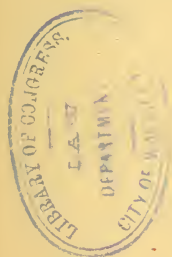




THE
POWERS, DUTIES
AND
LIABILITIES
OF
TOWNS AND TOWN OFFICERS
IN MASSACHUSETTS.

BY
WILLIAM M. SEAVEY,
OF THE SUFFOLK BAR



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PREFACE.

IN the present work the author has endeavored to select from the statutes of Massachusetts all the provisions which relate to the powers and duties of towns and of town officers in this Commonwealth. To these have been added, wherever they tended to make the meaning and intent of the statutes clearer, the latest decided cases from the reports of the Massachusetts Supreme Judicial Court, and a selection of appropriate forms and rules.

Although the form of the statutes has, in the main, been preserved, yet where they contained superfluous matter, or matter not relating to the subject of towns, and where this could be done without altering their meaning, abridgments have been made.

For convenience of reference, and because many statutes and parts of statutes have been grouped together under the same headings, the paragraphs in the book have been numbered consecutively, with proper references to denote the corresponding chapters and sections of the statutes referred to.

It has been thought best to give the Election Act of 1893, and the Act of the same year relative to the duties of town officers, nearly in full so far as they relate to the subjects treated of in the book, as these Acts codify the previous legislation on those subjects.

It has been intended to make the index to the book so full and complete that the reader may readily find the provisions relating to any of the principal subjects referred to.

The author has availed himself freely of matter contained in Herrick's Town Officer, but all of the matter which has been made use of has been verified and thoroughly revised.

W. M. S.

BOSTON, August, 1893.

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THE TOWN OFFICER.

CHAPTER I.

GENERAL POWERS AND DUTIES OF TOWNS.

THE NATURE OF A TOWN.

§ 1. The towns and cities of Massachusetts have been established by the Legislature for public purposes and the administration of public affairs, and embrace all persons residing within their respective limits. At the first settlement of the Colony, towns consisted of clusters of inhabitants dwelling near each other, which, by the effect of legislative acts, designating them by name, and conferring upon them the powers of managing their own prudential affairs, electing representatives and town officers, making by-laws, and disposing, subject to the paramount control of the Legislature, of unoccupied lands within their territory, became in effect, municipal, or *quasi*, corporations, without any formal act of incorporation. GRAY, C. J., in *Hill v. Boston*, 122 Mass. 344, p. 349; *Porter v. Sullivan*, 7 Gray, 441, 444; *Com. v. Roxbury*, 9 Gray, 451, 485; *West Roxbury v. Stoddard*, 7 Allen, 158, 169; *Lynn v. Nahant*, 113 Mass. 433, 448.

§ 2. Towns are strictly public corporations, established for the convenient administration of government; their municipal powers and duties are not created and regulated by contract, express or implied, but by acts passed by the Legislature from time to time, according to its judgment of what the interests of the public require; and they have not the same rights to judicial trial and determination in regard to the obligations imposed upon them as other corporations and

individuals have. GRAY, C. J., in *Agawam v. Hampden*, 130 Mass. 528, p. 530.

POWERS AND DUTIES OF TOWNS.

(a) *In General.*

§ 3. Towns shall continue to be bodies corporate, with all the powers heretofore exercised by them, and subject to all the duties to which they have heretofore been subject.

§ 4. The boundary lines of towns bordering upon the sea shall extend beyond the shore to the line of the Commonwealth (which extends one marine league from its seashore at low-water mark), but otherwise shall remain as now established.

§ 5. There shall be a perambulation of town lines, and they shall be run and the marks renewed, once in every five years, by two or more of the selectmen of each town, or such substitutes as they in writing appoint for that purpose. After every such renewal the proceedings shall be recorded in the records of the respective towns. Pub. Stats. ch. 27, §§ 1-3. Selectmen have no authority to change the boundaries, or to adjudicate upon the limits of towns, but only to ascertain existing lines and renew old marks and monuments. *Commonwealth v. Heffron*, 102 Mass. 148, p. 151.

§ 6. The commissioners on the topographical survey and map of Massachusetts may propose for the acceptance of the Legislature a change, by straightening or otherwise, in the existing boundary lines of any contiguous towns, provided such towns, at meetings duly called for the purpose, concur therein. Sts. 1888, ch. 336, § 1.

§ 7. Towns may in their corporate capacity sue and be sued by the name of the town, and may appoint all necessary agents and attorneys in that behalf. Pub. Stats., ch. 27, § 8. Selectmen are not such agents without special authority. *Walpole v. Gray*, 11 Allen, 149.

§ 8. Towns may hold real estate for the public use of the inhabitants, and may convey the same either by a vote of the inhabitants or by a deed of their committee or agent; may hold personal estate for the public use of the inhabit-

ants, and alienate and dispose of the same by vote or otherwise; may hold real and personal estate in trust for the support of schools, and for the promotion of education within the limits of the town; may receive, hold, and manage any devise, bequest, or donation for the establishment or maintenance of any reading-room for which it may grant money under the following section; may make contracts necessary and convenient for the exercise of their corporate powers; and may make orders for the disposal or use of their corporate property, as they may judge necessary or expedient for the interest of the inhabitants. Pub. Stats. ch. 27, § 9. They may take and hold devises and bequests for appropriate charitable uses. *Drury v. Natick*, 10 Allen, 169; *Hill v. Boston*, 122 Mass., at p. 349. A gift to a town by will, the income of which is to be applied to the support of the public schools of the town, is a gift for a charitable use which the town may properly take. *Davis v. Barnstable*, 154 Mass. 224.

§ 9. Any city or town is authorized to lease, for a period not exceeding five years, to any post of the Grand Army of the Republic established in such city or town, to be used by such post solely for the purposes of its organization, and to lease, for a period not exceeding five years, to any veteran firemen's association established in such city or town, to be used by such association solely for the purposes of its organization, any public building or part thereof belonging to such city or town, except schoolhouses in actual use as such, on such terms as the aldermen of such city or the selectmen of such town may determine. Sts. 1885, ch. 60; Sts. 1891, ch. 218. The statute of 1885, chapter sixty, refers only to existing public buildings, and by no means authorizes the erection of a building to be let to a Grand Army Post at a nominal rent. ALLEN, J., in *Kingman v. Brockton*, 153 Mass. 255, p. 259.

§ 10. Any town in the Commonwealth which has public grounds or open spaces in any of its streets, highways, or town ways, which it may have designated or shall hereafter designate as not needed for public travel, may give the improvement thereof to corporations within its limits organized under the provisions of section eighteen of chapter one hun-

dred and fourteen of the Public Statutes. Corporations which have or may hereafter have the improvement of such designated spaces given them, shall have the use, care and control thereof, and may grade, drain, curb, set out shade or ornamental trees, lay out flower plats, and otherwise improve the same, and may protect their work by suitable fences or railings; subject at all times to such directions as may be given by the selectmen or road commissioners. Sts. 1885, ch. 157.

§ 11. Towns may at legal meetings grant and vote such sums as they judge necessary for the following purposes:—

For the support of public schools authorized or required by law;

For the relief, support, maintenance, and employment of the poor;

For laying out, discontinuing, making, altering, and repairing highways and town ways, and for labor and materials to be used thereon;

For procuring the writing and publishing of their town histories;

For burial-grounds;

For encouraging the destruction of noxious animals;

For necessary aid to disabled soldiers and sailors and their families, and to the families of the slain;

For erecting headstones or other monuments at the graves of persons who, accredited to their respective quotas, served in the military or naval service of the United States in the war of the Rebellion; in the Revolutionary war, the war of 1812, the Seminole war, and the Mexican war; erecting monuments in memory of their soldiers who died in the service of the country in said war; and for keeping in repair or decorating graves, monuments, or other memorials erected to the memory of soldiers or sailors who have died in the military or naval service of the United States;

For conveying pupils to and from the public schools, the same to be expended by the school committee in their discretion;

For procuring the detection and apprehension of persons committing any felony therein;

For maintaining any library therein to which the inhabitants are allowed free access for the purpose of using the

same on the premises, and for establishing and maintaining a public reading-room, in connection with and under the control of the managers of such library; and for all other necessary charges arising in such town. Pub. Stats. ch. 27, § 10; Sts. 1884, ch. 42; Sts. 1886, ch. 76. Sts. 1888, ch. 304.

The foregoing seems not to have been intended to be an enumeration of objects and purposes for which towns may raise money, but the expression of a few leading and prominent objects, by way of instance, and a general reference to others under the term "other necessary charges." SHAW, C. J., in *Willard v. Newburyport*, 12 Pick. 227, p. 230.

But these "other necessary charges" are limited to objects of a like character with those previously specified. *Allen v. Marion*, 11 Allen, 108; *Coolidge v. Brookline*, 114 Mass. 594. But it was intended to give authority to towns to raise money whenever it is required to enable them to execute the powers or to perform the duties conferred and imposed upon them. *Dunn v. Framingham*, 132 Mass. 436. And courts have held such charges to embrace building a market-house; *Spaulding v. Lowell*, 23 Pick. 71; repairing a meeting-house as compensation for its use for town meetings, and paying a sexton for services; *Woodbury v. Hamilton*, 6 Pick. 101; repairing fire-engines, whether belonging to the town or private owners; *Allen v. Taunton*, 19 Pick. 485; repairing a public clock. *Willard v. Newburyport*, 12 Pick. 227; constructing reservoirs for water to supply fire-engines. *Hardy v. Waltham*, 3 Met. 163.

But towns cannot legally raise or appropriate money to celebrate anniversaries, such as the fourth of July, or the surrender of Cornwallis. BIGELOW, C. J., says: "The appropriation is neither necessary to the exercise of any power expressly granted to the city; nor is it incidental to any right or authority, which, though not expressly granted, has its origin in well-settled usage, and is founded upon the necessities, convenience, or even the comfort of the inhabitants. This is the extreme limit of the power of towns and cities to grant money, as settled by repeated adjudications of this court." *Hood v. Lynn*, 1 Allen, 103, p. 105, and cases cited.

The clause of Pub. Stats. ch. 27, § 10, authorizing towns to

raise money "for all other necessary charges arising therein," is "not limited to the purposes specifically enumerated in the section, or to others of the same kind. It was intended to give authority to towns to raise money whenever it was required to enable them to execute the powers or to perform the duties conferred and imposed upon them. Therefore, whenever the legislature confers a power or imposes a duty upon towns, this clause applies, and gives the towns authority to grant money which is required to enable them to execute the power or to perform the duty." Consequently a town may vote to appropriate money for the enforcement of the liquor law, and to employ agents and counsel to suppress the sale of intoxicating liquors. *Dunn v. Framingham*, 132 Mass. 436.

"Legal meetings" include special meetings called after the annual meeting. The purposes for which money is raised should be expressed in the vote, though it has been held sufficient when the objects were stated in town meeting by the chairman of the selectmen, where the parties afterwards objecting to the appropriation were present and made no objection. *Freeland v. Hastings*, 10 Allen, 570.

§ 12. Towns may contract for the disposal of garbage, refuse, and offal. Sts. 1889, ch. 377. They may contract with hospitals for the temporary care of the sick. Sts. 1890, ch. 119. They may employ counsel at hearings before legislative committees. Sts. 1889, ch. 380.

Under the St. 1889, ch. 380, authorizing the employment of counsel by "any town interested in a petition to the Legislature" to represent it at hearings thereon, a town may employ and pay counsel to oppose its division before a committee of the Legislature. *Connolly v. Beverly*, 151 Mass. 437.

§ 13. A town may, at its annual meeting, raise, by taxation, a sum of money, not exceeding one tenth of one per cent of its assessed valuation for the year last preceding, for the purpose of celebrating any centennial or two hundred and fiftieth anniversary of its incorporation, and of publishing the proceedings of any such celebration. Sts. 1889, ch. 21.

§ 14. Any city or town may raise, by taxation, such amount of money as may be authorized by a vote of two

thirds of the voters present and voting at a town meeting, or of two thirds of the members of each branch of the city council, taken by yeas and nays and approved by the mayor, for the purpose of celebrating the anniversary of its settlement, or of its incorporation as a town, or as a city, at the end of a period of fifty or of any multiple of fifty years from such settlement or incorporation, and of publishing an account of the proceedings of any such celebration. Sts. 1892, ch. 166.

§ 15. A city or town may grant and vote a sum not exceeding fifty cents for each of its ratable polls in the preceding year, to be expended in planting, or in encouraging the planting by the owners of adjoining real estate, of shade trees upon the public squares or highways, and may plant such trees subject to the provisions of § 793 (*post*). Sts. 1885, ch. 123, § 1.

§ 16. A town in which chapter two hundred and fourteen of the statutes of the year eighteen hundred and seventy-four has been duly accepted, or in which this and the following section have been accepted by two thirds of the legal voters present and voting at an annual meeting, may purchase or lease lands, and erect, alter, enlarge, repair, and improve buildings for public baths and wash-houses, either with or without open drying grounds, and may make open bathing-places, and may fit up and furnish all of the same with the requisite furniture, fittings, and conveniences, and may raise and appropriate money therefor.

§ 17. Such town may establish rates for the use of such baths and wash-houses, and appoint officers therefor, and may make by-laws for the government of such officers, and authorize them to make such rules and regulations as may seem to them expedient for the management of such baths and wash-houses; but such by-laws, rules, or regulations shall be subject to alteration or repeal at any time. Pub. Stats. ch. 27, §§ 13, 14.

§ 18. Towns may make for the following named purposes in addition to other purposes authorized by law such necessary orders and by-laws, not repugnant to law, as they may judge most conducive to their welfare, and may affix penalties, not exceeding twenty dollars for one offence, for breaches thereof:

For directing and managing the prudential affairs, preserving the peace and good order, and maintaining the internal police thereof.

For preventing the falling and securing the removal of snow and ice from the roofs of buildings in such portion of their limits, and to such extent, as they may deem expedient; the penalty for violation of such by-laws to apply to the owner of such building, or to his agent having the care thereof.

For requiring owners of buildings near the line of streets and public ways to erect barriers or to take other suitable measures to prevent the falling of snow and ice from such buildings upon persons travelling on such streets and ways, and to protect such persons from any other dangers incident to the maintenance, occupation, or use of such buildings. Pub. Stats. ch. 27, § 15.

The term "by-law" has a peculiar and limited signification, being used to designate the orders and regulations which a corporation, as one of its legal incidents, has power to make, and which is usually exercised to regulate its own action and concerns, and the rights and duties of its members amongst themselves. SHAW, C. J., *Commonwealth v. Turner*, 1 Cush. 496.

By-laws must be reasonable, and it is for the court to decide whether they are unreasonable or not. If unreasonable, they are void. If necessary for the good government of society, they are good. *Commonwealth v. Worcester*, 3 Pick. 472; *Vandine's Case*, 6 Pick. 191; *Boston v. Shaw*, 1 Met. 130.

"Prudential concerns" of a town embrace that large class of miscellaneous subjects affecting the accommodation and convenience of the inhabitants, which have been placed under the municipal jurisdiction of towns by statutes or by usage; such as public hay-scales, burying-grounds, wells and reservoirs, one or more public clocks for the common regulation of time, in all large towns and populous villages. *Willard v. Newburyport*, 12 Pick. 231.

But the usage must be what the law terms a good usage. "An unlawful expenditure of the money of a town cannot be rendered valid by usage, however long continued. A casual or occasional exercise of a power by one or a few towns will

not constitute a usage. It must not only be general, reasonable, and of long continuance, but, what is more important, it must also be a custom necessary to the exercise of some corporate power or the enjoyment of some corporate right, or which contributes essentially to the necessities and convenience of the inhabitants." *Hood v. Lynn*, 1 Allen, 106.

§ 19. A town in which water is supplied at the public expense, may by by-laws prescribe rules and regulations for the inspection, materials, construction, alteration, or use of all pipes and of fixtures through which such water is used within said town, and may impose penalties not exceeding twenty dollars for each violation thereof; and may prohibit the use of such water by persons neglecting or refusing to comply with the provisions of such by-laws; and any such by-law may be made operative within the whole territory of such town, or within any prescribed or defined district or districts of said territory.

§ 20. The powers conferred by the preceding section, except the power to impose penalties, may be exercised through any board or commission which the town may designate; but the powers so delegated may at any time be revoked by the authority delegating them.

§ 21. A town may regulate by by-laws, not repugnant to law, with penalties not exceeding fifty dollars for each violation thereof, the use of reservoirs and land and drive-ways appurtenant thereto, forming a part of its system of water supply within its limits.

§ 22. All penalties for breaches of the orders and by-laws of a town may be recovered on complaint before a police, district, or municipal court, or a trial justice, and shall inure to the town, or to such uses as the town may direct.

§ 23. When a town in a by-law imposes a duty and affixes a penalty for refusal or neglect to perform the same, it may therein provide that, in case of such refusal or neglect, the duty may be performed by officers therein named at the expense of the party liable to perform the same; and such expense may be recovered of such party by the town in an action of contract in the name of its treasurer; but the amount recovered shall not exceed the penalty fixed in the by-law.

§ 24. Before any by-law takes effect it shall be approved by the superior court or in vacation by a justice thereof, and shall with such approval be entered and recorded in the office of the clerk of the courts in the county where the town is situated, or in the county of Suffolk in the office of the clerk of the superior court for civil business.

§ 25. Such by-laws shall be binding upon all persons coming within the limits of the town, as well as upon the inhabitants thereof.

§ 26. All by-laws made by a town shall be published in one or more newspapers printed in the county where the town is situated.

§ 27. Each town shall provide at its own expense some suitable cabinet or book-case for the safe preservation of such books, reports, and laws as it receives from the Commonwealth, and for every month's neglect shall forfeit ten dollars.

§ 28. One copy or more of the annual report of a town, or of any special report relating to its income, expenditures, or other affairs, shall be returned by the clerk of such town, on or before the last day of April in each year, to the State librarian, to be deposited and preserved in the State library.

§ 29. If a town neglects to make the return required in the preceding section, the publications distributed by authority of the Commonwealth shall be withheld while such neglect continues. Pub. Stats. ch. 27, §§ 16-26.

§ 30. A town with the consent of a majority of its selectmen, ratified by a majority of its voters, present and voting thereon at a legal meeting, at which the check-list shall be used, may, for the purpose of supplying water to its inhabitants, purchase of any municipal or other corporation the right to take water from any of its sources of supply, or from pipes leading therefrom; or may purchase its whole water-rights, estates, franchises, and privileges, and thereby become entitled to all the rights and privileges and subject to all the duties and liabilities of said corporation; or may make a contract therewith for a supply of water. Pub. Stats., ch. 27, § 27.

The selectmen of a town, under a vote of the town authorizing them to do so, made a contract with a water company for three years at a certain rate per year for the service of a num-

ber of hydrants. At the expiration of the three years a town meeting was held to see what action the town would take with reference to a supply of water for fire and other service. It was voted that "the selectmen be authorized to renew the contract for ten years with the company at a reduced rate per year." *Held*, that the contract authorized by the vote did not come within the provisions of section 27 of chapter 27, of the Public Statutes; for the contract to which the statute refers is a contract for the supply of water for all uses, and was not intended to interfere with the corporate power of towns to procure water for fire purposes. *Smith v. Dedham*, 144 Mass., 177.

§ 31. A town making such purchase may issue, in payment therefor, bonds, bearing interest at a rate not exceeding seven per cent, payable semiannually, and redeemable at a time not exceeding twenty years from their date; and may, for the purpose of purchasing materials, laying pipes, and doing other work necessary for so supplying water, issue additional similar bonds; and a town making such contract as aforesaid may, for the purpose named in this section, issue similar bonds.

§ 32. The whole amount of bonds issued by any town under the preceding section shall not exceed ten per cent of its valuation.

§ 33. If the water is brought through another city or town, pipes may be laid through any streets and highways therein designated by the mayor and aldermen or selectmen thereof; and the town laying such pipes shall be liable, in an action of contract or tort, for all damages occasioned thereby. Pub. Stats., ch. 27, §§ 28-30.

§ 34. All purchase money received under the provisions of the four preceding sections by a town owing a water debt shall be applied to the payment of such debt. Pub. Stats., ch. 27, § 31.

§ 35. Any city or town having a water supply may contract with any other city or town situated in the water-shed of such supply to contribute, on such terms as may be deemed proper, to the cost of building a sewer or system of sewers which will aid in protecting any part of the source of such water supply from pollution. Sts. 1888, ch. 160.

§ 36. Each town containing more than three thousand inhabitants shall, and every town may, keep and maintain a secure and convenient lock-up to which persons arrested by an officer without a warrant may be committed; and a police, district, or municipal court, or a trial justice, may commit, for further examination, a prisoner charged with a bailable offence, and not recognizing, to the lock-up in the town in which the court is held, when in the opinion of such court or justice it may be deemed safe and commodious and costs may be saved thereby.

§ 37. The selectmen in towns required to maintain a lock-up shall annually appoint a keeper, who shall have the custody and care of the same and of persons committed thereto, and who shall signify his acceptance of the appointment within three days after he has notice thereof, and shall be sworn. Such appointment shall be in writing, and for the term of one year unless sooner revoked; and it shall be recorded in the town clerk's office. Pub. Stats., ch. 27, §§ 32, 33.

§ 38. Such keepers shall have the powers of police officers, with such compensation, to be paid by the town, as may be fixed by the selectmen at the time of their appointment. For the expenses of detention and support of each person committed there may be charged upon the warrant or other precept, if any, fifty cents for each full day of twenty-four hours from the time of commitment, and the same sum for any fractional part of a day, and no more, which shall be paid to the town maintaining the lock-up. But no fee for detention and support will be allowed unless it appears from the officer's return that the defendant was actually detained in the lock-up. Pub. Stats., ch. 27, § 34; Sts. 1890, ch. 166.

§ 39. A town which neglects to provide and maintain a lock-up required by law shall forfeit ten dollars for each month of such neglect. And if the selectmen neglect to appoint a keeper, they shall forfeit ten dollars for each month of such neglect.

§ 40. Such lock-ups shall at all reasonable hours be accessible for any legal and proper use to members of the district police, and to sheriffs, constables, and police officers; and a keeper of a lock-up who neglects to keep the same so acces-

sible, or who refuses to permit said officers so to use the same, shall pay a fine of not less than five nor more than twenty dollars.

§ 41. A town at a legal meeting may authorize a village or district in such town, containing not less than one thousand inhabitants, the limits of which shall be accurately defined, to organize under a name approved by such town, for the purpose of erecting and maintaining street lamps, establishing and maintaining libraries, building and maintaining sidewalks, and employing and paying watchmen and police officers, or for any of such purposes.

§ 42. The provisions of sections forty-two, forty-three, forty-six, fifty-one, fifty-two, fifty-three, fifty-four, fifty-eight, and sixty, of chapter thirty-five of the Public Statutes shall, so far as applicable, apply to such districts.

§ 43. The officers of such districts shall be a clerk and prudential committee, and they may have in addition a treasurer, and such other officers as the district may decide; and all such officers shall hold their offices for one year, and until others are chosen and qualified in their stead.

§ 44. Such districts may adopt by-laws to define the manner of calling their meetings and the duties of their officers, and may sue and be sued in the name of their inhabitants.

§ 45. A town, at a meeting held for the purpose, may take any land not appropriated to public uses, within its limits, as a place for the erection of a town-hall, or for the enlargement of its town-hall lot; but no lot so taken or enlarged shall exceed in extent one acre. The town shall, within sixty days after such taking, file in the registry of deeds for the county or district in which the land is situated such a description of the land so taken as is required in a common conveyance, and a statement of the purpose for which such land was taken, which description and statement shall be signed by the selectmen, or by a major part of them; and the title of such land shall vest in such town from the time of such filing.

§ 46. All damages sustained by such taking shall be paid by the town; and if the selectmen fail to agree upon such damages with the owner, the same may be assessed and determined by a jury in the manner provided by law in the case of

the laying out of town ways, upon application therefor made within three years after such filing. If the damages so awarded exceed the amount tendered to the owner as compensation before the filing of his application for a jury, he shall recover his costs; otherwise, the town shall recover costs.

§ 47. Land so taken shall revert to the owner, or to his heirs or assigns, unless within three years after the filing of such description and statement a town-hall is erected thereon, or the same is enclosed and devoted to the enlargement of a town-hall lot.

§ 48. A town may construct lines of electric telegraph for its own use upon and along the public ways within its limits, subject to the provisions of chapter one hundred and nine of the Public Statutes as far as the same are applicable. Pub. Stats. ch. 27, §§ 35-44.

§ 49. The selectmen may establish and maintain such public drinking troughs, wells, and fountains within the public highways, squares, and commons of their respective towns, as in their judgment the public necessity and convenience may require; and towns may grant and vote money to defray the expense thereof.

§ 50. When a town is required to enter into a recognizance, the selectmen may by an order or vote authorize any person to enter into the recognizance in the name and behalf of the town, and it shall be binding upon such town. No surety shall be required in such recognizance. Pub. Stats. ch. 27, §§ 50, 51.

§ 51. Towns may at their annual meetings establish by-laws to provide for the removal of snow and ice, to such extent as they may deem expedient, from sidewalks within the limits of the highways or town ways therein.

§ 52. Such by-laws shall determine the time and manner of removal, and shall annex penalties, to be recovered in an action of tort in the name of the town, not exceeding ten dollars for each violation thereof by any owner or tenant of an estate abutting upon such sidewalks.

§ 53. A city or town may make suitable by-laws and regulations to prevent the pasturing of cattle or other animals, either with or without a keeper, upon any or all of the streets

or ways in such city or town, and may annex penalties not exceeding twenty dollars for each violation thereof. But no such by-law or regulation shall affect the right of a person to the use of land within the limits of such way adjoining his own premises.

§ 54. A city or town may regulate by suitable ordinances or by-laws the passage and driving of sheep, swine, and neat cattle through and over the public streets, ways, causeways, and bridges therein, and may annex penalties not exceeding fifty dollars for each violation thereof.

§ 55. A city or town may regulate by ordinance or by-law the transportation of the offal of slaughtered cattle, hogs, sheep, or other animals, over, along, or through any of the public streets or highways therein, and may annex penalties not exceeding one hundred dollars for each violation thereof.

§ 56. A city or town may by ordinance or by-law prohibit persons from riding or driving beasts of burden, carriage, or draught upon any of the streets or ways for public travel therein at a rate of speed which it deems inconsistent with the public safety or convenience, under such penalties as it may impose for breaches of other ordinances or by-laws. Pub. Stats. ch. 53, §§ 8-13.

§ 57. A town may at an annual meeting establish by-laws to prevent persons from riding or driving horses at a rate faster than a walk over any bridge within its limits, and which has cost not less than five hundred dollars, and may annex penalties not exceeding one dollar for a breach thereof; but such by-laws shall first be approved by the commissioners for the county in which such town lies.

§ 58. Each city and town in which any such bridge terminates shall cause to be posted in a conspicuous place on or near the end of such bridge in said city or town, and to be there kept up, a white board containing in black letters the substance of the two preceding sections; and any such city or town neglecting to post and keep up such notice shall forfeit to the use of the county ten dollars for each day's neglect. Pub. Stats. ch. 53, §§ 19, 26.

§ 59. A city or town in which a draw for the passage of vessels through a bridge, used as a public highway, and main-

tained at the public expense, is situated, may make ordinances or by-laws regulating the passage of vessels through such draw, and may annex penalties not exceeding fifty dollars for each violation thereof; but no such ordinance or by-law shall take effect until approved by the board of harbor and land commissioners.

§ 60. When such ordinances or by-laws are made applicable to a draw, the city or town shall place said draw under the direction of a suitable person as draw-tender or superintendent, and shall post a copy of such ordinances or by-laws in some conspicuous place near by. Pub. Stats. ch. 53, §§ 28, 29.

§ 61. A town may adopt such ordinances, by-laws, and regulations, as it may deem reasonable in relation to the manufacture, mixing, storing, keeping, or selling within the corporate limits of the town, of naphtha, except for the purpose of re-manufacture, which will ignite at a temperature of less than one hundred and ten degrees Fahrenheit, of crude petroleum or any of its products, or of illuminating oils made from coal or petroleum, and having an igniting point of less than one hundred and ten degrees Fahrenheit, and a town may affix penalties for breaches thereof, not exceeding fifty dollars for each offence, reasonable notice of which ordinances, by-laws, or regulations shall be given. Pub. Stats. ch. 102, §§ 69-75.

§ 62. Towns which have adopted §§ 32-34 of chapter sixty of the Public Statutes shall appoint a superintendent of hay-scales and weigher of hay. Pub. Stats. ch. 60, § 32. Towns shall choose cullers of staves and hoops, in every maritime place from which staves are usually exported. Pub. Stats. ch. 60, § 41. Towns where lime is manufactured or imported, may choose inspectors of lime. Pub. Stats. ch. 60, § 46. Towns shall choose measurers of wood and bark. Pub. Stats. ch. 60, § 72. Towns shall choose surveyors of lumber. Pub. Stats. ch. 63, § 6.¹

¹ The duties of these officers will be found more in detail in the following sections of the Public Statutes: superintendent of hay scales, ch. 60, §§ 32-40; cullers of staves, ch. 60, §§ 41-45; inspectors of lime, ch. 60, §§ 46-52; surveyors of lumber, ch. 63, §§ 6-18.

(b) *Town and City Libraries.*

§ 63. Any town or city may establish and maintain a public library therein, with or without branches, for the use of the inhabitants thereof, and may provide suitable rooms therefor, under such regulations for its government as may from time to time be prescribed by the inhabitants of the town or by the city council.

§ 64. Any town may at a legal meeting grant and vote money for the establishment, maintenance, or increase of a public library therein, and for erecting or providing suitable buildings or rooms therefor; and may receive, hold, and manage any devise, bequest, or donation for the establishment, increase, or maintenance of any such library. Pub. Stats. ch. 40, §§ 9, 10.

§ 65. The city government of a city or the selectmen of a town, in which there is a public library, owned and maintained by such city or town, may place in such library, for the use of the inhabitants, such books, reports, and laws as have been or may be received from the Commonwealth. Pub. Stats., ch. 40, § 11. The authority of a town is to "establish and maintain" a library, and under the statute the town has authority to print a catalogue. *Eastman v. Allard*, 149 Mass. 154.

§ 66. Every town which raises or appropriates money for the support of a free public library, or free public library and reading room that is owned by the town, shall at its annual meeting, or at a legal town meeting appointed and notified for that purpose by the selectmen, elect a board of trustees, except in cases where such library has been or may be acquired by the town, in whole or in part, by some donation or bequest containing other conditions or provisions for the elections of its trustees or for its care and management, which conditions have been accepted and agreed to by vote of the town. Sts. 1888, ch. 304, § 1.

§ 67. Said board of trustees shall consist of any number of persons divisible by three which the town may decide to elect, one third thereof to be elected annually and to continue

in office for three years, except that the town shall first elect one third of the trustees for one year, one third for two years, and one third for three years, and thereafter one third the number annually for the term of three years. No person shall be ineligible to serve upon said board of trustees by reason of sex. Such board of trustees shall be elected by ballot, and shall organize annually by the choice of a chairman and secretary from their own number: *provided*, any town having a free public library which has heretofore elected a board of trustees to manage the same, consisting of a number divisible by three, and has heretofore elected annually one third of said board for three years, may continue to elect annually one third of said board, and the trustees in office shall hold their offices until the term for which they were elected shall expire, unless the town shall vote otherwise. Sts. 1889, ch. 112.

§ 68. If any person elected a member of the board of trustees, after being duly notified of his election in the manner in which town officers are required to be notified, refuses or neglects to accept said office, or if any member declines further service, or from change of residence or otherwise becomes unable to attend to the duties of the board, the remaining members shall in writing give notice of the fact to the selectmen of the town, and the two boards may, thereupon, after giving public notice of at least one week, proceed to fill such vacancy until the next annual town meeting; and a majority of the ballots of persons entitled to vote shall be necessary to an election.

§ 69. The trustees so elected by the town shall have the entire custody and management of the library and reading room, and all property owned by the town relating thereto; and all money raised or appropriated by the town for its support and maintenance, and all money or property that the town may receive by donation from any source, or by bequest, in behalf of said free public library and reading room, shall be placed in the care and custody of the board of trustees, to be expended or retained by them for and in behalf of the town for the support and maintenance of its free public library and reading room, in accordance with the conditions of each or any donation or bequest accepted by the town.

§ 70. In every town which shall, by a majority of the votes cast at its annual town meeting, or at a legal town meeting appointed and notified for that purpose by the selectmen, so direct, the board of trustees shall, in addition to the officers named in the preceding section, elect from among their own number a treasurer, who shall give a bond to the town, similar to the bond given by the town treasurer, for such an amount and with such sureties as may be satisfactory to the selectmen; and until a town directs otherwise, the town treasurer shall act as treasurer of the board of trustees.

§ 71. The trustees shall make an explicit report to the town at each annual town meeting of all their receipts and expenditures, and of all the property of the town in their care and custody, including a statement of any unexpended balance of money they may have, and of any bequests or donations they may have received and are holding in behalf of the town, with such recommendations in reference to the same as they may deem necessary for the town to consider.

§ 72. Nothing in this act shall be construed to interfere with library associations, nor with any library that is or may be organized and managed under special act of the legislature. Sts. 1888, ch. 304, §§ 3-7.

§ 73. The board of library commissioners is hereby authorized and directed to expend, upon the application of the board of library trustees of any town having no free public library owned and controlled by the town, a sum not exceeding one hundred dollars for books for any such town entitled to the benefits of this act; such books to be used by said trustees for the purpose of establishing a free public library, and said commissioners shall select and purchase all books to be provided as aforesaid. Sts. 1890, ch. 347, § 3.

(c) *The Power of Towns to Manufacture and Distribute Gas and Electricity.*

§ 74. Any city or town may, under the limitations of the following sections, construct, purchase, lease, or establish, and maintain within its limits one or more plants for the manufacture or distribution of gas or electricity for furnishing light for municipal use, and for the use of such of its inhabi-

tants as may require and pay for the same as herein provided. Such plants may include suitable land, structures, easements, water privileges, stations, gasometers, boilers, engines, dynamos, tools, machinery, pipes, conduits, poles, conductors, burners, lamps, and other apparatus and appliances for making, generating, distributing, and using gas or electricity for lighting purposes.

§ 75. No town shall exercise the authority conferred in the preceding section until after a vote that it is expedient to exercise such authority shall have been passed by a vote of not less than two thirds of the voters present and voting at each of two legal town meetings duly called for the purpose, of which meetings the second shall be held at an interval of not less than two nor more than thirteen months after the first. At such meetings such vote shall be taken by written or printed ballot and by the use of the check-list. When such a vote has failed of passage as hereinbefore provided at the second of said meetings, no similar vote shall be passed until after the expiration of two years thereafter. Sts. 1891, ch. 370, §§ 1, 3.

§ 76. Whenever any town, or the city council of any city, shall vote upon the acceptance of the provisions stated in § 74 *ante*, the clerk of such city or town shall forthwith forward to the board of gas and electric light commissioners a certified abstract of so much of the records of said city council or town as pertains to the acceptance of, or refusal to accept, the provisions of said section.

§ 77. Whenever in any city or town the votes contemplated by § 75 *ante*, have been passed, and any subsequent votes are passed relative to establishing or purchasing a plant, or to reconstructing, extending, or enlarging the same, or for the issue of bonds on account of the same, or concerning in any way the management or conduct thereof, or whenever any city or town shall adopt any ordinance or by-law concerning such plant, the clerk of said city or town shall, within ten days after the passage of such vote, or the adoption of such ordinance or by-law, forward to the board of gas and electric light commissioners a certified copy of every such vote, by-law, or ordinance. Sts. 1892, ch. 259, §§ 1, 2.

§ 78. Any city or town establishing or purchasing a plant within its limits as provided in this act, or reconstructing, extending, or enlarging the same, as stated in the next section, may pay for the same by the issue of bonds, payable in a term not exceeding thirty years, and bearing interest at a rate not exceeding five per cent, which shall not be disposed of for less than par and accrued interest, and the indebtedness thereby created shall not be included in the limit of indebtedness of such city or town provided by law; but such bonds shall not be issued until a vote authorizing the same has been passed by the vote as is required by § 103 *post*, and the whole amount of bonds so issued by a city or town, and outstanding, shall not exceed at their par value the amount of five per cent of the total valuation of estates therein in the case of a town, or two and one half per cent of such valuation in the case of a city according to the last preceding state valuation. The interest on such bonds and a sinking fund to meet the same at maturity shall be provided for as is required by § 105 *post*. No indebtedness shall be incurred by any city or town in connection with such plant except as aforesaid, and excepting further that money may be borrowed under the provisions stated in § 101 *post*, to pay the operating expenses thereof. All receipts from the sale of gas or electricity shall be paid over to the treasurer of such city or town. The gross expenses of running such plant and conducting such business of supplying gas or electric light, including interest on such bonds and requirements of the sinking fund as aforesaid, shall be included in the appropriations made annually or from time to time by such city or town, and shall be paid out of the treasury thereof.

§ 79. Any city or town owning a plant for the manufacture or distribution of gas or electricity may reconstruct, extend or enlarge the same, but no such reconstruction, extension, or enlargement, beyond the necessary and ordinary maintenance, repair, and replacement thereof, except such increased appliances for the distribution of gas and electricity as may be necessary to furnish the same to new takers, shall be undertaken or made except by the vote provided by the preceding section in case of the issue of bonds.

§ 80. Any city or town obtaining a plant may provide by ordinance, if a city, or by by-laws, if a town, for the equitable assessment upon the owner or occupant of any premises of any part or the whole of the cost of laying and maintaining upon such premises, pipes, conduits, conductors or other appliances for the distribution of gas or electricity to the occupants thereof. Payment of such assessments shall not be obligatory, but shall be made a condition precedent to the supply of gas or electricity to the occupants of such premises, and may be exacted before providing any such appliances for such distribution.

§ 81. Any city or town having obtained a plant for the purpose, as provided in this act, may manufacture, generate, and distribute gas or electricity for furnishing light for municipal use or for the use of its inhabitants, under such regulations as it may establish. No city or town shall be compelled to furnish gas or electricity to any person or corporation except upon order of the gas and electric light commissioners and after payment of any assessment provided for in the preceding section. Any person or corporation aggrieved by the refusal of any city or town supplying gas or electricity under the authority of this act to furnish the same may appeal to such commissioners, setting forth in such appeal what is required of the city or town, in such detail as the commissioners may require.

§ 82. Whenever any city or town shall obtain a plant as stated in § 74 *ante*, the operation, control, management and repair thereof, the manufacture, generation, and distribution of gas and electricity thereby, including the purchase of supplies, the hiring and discharge of employees, and all business relating to such manufacture, generation, and distribution, to the methods, amounts, times, prices and quality of the supply to each person and corporation, the collection of bills, the keeping of accounts and custody of moneys received for gas or electricity or otherwise, and the payment of bills incurred in said business, shall be entrusted, subject to any ordinances established by the city council in a city, or the by-laws or regulations established in a town, to one officer, who shall be appointed and may be removed by the mayor in

a city, and by the selectmen in a town. Such officer shall be known as manager of gas, manager of electric light, or manager of gas and electric light, according as a plant for one or both may be under his charge. In cities, the compensation of such officer shall be annually fixed by the city council, and in towns by the selectmen. Before entering upon the duties of his office he shall give bond to the city or town for the faithful performance of his duties in such sum and form and with such sureties as the mayor or selectmen shall approve. He shall at the end of each municipal year render to the mayor or selectmen such detailed statement of his doings and of the business and financial matters in his charge as the gas and electric light commissioners may prescribe. He shall also at any time, when required by the mayor or selectmen, make to him or them a statement of his doings, business, receipts, disbursements, balances, and of the indebtedness of the city or town in his department, in the detail required; and he shall pay over to the treasurer of the city or town all receipts collected.

§ 83. The books and accounts pertaining to the business authorized by this act shall be kept in a form to be prescribed by the board of gas and electric light commissioners, and the accounts shall be closed on the thirtieth day of June in each year, so that a balance sheet of that date can be taken therefrom and included in the return to said board, which return shall be for the year ending the thirtieth day of June. The mayor or selectmen and manager shall annually, on or before the second Wednesday of September in each year, make a return to said board in a form prescribed by it, setting forth the financial condition of said business, the amount of indebtedness authorized or existing on account thereof, a statement of income and expenses in such detail as the board may require, with a list of salaried officers employed in said business, and the amount of salary paid to each. Said return shall be signed and sworn to by the mayor or a majority of the selectmen, and in both cities and towns by the manager. The mayor of a city or the selectmen of a town may direct, in addition, any additional returns to be made at such time and in such detail as they may order. The mayor or selectmen and manager shall also at all times, on request, submit said

books and accounts for the inspection of said board, and furnish any statement or information required by the board concerning the condition, management, and operation of said business.

§ 84. The price to be charged for gas or electricity to persons and corporations shall be fixed, and shall not be changed oftener than once in three months. Any change shall take effect on the first day of a month, and the new price adopted shall, before the change shall take effect, be advertised in some newspaper published in the city or town where the plant is, if any is published therein. Such price shall not, except with the written consent of the gas and electric light commissioners, be fixed at less than cost, in which shall be included, in addition to all operating expenses, interest on the net investment in plant made by the city or town, less assessments collected in the manner stated in § 80, at the rate paid upon the bonds above provided for, together with the requirements of the sinking fund established to meet such bonds, and also depreciation of the plant, to be reckoned at not less than five per cent per annum of its cost, and losses; but any losses exceeding three per cent of the investment in plant may be charged in different years at not more than such three per cent per annum. Such price shall not be greater than shall allow above such cost a profit of eight per cent per annum to the city or town upon its net investment. In fixing such cost to establish the price to be charged to persons and corporations the gas and electricity used by the city or town shall be charged to it at cost. A sufficient deposit to secure the payment for gas or electricity for three months may be required in advance from any taker, and the supply may be shut off from any premises until all arrearages for gas or electricity furnished thereon, to whomsoever furnished, shall be paid. After three months default in the payment of such arrearages all appliances for distribution belonging to the city or town on such premises may be removed, and after such removal shall not be restored except on payment of all such arrearages, and a sufficient sum to cover all expenses caused by removal and restoration. Sts. 1891, ch. 370, §§ 4-10.

§ 85. Whenever any city or town engaged in the business

of selling gas or electric light, or both, to persons or corporations, shall fix or change the price of such light, the manager of gas or electric light in such city or town shall send to the board of gas and electric light commissioners a certified copy of the notice announcing such price or change. Sts. 1892, ch. 259, § 3.

§ 86. When any city or town shall decide as hereinbefore provided to establish a plant, and any person, firm, or corporation shall at the time of the first vote required for such decision be engaged in the business of making, generating, or distributing gas or electricity for sale for lighting purposes in such city or town, such city or town shall, if such person, firm, or corporation shall elect to sell and shall comply with the provisions of this act, purchase of such person, firm, or corporation before establishing a public plant such portion of his, their, or its gas or electric plant and property suitable and used for such business in connection therewith as lies within the limits of such city or town. If in such city or town a single corporation owns or operates both a gas plant and an electric plant, such purchase shall include both of such plants, but otherwise such city or town shall only be obliged to purchase the existing gas plant or plants if it has voted only to establish a gas plant, and shall only be obliged to purchase the existing electric plant or plants if it has only voted to establish an electric plant. If the main gas works, in the case of a gas plant, or the central lighting station, in the case of an electric light plant, lie within the limits of the city or town which has voted to establish a plant as aforesaid, such city or town shall purchase as herein provided the whole of such plant and property used in connection therewith, lying within its limits, and the price to be paid therefor shall be its fair market value for the purposes of its use, no portion of such plant to be estimated, however, at less than its fair market value for any other purpose, including as an element of value any locations or similar rights acquired from private persons in connection therewith, plus the damages suffered by the severance of any portion of such plant lying outside of the limits of such city or town, unless it shall refuse or neglect to purchase the same, and minus the amount of any mortgage

or other encumbrance or lien to which the plant so purchased, or any part thereof, may be subject at the time of transfer of title; but such city or town may require that such plant and property be transferred to it free and clear from any mortgage or lien, unless the commissioners appointed under the provisions of section thirteen of this act shall otherwise determine. Such value shall be estimated without enhancement on account of future earning capacity, or good will, or of exclusive privileges derived from rights in the public streets. If the main gas works or central lighting station of such a plant do not lie within the limits of the city or town which has voted as aforesaid, then such city or town shall only purchase that portion of such plant and property which lies within its limits, paying therefor upon the basis of value above established, but without allowance of damages on account of severance of plant. No city or town shall be obligated by this section to buy any apparatus or appliances covered by letters patent of the United States or embodying a patentable invention unless a complete right to use the same and all other apparatus or appliances necessary for such use within the limits of such city or town to such extent as such city or town shall reasonably require such right, shall be assigned or granted to such city or town at a cost as low as the cost of such right would be to the person, firm, or corporation whose plant is purchased.

No town shall be obliged to buy any property added to a plant unnecessarily after the passage of its vote to exercise the authority conferred in § 74, nor any property except such as shall be suitable for the business which the town may assume; and if any property or plant which the town shall be entitled or obliged to buy will not be available if purchased, by reason of liens or other cause, the town may be released from buying it, or a discount may be made from the price to be paid. Sts. 1893, ch. 454, § 5.

§ 87. Whenever the existing gas plant or electric plant of any person or corporation shall have been acquired by any city or town pursuant to the provisions of this act, the powers and rights of such person or corporation in relation to the manufacture and distribution of gas or electricity within the

limits of such city or town shall, from and after the date of such acquirement, cease and determine.

§ 88. Any city or town owning or operating a plant or plants for the manufacture or distribution of gas or electricity for furnishing light under this act, shall be responsible for any injury or damage to persons or property, happening or arising by reason of the maintenance or operation of the same, in the same manner and to the same extent as though the same were owned and operated by an individual or private corporation; but nothing in this act shall be construed to include damages to any existing gas or electric plant in a city or town by reason of the establishment of a competing line or plant under authority of this act.

§ 89. All general laws of the Commonwealth, and all ordinances or by-laws of any city or town availing itself of the provisions of this act relative to the manufacture, use, generation, or distribution of gas or electricity, or the quality thereof, or plant or the appliances therefor, shall apply to such city or town, so far as the same may be applicable and not inconsistent with this act, in the same manner as the same apply to persons and corporations engaged in making, generating, or distributing gas or electricity therein.

§ 90. Nothing herein shall be construed to take away, restrict, or impair any rights of any city, town, or other authority, which may now exist to revoke locations of wires, poles, conduits, or pipes in, over, or under their streets or ways: *provided, however,* that no city or town having within its limits the main gas works, in the case of a gas plant, or the central lighting station, in the case of an electric light plant, or the major portion of the wires, poles, conduits, or pipes used in connection with any such works or plants, shall, except for a violation of the terms or conditions upon which the same were granted, or for a violation of law respecting the exercise thereof, revoke any rights heretofore granted, or which may hereafter be granted, to any person or corporation engaged in the business of making, generating, or distributing gas or electricity for sale for lighting purposes, after the first passage by the city council, in the case of a city, of the vote provided for, or while such vote is pending in either branch thereof, or

in the case of a town, after the passage of the first vote as stated in § 75 *ante*, or after the calling of a town-meeting at which the passage of such vote is included in the warrant: *provided, however*, that in case in either a city or town the second vote provided for by this act shall fail of passage, or in a city shall fail to receive the approval of the mayor or the ratification of the voters in accordance with this act, then such city or town may exercise all rights of revocation, if any, which it possessed prior to the passage of such first vote until such first vote is again passed, or pending or included in the warrant as above provided. And after the passage and ratification of both votes by a city, and after the passage of both votes in the manner stated in § 75 *ante* by a town, no such city or town shall, except as hereinbefore provided, revoke any rights, locations, or licenses granted to any such person or corporation. The provisions of this section shall apply, in the case of a city, whether such revocation shall be made by both branches of the city government or by one branch. Sts. 1891, ch. 370, §§ 15-18; Sts. 1893, ch. 454.

(d) *Town Subscriptions to Railroads.*

§ 91. Any town within which the road of a railroad corporation organized after the first day of February in the year eighteen hundred and seventy-five, or the road of a railroad corporation then existing and whose road was not then constructed, is located or terminates, and any such city having by the census of the year eighteen hundred and seventy less than thirty thousand inhabitants, may subscribe for and hold shares of the capital stock of the securities of any or all such corporations, to an amount not exceeding, for the aggregate in all such corporations, two per cent of the valuation of such city or town for the year in which the subscription is made; and any such town having a valuation not exceeding three millions of dollars may so subscribe for and hold the securities of such corporations, or either of them, to an additional amount not exceeding one per cent of the valuation of such town in the year in which the subscription is made: *provided*, that two thirds of the legal voters in such city or town, present and voting by ballot and using the check-list, at legal meetings

called for the purpose and held in like manner as the meetings for the choice of municipal officers are held therein, vote so to subscribe. Nothing in this section shall be construed to authorize a city or town to make subscriptions to a greater amount than is stated in § 111 *post*.

§ 92. A city or town, by vote passed in accordance with the provisions of the preceding section, may become an associate under section thirty-four of chapter 112 Public Statutes in the formation of a railroad corporation to construct a road located or terminating therein, with all the powers and privileges enjoyed by an individual associate.

§ 93. The form in which the matters provided for in the two preceding sections shall be voted upon shall be determined in cities by a concurrent vote of both branches of the city council, and in towns by the selectmen; and whenever a city or town has voted to subscribe to such stock or securities, or to become an associate in the formation of such corporation, the mayor and aldermen or the selectmen shall select some person, who may in behalf of the city or town execute its vote.

§ 94. A subscription authorized by vote as is stated in § 91 *ante*, shall be void, unless actually made by the persons authorized within twelve months from said vote; and unless, within the said period a part thereof is actually paid, or some proceeding is commenced by the corporation to enforce payment thereof, and at least twenty per cent of the capital stock of the corporation is actually paid in cash, and at least ten per cent of the capital stock is actually expended by it in the construction of its road.

§ 95. Towns and cities so subscribing for stock or securities may raise money to pay for the same by tax, or, within the limits stated in § 111 *post* by loan, and may issue their notes or bonds for such loan, and may hold and dispose of such stock and securities in like manner as other town property; and the selectmen of towns, and such persons as may be authorized by the city councils of cities, may represent their respective municipalities at all meetings of the corporations in which the stock or securities are held, and vote upon all the shares of stock owned by them respectively. Pub. Stats. ch. 112, §§ 46-50.

(e) *Municipal Indebtedness.*

§ 96. Cities and towns shall not incur debts except in the manner of voting, and within the limitations as to amount and time of payment, prescribed in the following sections.

§ 97. In ascertaining the amount of indebtedness of a city or town for the purposes of this chapter, debts created for supplying the inhabitants with water shall be omitted, and the amount of its sinking-funds shall be deducted.

§ 98. The provisions set forth in §§ 96-110 do not apply to debts lawfully incurred in aid of railroad corporations, or to water-scrip lawfully issued by a town under special statutes, for the indebtedness of a fire district. Pub. Stats. ch. 29, §§ 1-3.

§ 99. No city or town, except as provided in the following section, shall become indebted in an amount which exceeds three per cent on the last preceding valuation, for the assessment of taxes, of the taxable property therein, except damages paid for alteration of grade crossings. Pub. Stats. ch. 29, § 4; Sts. 1892, ch. 178.

§ 100. Cities and towns which were indebted on the thirteenth day of June in the year eighteen hundred and seventy-five to an amount not less than two per cent on the valuation for said year, for the assessment of taxes, of the taxable property therein, may, within the limitations as to the manner of voting the same and time of payment prescribed in this chapter, increase such indebtedness to the extent of an additional one per cent on that valuation, and no more. Pub. Stats., ch. 29, § 5.

§ 101. Cities and towns may, by ordinary vote, incur debts for temporary loans in anticipation of the taxes of the municipal year in which such debts are incurred and expressly made payable therefrom by vote of the city or town. Sts. 1889, ch. 372.

§ 102. Debts incurred by cities and towns for temporary loans in anticipation of the taxes of the municipal year in which such debts are incurred and expressly made payable therefrom by vote of the city or town, shall become due and payable within one year from the date of their incurrence. Sts. 1891, ch. 221.

§ 103. Other debts than those mentioned in the two preceding sections shall be incurred only by a vote of two thirds of the voters present and voting at a town meeting, or of two thirds of all the members of each branch of the city council, taken by yeas and nays and approved by the mayor ; or, if he disapproves such vote, by another like vote taken after notice of such disapproval, which notice shall be given within ten days from the time in which the vote of the city council is laid before the mayor ; and if the mayor fails to give such notice to the branch of the city council in which such vote was first taken, he shall be deemed to have approved such vote. Pub. Stats., ch. 29, § 7.

This statute deprives cities and towns of the authority to contract debts for borrowed money, which they had previously possessed, whether derived from express grant or held to exist as an implied power ; and, instead of it, gives to these municipalities a limited power, which can be lawfully exercised only in the mode specially pointed out. It contains a positive prohibition of all debts contracted for borrowed money in any other mode ; therefore an action cannot be maintained against a town on a promissory note given by its treasurer for borrowed money, unless the vote of the town authorizing the treasurer to borrow money shows either that the debt was in anticipation of the taxes of the year in which the debt was incurred, and of the year next ensuing, and expressly made payable therefrom, or that the vote was passed by two thirds of the legal voters present and voting at a legal meeting. *Agawam National Bank v. South Hadley*, 128 Mass. 503.

§ 104. All debts mentioned in the preceding section shall be payable within the following periods : namely, debts incurred in supplying the inhabitants with water, within not exceeding thirty years ; debts incurred in constructing sewers, within not exceeding thirty years ; and all other debts within not exceeding ten years. Sts. 1892, ch. 245, § 6.

§ 105. The interest on all debts shall be raised by taxation annually. When a debt is payable at a period exceeding ten years, the city or town shall, and when payable at a period not exceeding ten years may, at the time of contracting the same, establish a sinking-fund, and contribute thereto from

year to year an amount raised annually by taxation sufficient with its accumulations to extinguish the debt at maturity; and when payable at a period not exceeding ten years, the city or town shall raise by taxation annually not less than eight per cent of the principal thereof, and shall set apart the same for a sinking-fund until an amount is raised sufficient with its accumulations to extinguish the debt at its maturity; and shall raise any balance necessary for such extinguishment, by taxation, in the year before the maturity of the debt. No such sinking-fund shall be used for any other purpose than the payment and redemption of such debt.

§ 106. A town establishing a sinking-fund under the provisions of this chapter shall, at the time of establishing the same, elect by ballot three or six commissioners of its sinking-funds; and a city establishing such a fund shall elect such commissioners by a concurrent vote of both branches of the city council. One third of the number shall be elected for one, two, and three years respectively: and annually thereafter there shall be elected, for a term of three years, a number equal to the number whose term of service then expires. Vacancies occurring in the board shall, in towns, be filled by the remaining member or members and the selectmen, by a majority of ballots of the officers so entitled to vote, at a meeting called for the purpose by the selectmen; and in cities by the city council in the manner herein provided for the election of the commissioners. The remaining member or members shall in case of a vacancy exercise the powers of the board until the vacancy is filled. The city or town treasurer shall not be eligible as such commissioner, and the acceptance of the office of treasurer by a commissioner already elected shall operate as a resignation of the office of commissioner. But the foregoing provisions as to the mode of electing commissioners and filling vacancies shall not apply to boards of sinking-fund commissioners established before the thirteenth day of June in the year eighteen hundred and seventy-five.

The commissioners shall choose a treasurer, who may be the city or town treasurer; and if the city or town treasurer is chosen, his bond shall apply to and include duties performed

under this chapter. If any other person is chosen treasurer, he shall give a bond, with sureties, to the satisfaction of the commissioners, for the proper discharge of the duties of his office.

§ 107. The commissioners shall receive all sums contributed to a sinking-fund, and shall invest and reinvest the same, and the income thereof as it accrues, in the name of the board, in the particular scrip, notes, or bonds for the redemption of which such sinking-fund was established, or in other bonds of such city or town secured by sinking-funds, or in the securities in which by law the funds of savings banks may be invested (except personal securities); but no portion of the same shall be loaned to the city or town except as herein provided; and the commissioners may sell and reinvest such securities when required in their judgment. They shall keep a record of their proceedings; and shall annually, at the time when other municipal officers are required to make their annual reports, make a written report to the city or town of the amount and condition of said funds, and of the income thereof for the preceding financial year. The record of and the securities belonging to said funds shall at all times be subject to the inspection of the selectmen, mayor, and aldermen, or of any committee of the city or town duly authorized for the purpose. The necessary expenses of the board shall be paid by the city or town; and the treasurer and secretary thereof shall receive such compensation as shall be fixed by the city or town, but no commissioner shall receive compensation for his services.

When securities issued by a city or town become a part of its sinking-fund, the commissioners shall cause to be stamped or written on the face thereof a notice that they are a part of such sinking-fund, and are not negotiable; and all coupons thereof, as they become due and are paid, shall be cancelled.

§ 108. Each city and town which was indebted on the thirteenth day of June in the year eighteen hundred and seventy-five, to an amount exceeding five per cent on the valuation for said year, for the assessment of taxes, of the taxable property therein, shall establish a sinking-fund and contribute thereto from year to year an amount raised annually by taxa-

tion sufficient with its accumulations to extinguish the debt within thirty years from said date; and each city and town which was then indebted to an amount less than five per cent and more than one per cent on such valuation shall establish a sinking-fund and contribute thereto as above provided, so as to extinguish the debt within twenty years from said date; subject, however, in both cases, to the provisions of the following section.

§ 109. In establishing and contributing to the sinking-funds mentioned in the preceding section, it shall be sufficient to provide for the extinguishment, at their maturity, of funded debts existing on the thirteenth day of June in the year eighteen hundred and seventy-five, and for the extinguishment within thirty years from said date of debts then existing and contracted for supplying the inhabitants with water.

§ 110. Nothing contained in the preceding sections shall be construed as prohibiting the inhabitants of towns, or city councils, from paying or providing for the payment of any debt at earlier periods than is therein required; or from renewing the same in securities payable within the period required for the final payment of the debt; or from adding to any sinking-funds the excess of any appropriation over the amount required for the purpose thereof, or any sums derived from taxation or from other sources which are not required by law to be otherwise expended; and such additions may be made for the purpose of reducing the entire debt for the redemption of which the sinking-fund was established, or of reducing the amount to be raised by taxation for such fund. Pub. Stats., ch. 29, §§ 9-14.

§ 111. No city or town shall, for the purpose of subscribing in aid of a railroad corporation, increase its indebtedness to an amount which with its existing net indebtedness, incurred for any purpose, exceeds three per cent of the valuation of the taxable property therein, to be ascertained by the last preceding city or town valuation for the assessment of taxes; but the limitation of this section shall not apply to temporary loans in anticipation of the taxes of the year in which such debts are incurred and of the year next ensuing, and expressly made payable from such taxes by vote of the said city or town.

§ 112. A city or town owing debts incurred in aid of a railroad corporation may, for the purpose of paying the same, establish a sinking-fund, which shall be subject to the provisions stated in §§ 106 and 107 *ante*, and may contribute thereto any sums received from sales of the stock or securities of such corporations, or from dividends or interest upon the same, or from taxes voted for the payment of such indebtedness; and may transfer the custody and management of such stock and securities to the commissioners of such sinking-fund.

§ 113. A city or town having a sinking-fund for the payment of its general indebtedness, under the provisions of this chapter, may, by a vote of the inhabitants of such town, or of the city council of such city, provide that the commissioners of such sinking-fund shall be the commissioners of the sinking-fund under the preceding section.

§ 114. A city or town owing debts described in § 112, shall annually raise by taxation a sum sufficient, with the income, if any, derived from its stock or securities there mentioned, to pay the interest on such debts.

§ 115. A city or town which recalls and pays any of its securities, under rights reserved therein, may issue, in place of securities so recalled and paid, other securities payable at periods within the maturity of those originally issued. Such new securities shall, for debts created before the twenty-eighth day of May in the year eighteen hundred and seventy-six, be made payable within thirty years from the thirteenth day of June in the year eighteen hundred and seventy-five; and shall, for debts created after said twenty-eighth day of May, be made payable within thirty years from the time of contracting the same. Pub. Stats., ch. 29, §§ 19-23.

§ 116. Any city or town required by the preceding sections, to establish a sinking-fund for the payment of its indebtedness may, instead thereof, by a majority vote provide for the payment of such indebtedness in such annual proportionate payments as will extinguish the same within the time prescribed in said sections; and when such vote has been heretofore or shall be hereafter passed, the amount required thereby shall, without further vote, be assessed by the assessors

in each year thereafter, until the debt shall be extinguished, in the same manner as other taxes are assessed. Sts. 1882, ch. 133, § 1.

§ 117. Any city or town which has already incurred or shall hereafter incur a debt under the provisions of the preceding sections may issue notes, bonds, or scrip therefor, properly denominated on the face thereof, and signed by its treasurer and countersigned in case of a city by its mayor, and in case of a town by a majority of its board of selectmen, and within the limitations as to amount and time of payment prescribed in said sections, with interest payable semiannually at a rate not exceeding six per cent per annum; and may sell said notes, bonds, or scrip at public or private sale, or use the same in payment of such debts upon such terms and conditions as it may deem proper, provided that said notes, bonds, and scrip shall not be sold at less than par. Sts. 1884, ch. 129.

CEMETERIES AND BURIALS.

§ 118. Each town and city shall provide one or more suitable places for the interment of persons dying within its limits.

§ 119. When there is a necessity for a new burial-ground in a town, or for the enlargement of a burial-ground already existing in and belonging to a town, and the owner or any person interested in the land needed for either purpose refuses to sell the same, or demands therefor a price deemed unreasonable by the selectmen of the town, or is unable for any reason to convey the land, the selectmen may, with the approbation of the town, make application therefor by written petition to the commissioners of the county wherein the land is situated. Pub. Stats. ch. 82, §§ 9, 10.

§ 120. Towns may grant and vote such sums as they may judge necessary for enclosing any cemetery provided by them according to law, or constructing paths and avenues and embellishing the grounds in the same, and may establish all necessary rules in relation thereto not repugnant to law. They may lay out such cemetery into lots, and shall set apart a suitable portion as a public burial-place for the use of the inhabitants, free of charge. They may sell and convey to any

persons, whether residents of the towns or otherwise, the exclusive right of burial and of erecting tombs and cenotaphs upon any lot, and of ornamenting the same upon such terms, conditions, and regulations as they shall prescribe; and the proceeds of such sales shall be paid into town treasuries, and be kept separate and apart from other funds, and be appropriated to reimburse the towns for the cost of the land, or of the improvement and embellishment thereof.

§ 121. No city or town shall alienate, convey, or appropriate to any other use than that of a burial-ground, any tract of land which has been for more than one hundred years used as a place of burial of the dead; and no portion of such burial-ground shall be taken for any public use without special authority from the legislature; but this section shall not apply in any case where the town had given its consent to such use, or where special authority therefor had been granted by the legislature, prior to the twenty-eighth day of April in the year eighteen hundred and eighty.

§ 122. Any person holding, occupying, or interested in a lot in a public burial-place of a city or town may deposit with the treasurer of such city or town a sum of money not exceeding five hundred dollars for the purpose of providing for the preservation and care of such lot or its appurtenances; which sum shall be entered upon the books of the treasurer, and held in accordance with the provisions of the ordinances or by-laws of such city or town in relation to burials. A city or town may pass such ordinances or by-laws as may be necessary for the purposes of this section, and not repugnant to law; and may receive such money for said purposes, and may allow interest thereon at a rate not exceeding six per cent a year. Pub. Stats. ch. 82, §§ 15-17.

§ 123. No highway or town way shall be laid out or constructed in, upon, or through an enclosure used or appropriated for the burial of the dead, unless authority to that effect is specially granted by law, or the consent of the inhabitants of the town where such enclosure is situated is first obtained.

§ 124. No highway or town way shall be laid out or constructed in, upon, or through such part of an enclosure belong-

ing to private proprietors, as may be used or appropriated to the burial of the dead, unless the consent of such proprietors is first obtained. Pub. Stats. ch. 82, §§ 29, 30.

§ 125. Any town which shall adopt the provisions of chapter 264 of the Acts of 1890, may elect, at a properly called town meeting, a board of three commissioners of burial-grounds, who shall have general charge of all matters pertaining to burial-grounds and burials. And a town which adopts this act may receive donations, gifts or bequests for maintaining cemeteries and cemetery lots, and these gifts or bequests shall be paid into the town treasury, and be under the charge of the town treasurer. Sts. 1890, ch. 264.

FORESTS AND PARKS.

§ 126. The voters of a town at a meeting properly called, may vote to purchase land within the limits of the town, to be devoted to the preservation, reproduction, and culture of forest trees for the sake of the wood and timber, or for the preservation of the water supply of the town. Sts. 1882, ch. 255.

§ 127. A town which accepts the provisions of chapter 154 of the Acts of 1882 may, at a legal meeting called for the purpose, elect a board of park commissioners consisting of three persons. This board may take by gift, purchase, devise, or otherwise, lands desirable for public parks, and they shall have charge of all matters connected with parks. Sts. 1882, ch. 154.

PAYMENT OF STATE AID.

§ 128. Any city or town may raise money for the purposes of this act; and the treasurers thereof may, under the direction of the mayor and aldermen or the selectmen thereof, under the following conditions pay state aid to, or expend it for, any worthy person having a residence and actually residing in such city or town who is not receiving aid from any other state, nor from any other city or town in this state, and who shall be in such necessitous circumstances as to require further public assistance, and who shall belong to either of the following classes, to wit: *First Class*. Invalid pensioners of the United States who served in the army or navy of the United States between the nineteenth day of April in the year

eighteen hundred and sixty-one and the first day of September in the year eighteen hundred and sixty-five, to the credit of the state of Massachusetts; or in such army or navy in the military organizations of this state known as three months' men, ninety days' men, or one hundred days' men, mustered into the United States service in the months of April, May, June or July in the year eighteen hundred and sixty-one, or April, May, July, or August in the year eighteen hundred and sixty-four; — or who, having their residence and actually residing in this state at the time of their enlistment, served to the credit of any other state in such army or navy, between the nineteenth day of April in the year eighteen hundred and sixty-one and the eighteenth day of March in the year eighteen hundred and sixty-two; which pensioners have been honorably discharged from their said service in the army or navy and are so far disabled by such service as to prevent them from following their ordinary and usual vocations. *Second Class.* Dependent relatives of soldiers or sailors who have served in the manner and under the limitations described for the service of invalid pensioners of the first class, and have, if not dying in such service, been honorably discharged therefrom, as follows: namely, the widows and widowed mothers of soldiers or sailors dying in such service, or dying after their honorable discharge therefrom, or dying while in receipt of a pension of the United States and the state aid of this state, and the wives and widowed mothers of invalid pensioners of the first class receiving from the United States at least one-half the amount allowed for total disability. *Third Class.* Dependent relatives of soldiers or sailors who have served in the manner and under the limitations described for the service of invalid pensioners of the first class, who appear on the rolls of their respective regiments or companies, in the office of the adjutant-general, to be missing or to have been captured by the enemy, and who have not been exchanged, and have not returned from captivity, and who are not known to be alive, as follows: namely, the widows or wives and widowed mothers of such soldiers or sailors: *provided*, that no such relative of any such soldier or sailor shall belong to this class or be aided as such if the municipal authorities granting the aid shall have good and

sufficient reason to believe that such soldier or sailor deserted, or that he is still living and wilfully absent from his family. *Fourth Class.* Persons who were receiving state aid as dependent fathers or mothers, prior to the eleventh day of April in the year eighteen hundred and sixty-seven, and were precluded therefrom by the provisions of the act of that date: *provided*, the mayor and aldermen or selectmen shall in each case be satisfied, on evidence first reported to the commissioners of state aid and satisfactory to them, that justice and necessity require a continuance of the aid to prevent actual suffering.

§ 129. No wife or widow of any discharged soldier or sailor shall be held to belong to either of the foregoing classes or be aided as such under this act unless, if his wife, she was married to him prior to his final discharge from the service aforesaid, and, if his widow, she was married to him prior to the ninth day of April in the year eighteen hundred and eighty. No person receiving military aid shall also receive state aid. The words "pensioners," "soldiers" and "sailors," singular or plural, used in this act shall be held to include commissioned officers.

§ 130. All persons specifically referred to and to or for whom state aid is paid under any special act or resolve passed since the first day of June in the year eighteen hundred and seventy-nine, or to or for whom state aid was then being paid under any special act or resolve then repealed, shall be held to belong to the first or second classes under this act, — namely, soldiers and sailors to the first class, and dependent relatives of soldiers and sailors to the second class, — notwithstanding the limitations of such classes; and state aid may be paid to or for such persons in the manner and under the same limitations that it is paid to or for other persons of their respective classes under this act: *provided*, that no aid shall be paid to or for any person under this section contrary to any limitation or condition expressed in the original special act or resolve authorizing state aid to be paid to or for such person. All special acts and resolves granting state aid are hereby repealed except so far as they authorize the payment of military aid as provided in section eleven of an act entitled,

An Act relative to military aid, of the Acts of 1889: *provided*, that this section shall not be held to apply to any special act or resolve specifically granting a fixed amount or an annual sum to any soldier or sailor or the dependent relative of any soldier or sailor for life or a term therein specified.

§ 131. No state aid shall be paid under this act to or for any person of the first class to an amount exceeding three fourths of the monthly amount of his pension, nor more than six dollars in any one month; and if pensioned as a commissioned officer he shall only be paid such proportion of state aid as he would be entitled to receive if his pension were based upon the rank of a private. No state aid shall be paid under this act to or for any person of the second, third, or fourth classes to an amount exceeding four dollars in any one month; and no more than eight dollars shall be paid to or for all the dependent relatives of any one soldier or sailor in any one month.

§ 132. All aid furnished under this act shall be paid to or for the persons for whom it is intended, for their future benefit; and no assignment thereof shall be valid or recognized, and it shall not be subject to trustee process. No back state aid shall be paid. No greater sum shall be paid to or for any person under this act than shall be necessary to furnish such person reasonable relief; and no aid shall be paid under its provisions to or for any person competent to support himself or herself, or in receipt of income, or in ownership of property, sufficient for his or her own support, nor to or for any person more than is necessary in addition to the income and property of such person for his or her personal relief; and no aid shall be paid under this act to any person not in such necessitous circumstances as to require further public assistance. No aid shall be paid under this act to or for any pensioner or dependent relative when the necessity therefor arises from the continuance in vicious or intemperate habits of said pensioner or of the soldier or sailor on whose account the same is paid. No aid shall be paid under this act to or for any person convicted of any criminal offence, unless or until the municipal authorities and the commissioners of state aid otherwise determine.

§ 133. Persons making application for aid in any city or

town under this act shall, as a basis for the first payment thereof, state in writing, under oath, the age and residence of the party for whom such aid is claimed; the relation of the claimant to the party who rendered the service for which aid is claimed; the company and regiment, or the vessel, if any, in which the officer, soldier, or sailor enlisted and in which he last served; the date and place of such enlistment, when known; the duration of such service and the reason upon which the claim for aid is founded; and furnish such official certificates of record, evidence of enlistment, service and discharge as may be required. Municipal authorities granting to such claimant any subsequent aid shall from time to time make such investigation into the necessities of said claimant and the facts of the case as to preclude any payment thereof contrary to the terms of this act. The original papers in each case shall be filed with the commissioners of state aid if required. It shall be the duty of the auditor to furnish from time to time to each city and town a sufficient number of blank forms for the use of applicants for aid under this act. Sts. 1889, ch. 301, §§ 1-6.

§ 134. When any sum shall have been expended under and according to this act, the full amount so expended, the ages and names of the persons aided, and the classes to which they severally belong, and the several sums paid to or for each person and the reasons for the expenditure in each case, and the names of the persons on account of whose services the aid was granted, and the names of the regiments and vessels, if any, in which they respectively enlisted and in which they last served, and the relationship of each dependent relative aided to the person on account of whose services the aid was granted, with such other details as the commissioners of state aid may require, shall be certified under oath to the auditor in manner approved by him, by the mayor, treasurer, and city clerk of any city, or by a majority of the selectmen of any town, disbursing the same, within ten days after the first day of the month next after the expenditure is made.

The sums legally paid as aforesaid, and allowed and indorsed by the commissioners of state aid, shall be reimbursed from the treasury of the Commonwealth to the several towns

and cities expending the same, on or before the first day of December in the year next after the year in which the same have been paid, but none of the expenses attending the payment of state aid shall be reimbursed.

§ 135. The provisions of this act shall continue in force until the first day of January in the year eighteen hundred and ninety-five and no longer, and so far as they are the same as those of existing laws shall be construed as a continuation thereof: *provided, however*, that such provisions of this act as relate to the settlement of accounts for payment of aid rendered by cities and towns previous to said date, and to reimbursement therefor, shall continue in force one year and no longer after said date. Sts. 1889, ch. 301, §§ 8, 9.

§ 136. Whenever any person who served in the army or navy of the United States in the war of the rebellion and received an honorable discharge from all enlistments therein, and who has a legal settlement in a city or town in the Commonwealth, becomes, from any cause except his own criminal or wilful misconduct, poor and entirely or in part unable to provide maintenance for himself, his wife and minor children under the age of sixteen years; or whenever such a person has died and left a widow or such minor children without proper means of support, such person, his wife or widow, or such minor children shall be supported wholly or in part, as may be necessary, by the city or town in which they or either of them have a legal settlement. Such relief shall be furnished by the mayor and aldermen of such city, or the selectmen of such town at the home of the beneficiary, or at such other place as they may deem right and proper. But no beneficiary shall be required to receive such relief at any almshouse or public institution unless the physical or mental condition of such beneficiary shall require it, or unless such beneficiary shall choose to do so; the choice to be made in case of a minor by the parent or guardian of such minor. In all printed reports of the expenses for such relief by the cities and towns under this section said expenses shall be designated as soldiers' relief. Sts. 1890, ch. 447.

ABUSE OF CORPORATE POWERS BY TOWNS.

§ 137. When a town votes to raise by taxation or pledge of its credit, or to pay from its treasury, any money for a purpose other than those for which it has the legal right and power, the supreme judicial court may upon the suit or petition of not less than ten taxable inhabitants thereof, briefly setting forth the cause of complaint, hear and determine the same in equity. Any justice of said court may in term time or vacation issue injunctions and make such orders and decrees as may be necessary or proper to restrain or prevent a violation or abuse of such legal right and power, before the final determination of the cause by said court. Pub. Stats., ch. 27, § 129.

The remedy given above need not be resorted to till money is about to be paid illegally out of the town treasury. "It is the improper expenditure of the money which does the principal injury." *Copeland v. Huntington*, 99 Mass. 525.

"It has never been held that the statute gives an absolute right to any ten taxpayers to maintain a bill in equity whenever a city or town has voted to pay money from its treasury for a purpose which is not legal. It gives the court jurisdiction to hear and determine the matter in equity, and it has been held that the court will not grant relief where the plaintiffs have been guilty of laches by delaying to bring their suit until the rights of other persons have been affected by the action of the town." MORTON, C. J., in *Prince v. Boston*, 148 Mass. 285, at p. 288; *Tush v. Adams*, 10 Cush. 252; *Fuller v. Melrose*, 1 Allen, 166; *Fisk v. Springfield*, 116 Mass. 88; *Parsons v. Northampton*, 154 Mass. 410.

INSPECTION OF BUILDINGS.

§ 138. With the exception of Boston, each city or town which has adopted chapter two hundred and forty-three of the statutes of the year eighteen hundred and seventy-two, or which adopts this section, may, for the prevention of fire and the preservation of life, by ordinances or by-laws not repugnant to law, and applicable throughout the whole or any defined part of its territory, regulate the inspection, materials,

construction, alteration, and use of buildings and other structures within its limits, excepting such buildings and structures as are owned or occupied by the United States or the Commonwealth, and excepting also bridges, quays, and wharves, and may prescribe penalties not exceeding one hundred dollars for each violation of such regulations.

§ 139. In a town which has adopted chapter three hundred and seventy-five of the statutes of the year eighteen hundred and seventy, or which adopts this and the following section, no dwelling-house or other structure more than eight feet in length or breadth and seven feet in height, except detached houses or structures situated more than one hundred feet from any other building and wooden structures erected on wooden wharves, shall be built within such limits as the town may from time to time prescribe, unless made of and covered with some incombustible material, or unless a special license in writing is granted therefor by a majority of the selectmen for reasons of public good or necessity, and is recorded in the records of the town.

§ 140. Any building or structure erected in violation of the provisions of chapter three hundred and seventy-five of the statutes of the year eighteen hundred and seventy, or in violation of the preceding section, shall be deemed to be a common nuisance, without any other proof thereof than proof of its use. And the selectmen may abate and remove any such building or structure in the same manner as boards of health may remove nuisances. Pub. Stats. ch. 104, §§ 1-3.

§ 141. The selectmen of a town where there is no town engineer or chief engineer of the fire department, shall designate officers to serve as a board of survey to inspect buildings. Sts. 1888, ch. 399, § 4.

CHAPTER II.

ELECTIONS AND TOWN MEETINGS.

GENERAL PROVISIONS.

§ 142. Terms used in this act and in statutes relating to elections shall have application as hereinafter set forth, unless other meaning is clearly apparent from the language or context, or from the manifest intent.

The term "state election" shall apply to any election held for the choice of a national, state, district, or county officer, by the qualified voters, whether for a full term or for the filling of a vacancy; and the term "state officer" shall apply to any person to be chosen by the qualified voters at such an election. The term "town election," shall apply to any meeting held for the election of town officers, by the qualified voters, whether for a full term or for the filling of a vacancy; and the term "town officer" shall apply to any person to be chosen by the qualified voters at such a meeting. The term "election" shall also apply to the taking of a vote upon a proposed amendment to the constitution, upon the question of granting licenses for the sale of intoxicating liquors in a town, and upon any other question submitted by statute to the vote of the people. The term "caucus," shall apply to any public meeting of qualified voters of a town, or of a representative district, held for the nomination of a candidate for election, for the selection of delegates to a political convention, or for the appointment of a political committee, under this act. The term "election officer" shall apply to wardens, clerks, inspectors, and ballot clerks, and, when on duty, to the deputies of any such officers, and also to selectmen, town clerks, moderators, and tellers when taking part in the conduct of elections. The term "presiding officer," shall apply to the warden, chairman of selectmen, modera-

tor or town clerk, in charge of a polling place at an election, or, in case of the absence of any such superior officer, to the deputy warden, or the clerk, or senior inspector, or senior selectman present, who shall have charge of a polling place in the absence of such superior officer. The term "polling place" shall apply to the room or place provided in a voting precinct of a town, or in a town within which an election is held. When reference is made in this act to town elections or meetings, at or for which ballots are provided at the expense of the town, such terms shall be held to apply to elections or meetings held for the election of town officers in towns, which have accepted the provisions of chapter three hundred and eighty-six of the acts of the year eighteen hundred and ninety, and in towns which have voted that ballots shall be so provided in accordance with § 337 *post*. The term "two leading political parties" shall apply to the two political parties which cast the largest and next largest number of votes for governor at the preceding annual state election.

§ 143. In all elections of civil officers by the people, the person receiving the highest number of votes for an office shall be deemed and declared to be elected to such office; and if two or more persons are to be elected to the same office, the several persons, up to the number to be chosen to such office, receiving the highest number of votes, shall be deemed and declared to be elected; but if two or more persons receive the same number of votes, they shall not be deemed to be elected if thereby a greater number would be elected than are by law to be chosen to such office. Sts. 1893, ch. 417, §§ 2, 3.

§ 144. In reckoning the number of days in a period of time allowed or required by the provisions of this act and of other statutes relative to elections, Sundays and holidays shall be included; except that, if a period of time follows a certain day, act, or event, and the final day of such period falls on a Sunday or a holiday, then the day succeeding such Sunday or holiday shall be considered the final day of the period; and, if a period of time precedes a certain day, act, or event, and the first day of such period falls on a Sunday or a holiday, then the day preceding such Sunday or holiday shall be considered the first day of the period.

§ 145. Indians residing within this Commonwealth shall, as citizens thereof, have all the rights, privileges, and immunities, and be subject to all the duties and liabilities, to which all other citizens of the Commonwealth are entitled and subject. Sts. 1893, ch. 417, §§ 5, 6.

§ 146. Assessors, registrars of voters, town clerks, and other officers, who are required by law to post lists and notices relating to elections, shall post all such lists and notices at or as near as may be to the places in which voting lists are posted as is stated in § 190 *post*. Sts. 1893, ch. 417, § 8.

QUALIFICATION AND REGISTRATION OF VOTERS.

§ 147. Every male citizen of twenty-one years of age or upwards, not being a pauper or person under guardianship, who is able to read the constitution of the Commonwealth in the English language and write his name, and who has resided within the Commonwealth one year, and within the town in which he claims a right to vote six calendar months next preceding a state or town election, may have his name entered upon the list of voters in such town, and shall have the right to vote therein in any such election, or in any meeting held for the transaction of town affairs, upon complying with the requirements hereinafter set forth; and, except as above provided, no male person shall have his name entered upon the list of voters, or have the right to vote, except that no person who is prevented from reading or writing as aforesaid by a physical disability, or who had the right to vote on the first day of May in the year eighteen hundred and fifty-seven, shall, if otherwise qualified, be deprived of the right to vote by reason of not being able so to read or write; and no person having served in the army or navy of the United States in the time of war, and having been honorably discharged from such service, if otherwise qualified to vote, shall be disqualified therefor on account of receiving or having received aid from any town; and further, no person, otherwise qualified to vote for national or state officers, shall, by reason of a change of residence within the Commonwealth, be disqualified from voting for such officers, in the town from which he has re-

moved his residence, until the expiration of six calendar months from the time of such removal.

§ 148. Every female citizen of twenty-one years of age or upwards, not being a pauper or person under guardianship, who is able to read the constitution of the Commonwealth in the English language and to write her name, and who has resided within the Commonwealth one year, and within the town in which she claims a right to vote six calendar months next preceding an election for school committee, may have her name entered upon the list of voters for school committee in such town, and shall have the right to vote therein in every such election for members of the school committee, upon complying with the requirements hereinafter set forth; and, except as aforesaid, no female person shall have her name entered upon the list of voters or have the right or be allowed to vote, except that no female person who is prevented from reading or writing as aforesaid by a physical disability shall, if otherwise qualified, be deprived of the right to vote by reason of not being able so to read or write.

§ 149. A person qualified to vote in a town which is divided into voting precincts shall be registered and be entitled to vote in the voting precinct in which he resided on the first day of May preceding the election, or, if he first became an inhabitant of such town after such first day of May, in the voting precinct in which he first thereafter became a resident.

(a) *Assessment of Poll Taxes and Lists of Persons Assessed.*

§ 150. The assessors, by one or more of their number, or by one or more assistant assessors, shall, in the month of May or June in each year, visit every building in their respective towns, and, after diligent inquiry, make true lists containing, as near as they can ascertain the same, the name, age, occupation, and residence, on the first day of May in the current year, and the residence on the first day of May in the preceding year, of every male person twenty years of age or upwards, residing in their respective towns, liable to be assessed for a poll tax; and shall receive the request of every woman twenty-one years of age or upwards, residing in their

respective towns on the first day of May in the current year, who, in a writing signed by her, requests that her name be transmitted to the registrars of voters for the purpose of registration.

The assessors shall, upon the personal application of an assessed person for the correction of any error in their original lists, and whenever informed of the existence of any such error, make due investigation, and, upon proof of error, correct the same on their books. They shall cause to be preserved for the space of two years all applications, certificates, and affidavits received by them under this section.

§ 151. The assessors in each town shall promptly, from time to time, and before the fifteenth day of July in each year, transmit to the registrars of voters the lists made as provided in the preceding section, or certified copies thereof, and shall promptly transmit to the registrars and to the collector of taxes notice of every addition to and correction in the lists made by them ; they shall also promptly transmit to the registrars the requests of all women which shall have been received by them as aforesaid ; and every assessor, assistant assessor, and collector of taxes shall furnish all information in his possession necessary to aid the registrars in the discharge of their duties.

§ 152. The assessors of towns having over five thousand inhabitants, according to the last state or national census, as the case may be, shall, on or before the first day of August in each year, prepare street lists containing the names of all persons assessed by them for poll taxes for the current year, which lists shall, for towns divided into voting precincts, be arranged by voting precincts. They shall print such lists in pamphlet form, shall deliver to the registrars as many copies thereof as the registrars may require, and shall hold the remainder of the copies for public distribution. In every town containing less than five thousand inhabitants according to such census, the assessors shall, on or before the first day of August in each year, cause printed or written lists of all persons assessed therein for poll taxes to be prepared and conspicuously posted in two or more public places in every such town.

§ 153. The assessors, in the preparation of street lists as above provided, shall name or designate all buildings used as residences, in the order in which they stand on the street or other way on which they are located, shall give the number or other definite description of each building, so that it can be readily identified, and shall place opposite or under each number or other description given of a building, the name, age, and occupation of every person residing in such building on the first day of May of the current year and assessed for a poll tax, with his residence on the first day of May of the preceding year.

§ 154. If a male person, who has not been previously assessed for a poll tax for the year beginning with the preceding first day of May, shall, on or before the day fixed by law for the close of registration in a town, appear in person and prove to the satisfaction of the assessors that he was on such preceding first day of May an inhabitant of such town, and liable to pay a poll tax therein, and shall under oath furnish a true list of his polls and of his estate, both real and personal, not exempt from taxation, the assessors shall thereupon assess him for his polls and estate, and shall give him a certificate of such assessment, which on presentation to the registrars of voters shall be taken by them as *prima facie* evidence of the facts therein stated.

§ 155. The assessors of a town, upon receipt from the registrars of voters of notice of the registration by them as a voter, of a person who was a resident of such town on the preceding first day of May, but who was not assessed therein for a poll tax, shall forthwith assess such person for his polls and estate, unless he is by law exempt from assessment.

§ 156. All assessments made in accordance with the preceding two sections shall be subject to the provisions stated in § 634 *post*, and shall be entered in the tax list of the collector of taxes of the town, and be collected by him according to law.

§ 157. The town clerk or registrar of deaths in each town shall, on the first day of every month, and also two days before every election, transmit to the registrars of voters a list of the names of all residents of such town of twenty-one

years of age or upwards, who have deceased within the preceding month, or since the date of the list previously transmitted, together with a statement of the street and number therein, and the ward, if any, in which such person resided at the date of his death. Sts. 1893, ch. 417, §§ 13-23.

(b) *Registrars of Voters.*

§ 158. In every town which shall have three hundred registered voters, as provided in the following section, there shall be a board of registrars of voters, consisting of the town clerk, and, in addition, three persons who shall be appointed by the selectmen, by a writing signed by them, or a majority of them, and filed with the town clerk. When a board of registrars is first appointed, the registrars shall be appointed in the month of March or April, for terms respectively of one, two, and three years, beginning with the first day of May next ensuing, and continuing until their respective successors are appointed and qualified. In the month of March or April in every year succeeding the original appointment of a board of registrars, as aforesaid, one registrar shall be appointed for the term of three years, beginning with the first day of May next ensuing, and until his successor is appointed and qualified.

§ 159. In every town having less than three hundred registered voters, as herein provided, the selectmen and town clerk shall constitute a board of registrars of voters, and shall perform all the duties and be subject to all the liabilities imposed by law upon registrars of voters. Whenever in any such town there shall be registered for the annual state election three hundred voters, a board of registrars shall in the succeeding year be appointed, as provided in the preceding section; and a board of registrars of voters, having been once so appointed in a town, shall continue to perform the duties of registration therein, notwithstanding the number of registered voters shall in any year be less than three hundred, except that if, for three successive years, the number of such registered voters shall be less than three hundred, then on the first day of May succeeding the annual state election in such third year, such board shall cease to exist and the duties

thereof shall be thereafter performed by the selectmen and town clerk.

§ 160. In the making of original and succeeding appointments and in the filling of vacancies, registrars of voters shall be so appointed that the members of every board shall equally, or as equally as possible, represent the two leading political parties at the state election next preceding such appointments, and in no case shall an appointment be so made as to cause a board to comprise more than two members, including the town clerk, of the same political party.

§ 161. Whenever, upon written complaint to the selectmen of a town, and after notice and hearing, it shall appear that the town clerk, when a member of the board of registrars, and two registrars, other than the one whose term of office next expires, are of the same political party, the selectmen shall remove from office the one of such two registrars having the shorter term of service. Whenever, upon written complaint to the selectmen of a town, and after notice and hearing, it shall appear that a registrar of voters, other than the town clerk, has ceased to act with the political party which he was appointed to represent, the selectmen shall remove such registrar from office.

§ 162. In case of a vacancy occurring by reason of the death, resignation, or removal from office of a registrar appointed as provided in the preceding sections, the selectmen shall, in the manner above provided, appoint a person as aforesaid to serve for the remainder of the term and until his successor is appointed and qualified.

§ 163. Whenever a member of the board of registrars shall be incapacitated by sickness or other cause from performing the duties of his office, or shall, at the time of any meeting of said board, be absent from the town in which he is appointed, the selectmen of the town by a writing signed by them, or a majority of them, may, upon the request in writing of a majority of the remaining members of the board of registrars, appoint some person to fill the temporary vacancy caused as aforesaid. The person so appointed shall be of the same political party as the member of the board whose position he is appointed temporarily to fill. Such tem-

porary registrar shall, during the time he holds his office, perform the same duties and be subject to the same requirements and penalties as are now provided by law for a registrar of voters.

§ 164. The registrars appointed as provided in the preceding sections shall, before entering upon the duties of their office, each take and subscribe an oath faithfully to perform the same, shall perform all the duties in relation to the registration of voters now imposed upon boards of registrars, and shall receive such compensation for their services as the city council or selectmen may, from time to time, determine; but such compensation shall not be regulated by the number of names registered on any list of voters, and any reduction of compensation shall take effect only upon such registrars as are appointed after such reduction. The selectmen shall furnish office room for the registrars, and such aid as may be needed by them. The town clerk when a member of a board of registrars, shall act as clerk of the board, shall keep a full and accurate record of its proceedings, and shall cause such notices as the registrars may require to be properly served or posted. Sts. 1893, ch. 417, §§ 26-32.

§ 165. No person shall be appointed a registrar of voters or an assistant registrar of voters, who is not a qualified voter of the town for which he is appointed, and no person shall be so appointed who holds an office by election or appointment under the government of the United States or, except as a justice of the peace or an officer of the state militia of the Commonwealth, or who holds an office in the town for which he is appointed either by election or by direct appointment of the selectmen of the town. The acceptance by a registrar or assistant registrar of an office which he is so prohibited from holding, shall be taken to be a resignation of his office as registrar or assistant registrar. Sts. 1893, ch. 417, § 35.

FORM FOR REGISTRARS.

Voting List.

Voting List prepared by the Registrars of Voters of the town of
W——, 189 .

Names.

Names.

N. B. The undersigned hereby give notice that they will be in session at the town officers' room in the Town Hall on _____, also on Wednesday [insert day of the month and year] from o'clock until ten o'clock in the afternoon for the purpose of receiving evidence of the qualifications of those persons intending to vote at the coming elections, and to correct and revise the above voting list:

The registration of voters will cease at ten o'clock in the afternoon of said Wednesday, and no name will be entered on the list of voters thereafterwards unless the qualifications of the person as a voter have been determined by the registrars of voters at some meeting held before the close of registration; such fact to be verified by the certificate of the clerk of the board of registrars.

Registrars of Voters of the town of W——.

(c) Registration of Voters.

§ 166. Every town shall provide the registrars of voters with suitable quarters in which to hold sessions for the purpose of determining the qualifications of persons to be registered as voters.

The registrars in every town divided into voting precincts shall hold such sessions as the town may prescribe, and such other sessions as the registrars may themselves deem necessary; and they shall in every year not more than twenty days before the annual state election, and also not more than twenty days before the annual town meeting, but in each case on or before the last day fixed for registration, hold at least one session at some suitable and convenient place within the limits of each voting precinct; and they shall hold a continuous session from twelve o'clock, noon, until ten o'clock in the evening on the Wednesday next preceding the annual state election, and also on the Wednesday next preceding the annual town meeting. Sts. 1893, ch. 417, §§ 36, 38.

§ 167. The registrars of voters in every town not divided into voting precincts shall hold such sessions as the town may

prescribe, and such other sessions as the registrars may themselves deem necessary; and they shall in every year, not more than twenty days before the annual state election, and also not more than twenty days before the annual town meeting, but in each case on or before the last day fixed for registration, hold sessions in two or more suitable and convenient places in such town; and they shall hold a continuous session from twelve o'clock, noon, until ten o'clock in the evening on the Wednesday next preceding the annual state election, and also on the Wednesday next preceding the annual town meeting. If in any such town ten or more voters residing in or near a village or locality which is distant two or more miles from the usual place of registration shall file with the town clerk not less than eighteen days before the annual state election or the annual town meeting, a petition stating that there are in such village or locality ten citizens at least who are entitled and desire to be registered, then the registrars shall hold a session at some suitable and convenient place in such village or locality before the last day fixed for registration in such town preceding such election or meeting.

§ 168. In every town registration shall cease at ten o'clock in the evening on the Wednesday next preceding the annual state election, and be discontinued from that date until the election shall have been held; and registration shall likewise cease at ten o'clock in the evening on the Wednesday next preceding the annual town meeting, and be discontinued thenceforth until the election shall have been held.

§ 169. In case an election is to be held in a town on a day other than the day of the annual state or town election therein, the registrars of voters shall, for the registration of voters in such town, hold in some suitable and convenient place therein a continuous session from twelve o'clock noon until ten o'clock in the evening, on the fourth day preceding such election, or if such day would fall on a Sunday, then on the fifth day preceding such election. Registration in such town shall cease at ten o'clock in the evening of the day on which such session is held, and be discontinued therein until the election shall have been held.

§ 170. The registrars of voters shall not, after ten o'clock

in the evening of a day on which registration is to cease, as provided in the preceding sections, register any person as a voter, previous to the next succeeding election, except that nothing contained herein or in any of these sections shall prevent the entering upon the registers, after such time, of the names of persons whose qualifications as voters have been already examined, or the correction, in accordance with the provisions stated in these sections, of any errors or omissions; but the registrars shall in every case require the vote by which such entry or correction is made to be attested by their clerk.

§ 171. The registrars of voters shall prepare, and shall post or publish proper notices, in which they shall state the places and hours for holding day and evening sessions, and last sessions preceding an election, and shall further state in such notices that after ten o'clock in the evening of the last day fixed for registration they will not before the election add any name to the registers except the names of voters examined as to their qualifications since the preceding thirtieth day of April.

§ 172. The registrars of voters in each town shall keep in blank books, to be provided for the purpose and to be known as general registers, records of all persons, both male and female, applying for registration, qualified to vote in the town. The registrars shall enter in the general register the name of every such voter written in full, or instead thereof the surname and first Christian name, or that name by which he is generally known, written in full, and the initial of every other name which he may have, and also his age, place of birth, residence on the preceding first day of May, or at the time of first becoming an inhabitant of the town after the first day of May, the date of his registration and his residence at such date, his occupation and place of occupation, the name and location of the court which has issued to him letters of naturalization and the date thereof, if he is a naturalized citizen, and such other particulars as may be necessary fully to identify him as a voter; and the registrars shall require each voter to write his name in the register.

The books used for the general registers shall have uniform

headings in substantially the following form, and blank books suitable for the purpose shall be furnished by the secretary of the Commonwealth at cost price to registrars applying therefor.

When Registered.	Name.	Signature of Applicant.	Residence May 1, or Subsequent Date.	Age.	Place of Birth.	Occupation.	Place of Occupation.	Minutes of Naturalization. Court issuing Letters and Date of Naturalization.	Residence at Date of Registration.	Remarks.

§ 173. The registrars of voters in each town shall, after the first day of May in every year, prepare an annual register containing the names of all qualified voters in such town for the current year, beginning with such first day of May. The names of voters in the annual register shall be arranged in alphabetical order, and, opposite the name of each voter, his residence on the first day of May preceding, or at the time after the first day of May of his first becoming an inhabitant of the town. The registrars shall enter in the annual register every name contained in the lists of persons assessed a poll tax for the current year as transmitted to them by the assessors, giving as his residence on the first day of May the place at which he was assessed a poll tax; and likewise the name and residence, as aforesaid, of every woman whose request for registration has been delivered to the assessors, and by them transmitted to the registrars, in accordance with the provisions of this act: *provided, however*, in every case the registrars are able to identify the name so transmitted to them as that of a man or woman whose name was borne on the voting list of such town at the last preceding election or town meeting. The registrars shall make all necessary inquiries and investigations in order to complete every such identification, and they shall not enter in the annual register the name of a person objected to by any one of the registrars until such person has been duly notified, and given an oppor-

tunity to be heard before the registrars. The registrars shall also forthwith enter in the current annual register the name of every other person whose qualifications as a voter have been determined by them in the current year, and whose name has accordingly been entered in the general register. Sts. 1893, ch. 417, §§ 39-45.

§ 174. Any registrar of voters may, in a place appointed for registration, during the hours designated for the purpose, on any day, except days on which registration is discontinued by law, receive applications for registration and examine under oath applicants and witnesses, but all doings of a single registrar shall be subject to the revision and acceptance of the registrars.

§ 175. If an applicant's qualifications have not been determined by the registrars within the four years next preceding his application, the registrar, in making the examination, shall examine the applicant under oath in regard to his qualifications, shall, unless the applicant is prevented by physical disability from so doing, or unless he had the right to vote on the first day of May in the year eighteen hundred and fifty-seven, require him to read, in such manner as to show that he is neither prompted nor reciting from memory, at least three lines, other than the title, from an official edition of the constitution of the Commonwealth, and shall require him to write his name in the general register, as is stated in § 172 *ante*.

§ 176. If an applicant for registration presents a certificate from the assessors, or a tax bill or notice from the collector of taxes, showing that he has been assessed for a poll tax as a resident of the town on the preceding first day of May, the same shall be received by a registrar as *prima facie* evidence of such residence; but in case the applicant shall fail to present such certificate, bill, or notice, he shall be required to satisfy the registrars that he has a residence in such town, as required by law.

§ 177. If an applicant for registration is a naturalized citizen, the registrar shall require him to produce for inspection his papers of naturalization, and to make oath that he is the identical person named therein, and shall, if satisfied that

the applicant has been legally naturalized, make upon his papers a memorandum of the date of such inspection. The registrar shall not be obliged to require the production of papers of naturalization which have once been examined, and of which record has been made in the general register, as required by the provisions stated in §§ 147-195.

§ 178. If the registrars are satisfied upon examination that an applicant for registration possesses all the qualifications of a voter, except that of age, and will on or before the day of the next election or town meeting attain the required age, they shall place the name of the applicant upon the registers for registration.

§ 179. In case the registrars of voters shall decline to register the name of any person examined for registration, and reported to them therefor by any registrar, they shall notify such person of their declining so to register his name, and give him a reasonable opportunity to be heard by them upon his application. The registrars shall likewise in case of rejection of an applicant who appears before them inform him of such rejection.

§ 180. The registrars of voters shall, from time to time, revise and correct the general register and the current annual register in accordance with any facts which may be presented to them, and they shall strike therefrom the name of every deceased person which has been transmitted to them by the clerk of the town or the registrar of deaths in accordance with the provisions stated in § 157 *ante*; but after the name of a voter has been placed upon the current annual register, they shall not strike it therefrom or change the place of residence as given thereon, unless the voter has deceased, or until they have sent a notification to him of their intention so to do; offering him an opportunity to be heard in the matter.

§ 181. If a complaint in writing under oath shall be made, in a town four days at least, before an election or town meeting, to the registrars by a registered voter, stating that he has reason to believe and does believe that a certain person by him therein named has been illegally or incorrectly registered, and setting forth the reasons for such belief, the registrars shall examine into such complaint, and, if satisfied that there

is sufficient ground therefor, shall summon the person complained of to appear before them at a certain place and time, before the next election or town meeting, to answer to the matters set forth in the complaint; and the substance of the complaint and a copy of this and the following section shall be set forth in the summons. Service of the summons shall be made, by an officer qualified to serve civil or criminal process, not more than fourteen days nor less than twenty-four hours before the day named for appearance, by the delivery of a copy of the summons to the person therein summoned, or by the leaving of such copy at his last and usual place of abode known to the officer; and the officer shall return the summons to the registrars before the day named for appearance, with a certificate of his doings endorsed thereon.

§ 182. When a person summoned before the registrars of voters to answer a complaint made in accordance with the preceding section, appears before them, they shall examine him under oath, and shall receive other evidence which may be offered in regard to the matters set forth in the complaint; and, if satisfied that the person is properly registered as a qualified voter, they shall enter in the register a statement of their determination upon the facts required for registration; if, however, the registrars are satisfied that the person so appearing is not a qualified voter in the town, or if a person duly summoned in the manner aforesaid shall fail to appear as directed in the summons, without sufficient cause for his failure being shown, they shall strike his name from the register.

§ 183. The registrars of voters shall promptly transmit to the assessors of the town notice of every error which they shall discover in the name or residence of a person assessed therein, and they shall also promptly transmit to the assessors the name and residence of every male person who shall, for the purpose of registration, prove that he was a resident of the town on the preceding first day of May, but whose name does not appear in the list of persons assessed for a poll tax transmitted to them by the assessors. Sts. 1893, ch. 417, §§ 47-56.

§ 184. The registrars of voters shall, in the performance

of their duties, act in open session, and not secretly. They shall in every case announce the name of an applicant for registration in a clear, audible, and distinct tone of voice, before entering his name on the general register of voters. They shall keep all their records open at suitable times to public inspection.

The registrars of voters shall cause all written complaints and certificates received by them under the provisions of the various sections of this topic, and all other documents in their custody relating to registration, to be preserved for a period of two years after the respective dates thereof. Sts. 1893, ch. 417, §§ 57, 58.

§ 185. Every registrar shall have authority to enforce regularity in all proceedings had before him, and to maintain order at and about the place where a session is held, or applications for registration are received, and to keep the access thereto open and unobstructed.

§ 186. The board or officer in charge of the police force of a town shall, when requested so to do by the registrars of voters, detail a sufficient number of police officers to attend any meeting held by a registrar in the performance of his duties, and to preserve order and enforce the directions of the registrar.

§ 187. The supervisors of registration who have been appointed in accordance with § 61 of ch. 417 of the Acts of 1893, shall attend all sessions or meetings for registration held at the places for which they are appointed, and either of them may attach to any book or papers there used for purposes of registration, any statement touching the truth or fairness of the proceedings, which he may deem proper, and may add thereto his signature or other marks for the purpose of identification.

(d) *Voting Lists.*

§ 188. The registrars of voters in each town shall, from the names entered in the annual register of voters, prepare voting lists for use at the several elections to be held therein. In such voting lists they shall place in alphabetical order the names of all voters entered on the annual register, and they

shall place opposite the name of each voter his residence on the preceding first day of May, or at the time of his becoming an inhabitant of such town after the first day of May; and they shall place the names of women entered as voters in separate columns or lists. If a town is divided into voting precincts, they shall prepare the voting lists by precincts, and shall place upon the lists for each precinct the names of all voters having therein a residence as above provided. They shall place upon the voting lists no names not entered in the annual register.

§ 189. The registrars of voters shall, at the end of the voting lists of each voting precinct or town, as the case may be, place together, under a proper heading, the names of all persons who, by changes in town boundaries, may be by law entitled to vote for a part only of the whole number of officers to be voted for in a state election in such town.

§ 190. The registrars of voters in every town, twenty days at least before the annual town election, and in every town, thirty days at least before the annual state election, shall cause to be posted in their principal office, and in one or more other public places in the town, copies of the voting lists prepared in accordance with the provisions of the preceding sections. In every town divided into voting precincts the registrars shall, in addition, cause copies of the voting lists of each precinct to be posted in one or more public places in the precinct.

§ 191. After the voting lists have been prepared from the annual register, and copies thereof have been posted as provided in the preceding sections, the registrars of voters shall, within forty-eight hours after adding a new name to the annual register, cause such name to be added to the lists so posted in their principal office. If, however, a town shall authorize the registrars to publish the names so added to the register, they may, instead of posting as aforesaid, cause all additional names to be printed in some one newspaper published in the town, or, if no newspaper is so published, then in some one newspaper published in the county in which such town is situated.

§ 192. The registrars of voters shall, on the day of any

election, give to a registered voter whose name has been omitted from the voting lists, or in whose name or residence, as placed on the voting lists, a clerical error has been made, a certificate containing the correct name and residence of the voter, signed by the registrars, or a majority of them, and directed to the presiding election officer of the voting precinct or town, as the case may be, in which the voter was registered. On presentation of such certificate to the presiding officer, the person therein named shall be allowed to vote, and his name shall be properly checked on the certificate, and the certificate shall be attached to and considered a part of the voting lists, and returned and preserved therewith.

§ 193. The registrars of voters, before every election, and meeting in a town at which voting lists may be required to be used, shall cause to be prepared voting lists for each precinct or town, as the case may be, in which such election or meeting is to be held, containing the names of all persons qualified to vote therein, with the residence of each such voter, as the same appears upon the annual register, and they shall seasonably transmit the same to the election officers in every such precinct or town. Such voting lists shall be provided and furnished in duplicate for all elections and meetings in which duplicate lists are by law required to be used. In providing such lists for an election or meeting, other than an annual state or town election, voting lists in the form used or as printed for the preceding annual state or town election, as the case may be, may be used, with such omissions, additions, and corrections as by law are required therein.

§ 194. The registrars of voters in each town shall forthwith, after every last day for registration before an annual state or town election, fixed by law, certify to the secretary of the Commonwealth the number of assessed polls and the number of registered male and female voters in the town, and in each precinct therein; and they shall also certify the number of persons who by law are entitled to vote for a part only of the whole number of officers to be voted for at a state election in such town, and in each precinct therein, together with the titles of the officers for whom such persons are entitled to vote.

§ 195. The registrars of voters in a town, whenever a caucus is called therein, shall, on request of the person designated in the notice thereof to call the caucus to order, furnish him for use in the caucus a certified copy of the voting lists of the town, for which the caucus is to be held, as last published according to law, together with such names of voters as have been added thereto since such publication. Sts. 1893, ch. 417, §§ 59-69.

NOMINATION OF CANDIDATES.

§ 196. Any convention of delegates representing a political party which, at the preceding annual state election, polled for governor at least three per centum of the entire vote cast in the state for that office, and any convention of delegates who have been selected in caucuses called and held in accordance with the provisions stated in these sections, and any caucus called and held in accordance with those provisions, may, for the state or for the district, division, or town, for which the convention or caucus is held, as the case may be, make one such nomination for each office therein to be filled at the election, by causing a certificate of nomination to be duly filed.

§ 197. Every certificate of nomination shall state such facts as by the preceding sections are necessary for its acceptance, and, as are stated in § 200 *post*, shall be signed by the presiding officer and by the secretary of the convention or caucus, who shall add to their signatures their places of residence, and shall be sworn by such officers to be true to the best of their knowledge and belief; and certification of their oaths shall be annexed to the certificate of nomination.

§ 198. Nominations of candidates for any offices to be filled by the voters of the state at large may be made by nomination papers, setting forth such facts as are stated in § 200 *post*, and signed in the aggregate for each candidate by not less than one thousand qualified voters of the state. Nominations of all other candidates for offices to be filled at a state election may be made by nomination papers, as aforesaid, signed in the aggregate for each candidate by

qualified voters of each electoral district or division for which the officers are to be elected, not less in number than one for every one hundred persons who voted for governor, at the preceding annual state election, in such district or division, but in no case less than fifty. Nominations of candidates for offices to be filled in a town election may be made by nomination papers, as aforesaid, signed in the aggregate for each candidate by qualified voters in each town, not less in number than one for every fifty persons who voted for governor at the preceding annual state election in such town, but in no case less than twenty. In case of a first election in a town the number of twenty shall be a sufficient number for the nomination of a candidate who is to be voted for only in such town.

§ 199. Every voter signing a nomination paper shall sign the same in person, and shall add to his signature his place of residence, with the street and number thereof, if any; and every voter may subscribe to as many nominations for each office to be filled as there are persons to be elected thereto, and no more. Women qualified to vote for members of the school committee may sign nomination papers for candidates for the school committee. Every nomination paper shall, before being filed, be at the proper time submitted to the registrars of voters of the town in which the signers purport to be qualified voters, and the registrars, or a majority of the board, to whom the same is submitted, shall forthwith certify thereon the number of signatures which are the names of the qualified voters in the same town for which they are registrars and in the district or division for which the nomination is made. The registrars shall not however be required in any case to certify upon a nomination paper a greater number of names than such number as is required to make a nomination as aforesaid, with one fifth of such number added thereto. One of the signers to each separate nomination paper shall swear that the statements therein are true, to the best of his knowledge and belief, and the certification of such oath and the post-office address of the signer shall be annexed to such paper.

§ 200. All certificates of nomination and nomination pa-

pers shall, besides containing the names of candidates, specify as to each: (1) his place of residence with street and number thereon, if any; (2) the office for which he is nominated; and (3), except as hereinafter provided, the party or political principle which he represents, expressed in not more than three words. In the case of electors of president and vice-president of the United States, the names of the candidates for president and vice-president may be added to the party or political designation.

If a candidate is nominated otherwise than by a political party which at the preceding annual state election polled for governor three per centum of the entire vote cast for that office, the name of a party so polling three per centum of such entire vote shall not be used in the party or political designation of such candidate, except as describing and preceding some other name or term; and if so used in case of a candidate nominated by a nomination paper, the designation of such candidate shall consist of not more than two words, and to such designation shall be added the words "nomination paper," or, as abbreviated, "nom. paper." Certificates of nomination and nomination papers for the nomination of candidates for town offices may include a designation of the party or principle which the candidate represents, but no such designation shall be necessary.

§ 201. In case a nomination is made in accordance with the provisions of this act, to supply a vacancy caused by the death, withdrawal or ineligibility of a candidate, the certificate of nomination made for supplying such vacancy shall state, in addition to the other facts which are stated herein in §§ 196-210, the name of the original nominee, the date of his death or withdrawal, or of being found ineligible, and the proceedings had for supplying the vacancy; and the certificate shall be signed and sworn to by the presiding officer and secretary of the convention or caucus, or by the chairman and secretary of a duly authorized committee, as the case may be. Sts. 1893, ch. 417, §§ 75-80.

§ 202. Certificates of nomination and nomination papers for the nomination of candidates for state offices shall be filed with the secretary of the Commonwealth; and certificates of

nomination and nomination papers for the nomination of candidates for town offices shall be filed in each town with the town clerk. Certificates of nomination for the nomination of candidates for offices to be filled by the voters of the state at large shall be filed on or before the fifth Monday preceding the day of the election for which the candidates are nominated; and nomination papers for the nomination of such candidates shall be filed on or before the fourth Monday preceding the day of such election. Certificates of nomination for the nomination of candidates for all other state offices shall be filed on or before the third Thursday preceding the day of the election; and nomination papers for the nomination of all such candidates shall be filed on or before the third Friday preceding the day of the election; except that in case of an election held on a day other than that of the day of the annual state election to fill any state office, certificates of nomination shall be filed on or before the twelfth day preceding the day of such election, and nomination papers for the nomination of candidates to fill such office shall be filed on or before the eleventh day preceding the day of such election. In towns certificates of nomination for the nomination of candidates for town offices shall be filed on or before the second Saturday preceding the day of the election, and nomination papers for the nomination of such candidates shall be filed on or before the Monday preceding the day of the election; except that whenever a town election is held on a day of the week other than Monday, such certificates of nomination and nomination papers shall be filed respectively on or before the ninth and seventh days preceding the day of the election. Sts. 1893, ch. 417, §§ 81, 82.

§ 203. All certificates of nomination and nomination papers which are by law required to be filed with the secretary of the Commonwealth, or with the clerk of a town, shall be filed in the office of the secretary or of the town clerk, as the case may be, before five o'clock in the afternoon of the last day fixed by law for the filing thereof.

No nomination paper offered for filing shall be received or deemed to be valid, unless there shall be presented for filing with such nomination paper the written acceptance of the candidate or candidates thereby nominated.

§ 204. A person who has been nominated as a candidate for any state office in accordance with the provisions stated in these sections, may cause his name to be withdrawn from nomination, by a request in writing signed by him and acknowledged before an officer qualified to take acknowledgments of deeds, and filed with the secretary of the Commonwealth, within the seventy-two hours succeeding five o'clock of the last day fixed by law within which nomination papers may be filed for the nomination of candidates for such office. A person so nominated as a candidate for a town office may cause his name to be withdrawn from nomination, by a request signed and acknowledged as aforesaid, and filed with the town clerk within the twenty-four hours succeeding five o'clock of the last day fixed by law within which nomination papers may be filed as aforesaid.

§ 205. When certificates of nomination and nomination papers have been filed in accordance with the provisions herein stated, and are in apparent conformity therewith, they shall be deemed to be valid unless objections thereto are duly made in writing. Such objections, in the case of nominations of candidates for state offices, shall be filed with the secretary of the Commonwealth, within the seventy-two hours succeeding five o'clock of the last day fixed by law within which nomination papers may be filed for the nomination of candidates for such office. In the case of nominations for candidates for town offices such objections shall be filed with the town clerk within the twenty-four hours succeeding five o'clock of the last day fixed by law within which nomination papers may be filed as aforesaid.

§ 206. Objections to certificates of nomination and nomination papers, which are filed in accordance with the preceding section, and all other questions arising in relation thereto, in the case of nominations of candidates for town offices, shall be considered by the board of registrars of voters of the town, and a decision of the majority of such board shall be final. The boards constituted in towns to consider such objections and questions may, at hearings upon any matters within their jurisdiction, summon witnesses and administer to them oaths, and may require the production of books and papers. Such witnesses shall be summoned in the same manner, be paid

the same fees, and be subject to the same penalties for default, as witnesses before the superior court. A summons may be signed, and an oath may be administered by any member of such board.

In case any such objection is filed, notice thereof shall, by the town clerk, be forthwith mailed to the candidates affected thereby, addressed to their residences as given in the certificates of nomination or nomination papers, and to any party committee known to the clerk as specially interested in the nomination to which objection is made.

Whenever a greater number of candidates bearing the same political or other designation are nominated for an office than there are persons to be elected to such office, the officer charged, as above, with considering objections to such nomination shall determine which of the candidates, if any, are entitled to such designation.

§ 207. In case a candidate who has been duly nominated for a state or town office shall die before the day of election, or shall cause his name to be withdrawn from nomination, in accordance with the provisions of this title, or shall be found in accordance with the provisions thereof to be ineligible to the office for which he is nominated, the vacancy may be supplied by the political party or other persons making the original nomination, in the manner in which such nomination was originally made; or if the time is sufficient therefor, then the vacancy may be supplied, if the nomination was made by a convention or caucus, in such manner as the convention or caucus has previously provided for the purpose, or, in case no such previous provision has been made, then by a regularly elected general or executive committee representing the political party or persons holding such a convention or caucus.

§ 208. All certificates of nomination and nomination papers, and all objections thereto and withdrawals, when filed, shall, under proper regulations, be open to public inspection, and the secretary of the Commonwealth and the several town clerks shall preserve the same in their respective offices for the period of one year.

§ 209. All signatures required under the provisions stated in §§ 196-210 shall be made in person.

§ 210. The secretary of the Commonwealth shall, upon application, furnish blank forms for the nomination of candidates for all state offices ; and blank forms for certificates of nomination of candidates for the office of representative in the general court shall be sent to the clerk of each town, for the use of the presiding officer and secretary of any caucus or convention held therein in accordance with the provisions of this act for the nomination of candidates for that office. The secretary of the Commonwealth shall likewise furnish to the clerks of towns, wherein ballots for town offices are provided at the expense of the town, blank forms for the nomination of candidates for town offices. Sts. 1893, ch. 417, §§ 83-90.

PREPARATIONS FOR VOTING.

(a) *Voting Precincts.*

§ 211. Whenever a town shall by vote accept the provisions of this section, the selectmen thereof shall, within sixty days after such acceptance, arrange a division of the town into convenient voting precincts for the choice of all officers which are elective by the people, except town officers. In arranging such division they shall, so far as possible, make the middle lines of streets or ways, or other natural or well-defined limits, the boundaries of the proposed precincts, and shall designate them by numbers or letters. They shall, when the same is completed, file a report of their doings with the town clerk, which report shall include a map or description of the proposed new precincts, designated by numbers or letters, as the case may be, and defined clearly and, so far as possible, by known boundaries ; and their report shall also include a statement of the number of registered male voters in each proposed precinct, according to the registration made for the preceding annual state or town election, as the case may be. The report shall be presented by the town clerk to the town at the next succeeding town meeting, but it shall not be acted upon except at a meeting duly called for the purpose, and held seven days at least after the report has been filed, as aforesaid, with the town clerk. The divi-

sion so arranged by the selectmen may be modified or amended at a meeting so held, and when adopted either in its original or amended form, by a majority of the legal voters then present and voting thereon, shall be operative. All elections of state officers thereafter in such town shall be held in the precincts so established, except that an election taking place after such division has been made, but before voting lists for each precinct have been prepared and copies thereof have been posted in the manner and for the number of days required by law, shall be held in the manner in which elections had previously been held in such town.

§ 212. The voting precincts of a town may be changed at any town meeting duly called for the purpose, if the selectmen shall have filed in the office of the town clerk, seven days at least before the meeting, a statement of the contemplated changes, giving proper boundaries and the numbers or letters of the proposed precincts, and the number of registered male voters in each proposed precinct, according to the registration of voters in such town for the last preceding annual state or town election, as the case may be; but no changes other than those so proposed by the selectmen shall be made at such meeting.

§ 213. Whenever a town has been divided into voting precincts, or the voting precincts thereof have been changed, in accordance with the preceding sections, the selectmen shall cause a map or description of the new precincts, designated by numbers or letters, as the case may be, and defined clearly and, so far as possible, by known boundaries, to be posted in the office of the town clerk and in three public places, at least, in each such new precinct; and they shall also cause a reasonable number of copies of such map or description to be furnished to the registrars of voters and the assessors of such town, and to the election officers of each precinct so established.

§ 214. Any town which has been divided into voting precincts may, by vote at a meeting duly called for the purpose, discontinue all such precincts; and thereafter the provisions of law applicable to such precincts shall cease to apply to such town, and all subsequent elections therein shall be held as if

no such division had been made. A town which has discontinued all its voting precincts may, however, in any subsequent year accept the provisions which are stated in § 211 *ante*, and cause a division into voting precincts to be made thereunder.

§ 215. Whenever voting precincts have been established in a town, and whenever a change has been made in the voting precincts of a town, the clerk of the town shall forthwith give a notice thereof in writing to the secretary of the Commonwealth, stating therein the number and designation of the precincts in each town. Notice in writing of the discontinuance of voting precincts in a town shall likewise be given forthwith by the town clerk to the secretary of the Commonwealth. Sts. 1893, ch. 417, §§ 101-105.

(b) *Election Officers.*

§ 216. The selectmen of every town which is divided into voting precincts shall, at some time between the first and fifteenth days of October in each year, appoint as election officers for each voting precinct, one warden, one deputy warden, one clerk, one deputy clerk, two inspectors and two deputy inspectors, who shall be qualified voters of the precinct. The selectmen of any such town may, in like manner, appoint, in addition to the above, two inspectors and two deputy inspectors. Such election officers shall be so appointed as equally to represent the two leading political parties, except that, without disturbing the equal representation of the two leading political parties, not exceeding two of such election officers may be appointed from qualified voters not representing either of such two parties. The warden and one of the inspectors so required to be appointed shall be of a different political party from the clerk and other inspector, and in each case the principal and his deputy shall be of the same political party. Every election officer so appointed shall hold office for a term of one year, beginning with the first day of November succeeding his appointment, and until his successor is appointed and qualified, or until his removal, as hereinafter provided.

Every such election officer may be removed from office by the selectmen, upon written charges of incompetency or

official misconduct, preferred either by the town clerk or by not less than six qualified voters of the precinct for which the officer is appointed to act.

§ 217. In case a vacancy in the number of election officers, appointed in accordance with the preceding section, shall occur on or before the first day of November in any year, or in case any one of such election officers shall decline his appointment and give notice of his declination to the town clerk on or before the first day of November, the selectmen shall appoint a person duly qualified for the office so vacant; and appointments for filling such vacancies shall be so made as to preserve the equal representation of the two leading political parties. In case the warden and deputy warden, or clerk and deputy clerk, or an inspector and his deputy shall be absent on the day of election, either at the opening of the polls or at any time during the day, a suitable person shall be elected by the qualified voters of the precinct on nomination and by hand vote, and he shall have full power to act during the remainder of the time at that election, in place of the absent officer.

§ 218. No person shall at a state election be eligible for appointment or election as an election officer in a voting precinct or town in which he is a candidate for election; and if a person who has been appointed an election officer subsequently becomes such a candidate, and shall neglect forthwith to resign his position, the selectmen shall, if he is a candidate at a state election, remove him from office before the first day of November.

§ 219. If a warden, clerk, or inspector is absent at the opening of the polls or subsequently on the day of election, or his office has become vacant, the person appointed as deputy of such officer shall act thereafter for that election, in his place, as warden, clerk, or inspector, as the case may be. Except as aforesaid, no deputy officer shall have power to act in an official capacity or be admitted to the space reserved for election officers while the polls are open or during the counting of the votes thereafter.

§ 220. Every election officer appointed or elected in accordance with the preceding sections shall, before entering

upon the performance of the duties of his office, be sworn to the faithful discharge of his duties. Such oath may be administered by a town clerk or by a justice of the peace; and an election officer who has been chosen at the polls to fill a vacancy, or who has not been sworn before the day of election, may also be sworn by the warden or clerk of the voting precinct for which he is elected.

§ 221. In all elections of state officers in a town divided into voting precincts, the presiding election officer of each voting place or precinct shall detail two inspectors, who shall be of different political parties, to act as ballot clerks, who shall have charge of the ballots and shall furnish them to voters in accordance with the provisions of this act.

§ 222. The selectmen in towns not divided into voting precincts shall preside at all meetings for the election of state officers, and shall have all the powers of moderators in towns, but the chairman or senior member present of the selectmen, acting under their direction, shall be regarded as the presiding election officer for the enforcement of the provisions of this act.

§ 223. At state elections in towns not divided into voting precincts, and at town elections in towns for which ballots are provided at the expense of the town, the selectmen in each such town shall, at some time prior to the opening of the polls, appoint two qualified voters as ballot clerks, who shall have charge of the ballots and shall furnish them to voters in accordance with the provisions of this act. The selectmen or the moderator, as the case may be, presiding over any such election, may subsequently appoint additional ballot clerks, not exceeding in number one for every four hundred registered voters and majority fraction thereof, and may likewise fill any vacancy occurring in the number of ballot clerks after the opening of the polls. Such ballot clerks shall be so appointed, as equally as may be, to represent the two leading political parties, except that such additional ballot clerks may be appointed from qualified voters not representing either of such two parties. Every ballot clerk so appointed shall, before entering upon the performance of the duties of his office, be sworn to the faithful performance of his duties, and

such oath may be administered by the presiding officer, for the time being, or the town clerk, and the town clerk shall make a record thereof.

§ 224. Selectmen, wardens, and justices of the peace, when presiding in towns at state and town elections, as the case may be, may appoint qualified voters of a town as tellers, to assist at the ballot box and in checking the names of voters upon the voting lists, and in canvassing and counting the votes; and they shall in any such case appoint tellers when requested in writing so to do by ten qualified voters of a town. When tellers are appointed, as aforesaid, at elections, for which ballots are provided at the expense of the Commonwealth or of the town, they shall be so appointed that the election officers, making and assisting in making the canvass and count of votes, shall equally represent the two leading political parties.

No person shall be eligible to the position of teller at an election in which he is a candidate to be voted for.

Tellers appointed as aforesaid shall be sworn to the faithful discharge of their duties, and the oath may be administered by the presiding officer for the time being, or by the town clerk or a justice of the peace, and the clerk shall make a record thereof.

§ 225. In case of a vacancy in the office of the town clerk of a town, or in case a town clerk shall be unable to perform the duties required hereunder, the selectmen of the town shall appoint a clerk *pro tempore*, in accordance with the provisions stated in § 359 *post*. Sts. 1893, ch. 417, §§ 108-117.

§ 226. Election officers shall, for the performance of their respective duties, attend in their respective voting precincts and towns at the times and places duly designated for the elections. Election officers in each town shall receive such compensation for each day's actual service as the selectmen of the town may from time to time determine; but no deputy officer shall receive compensation, except for attendance at the opening of the polls or for services in place of an officer who is absent. Sts. 1893, ch. 417, §§ 118, 119.

§ 227. The governor, by and with the consent of the council, shall, upon the petition in writing of ten qualified

voters in a town, whether divided into voting precincts or not, presented to him twenty-one days, at least, before a state election therein, appoint for such town, or for each of such voting precincts as may be named in the petition, two qualified voters of the town, who shall not be signers of the petition or members of any regularly elected political committee or candidates for any office, to act as supervisors at such election. Such supervisors shall be appointed, one from each of the two leading political parties. They shall be sworn to the faithful discharge of their duties by the town clerk or by a justice of the peace. The supervisors shall be present at the several precincts or polling places for which they are appointed, shall have the right to challenge illegal voters, and shall throughout witness the conduct of the election and the counting of votes, but they shall not make any statement tending to reveal the state of the polls before the public declaration of the vote; and they shall remain where the ballot boxes are kept at all times after the polls are open, and until the ballots are duly sealed in envelopes for transmission to the officers entitled to receive them. Each supervisor shall have the right to affix his signature, for the purpose of identification, to the certificate of the number of votes cast, or to attach thereto any statement which he may desire to make touching the truth or fairness or conduct of the election. Supervisors so appointed shall receive such compensation for each day's actual service as the selectmen of the town may from time to time determine.

(c) *Voting Places.*

§ 228. The selectmen of every town divided into voting precincts shall, thirty days at least before the day of the annual state election in such town, and ten days at least before the day of any special election of a state officer therein, designate and appoint the polling place for each of the voting precincts in such town, and shall procure the same for such purpose, and cause it to be suitably fitted up and prepared therefor. Such polling place shall be in a public, orderly, and convenient portion of the precinct; except that, when no such polling place can be had within the territorial

limits of the precinct, the selectmen may designate and appoint a polling place in some public, orderly, and convenient place within the limits of any one of the adjoining precincts of such town; and for the purposes of this act, the place so designated and appointed for the polling place of a precinct shall be deemed and taken to be included in and to be a part of such precinct, as though the same were within the territorial limits thereof. No building or portion of a building shall be designated, appointed, or used as a polling place in which, or in any part of which, intoxicating liquor is sold or has been sold within thirty days next preceding the day of the election. Whenever the polling places have been so designated in a town, the selectmen of a town shall, in at least three public places in each precinct of the town, forthwith cause to be posted a printed description of the polling places so designated, and shall give such further notice thereof as they may in any case think necessary or proper.

§ 229. The selectmen in towns shall cause each polling place in their respective towns to be provided with a sufficient number of suitable marking shelves or compartments, at or in which voters may conveniently mark their ballots, so that in the marking thereof they may be screened from the observation of others; and they shall cause a guard rail to be so constructed and placed in the polling place that only such persons as are inside the guard rail can approach within six feet of the ballot boxes and of the marking shelves or compartments. The arrangement shall be such that neither the ballot boxes nor the marking shelves or compartments shall be hidden from the view of those just outside the guard rail. The number of such marking shelves or compartments shall not be less than one for every seventy-five registered voters at such polling place, and not less than three in any town or voting precinct of a town. Each marking shelf or compartment shall be kept provided with proper supplies and conveniences for marking the ballots.

(d) *Election Apparatus and Blanks.*

§ 230. The secretary of the Commonwealth shall, at the expense of the Commonwealth, provide every town with a

state ballot box for use at every voting precinct or polling place therein. The secretary shall likewise provide every town with suitable blank forms and apparatus, such as shall be approved as aforesaid, for use at each polling place by the election officers in the canvass and count of votes. Sts. 1893, ch. 417, §§ 120-123.

§ 231. Any town may, by a majority vote of the legal voters thereof present and voting thereon at a meeting held not less than ten days before its annual town meeting, determine upon, purchase, and order the use of one or more McTammany automatic ballot machines at elections of town officers in said town; and thereafter at all elections of town officers in said town, until otherwise ordered by the board of selectmen, said McTammany automatic ballot machines shall be used for the purpose of voting for the officers to be elected at such elections, and for taking the vote upon the question of granting licenses for the sale of intoxicating liquors, and for registering and recording the votes cast thereat. Sts. 1893, ch. 465, § 1.

§ 232. The secretary of the Commonwealth shall provide every town with suitable blank forms and envelopes for all certificates, copies of records and returns required by this act to be made to his office, with such printed directions thereon as he may deem necessary for the guidance and direction of the election officers; and he shall furnish such other blank forms and such suggestions and instructions as will assist the election officers in the performance of their duties under the requirements of this act. The clerks of the courts in the several counties shall in like manner provide towns with suitable blank forms and envelopes for all certificates, copies of records and returns required by this act to be made to the county commissioners and boards of examiners.

§ 233. The town clerk of each town shall provide therein a place for the safe and suitable keeping of the ballot boxes and counting apparatus furnished by the Commonwealth, shall have the care and custody thereof, shall see that they are kept in good order and repair, and, if any of them are lost, destroyed, or irreparably damaged, shall replace the same by suitable ballot boxes or apparatus, as is stated in § 230 *ante*.

The custody, care, and repair of all such ballot boxes and apparatus shall be at the expense of the town, but shall be subject to the supervision and control of the secretary of the Commonwealth.

§ 234. The selectmen of a town may make such regulations, not inconsistent with the provisions of this act, in regard to the use of ballot boxes and seals, counting and other apparatus, as they may deem expedient.

§ 235. The clerk of every town divided into voting precincts shall furnish to the clerk of each voting precinct a seal of suitable device, the design of which shall include the designation of such precinct; and such seal shall be used in sealing all envelopes required by law to be used at the elections. The clerk of the precinct shall retain the custody of the seal, and shall, at the end of his term of office, deliver the same, together with the records of the precinct and other official documents in his custody, to the town clerk.

§ 236. The clerk of every town shall send to the election officers at each polling place in the town, on the day of an election or meeting at which the same are required to be used, before the opening of the polls, the ballot box, blank forms and counting and other apparatus provided by the secretary of the Commonwealth; and shall send therewith such ballot boxes, ballot box seals, blank forms, and apparatus as may be required by the selectmen of the town.

(e) *Preparation and Form of Ballots.*

§ 237. All ballots for use in elections of state officers shall be prepared and furnished by the secretary of the Commonwealth; and all ballots for use in elections of town officers, in a town which has voted that ballots shall be provided at the expense of the town, shall be prepared and furnished by the town clerk.

§ 238. General ballots, intended for the use of all male voters in a voting precinct or town, shall contain the names of all candidates for election in such voting precinct or town, who have been duly nominated and have not deceased, or whose nominations have not been withdrawn or rejected as invalid; and such general ballots shall, except in the case

of candidates for presidential electors, contain no other names.

To the name of each candidate for a state office shall be added the name of the town in which the candidate resides.

To the name of each candidate for a state office shall be added his party or political designation, expressed in accordance with §§ 200 and 206 *ante*. To the name of each candidate for a town office upon an official ballot shall be added such designation of the party or principle which the candidate represents as is duly contained in the certificate of nomination or nomination papers. No greater number of candidates for any office bearing the same party or political designation shall be placed upon the official ballot than there are persons to be elected to such office.

If the name of a political party, which at the preceding annual state election polled for governor three per centum of the entire vote cast in the state for that office, is used in connection with some other name or term, in accordance with the provisions stated in § 200 *ante*, as the designation of a candidate nominated for a state office by a nomination paper, the words "nomination paper" or "nom. paper" shall be added to the political designation of such candidate.

The names of candidates for every state and town office shall, except in the case of candidates for presidential electors, be arranged under the designation of the office, in alphabetical order according to the surnames. There shall be left at the end of the list of candidates for each different office as many blank spaces as there are persons to be elected to such office, in which the voter may insert the name of any person not printed on the ballot, for whom he desires to vote for such office. Whenever the approval of a constitutional amendment is submitted to the vote of the people, or any other question is submitted to vote in a town in accordance with a statute providing therefor, such question shall be printed on the ballot after the list of candidates.

Special ballots containing only the names of candidates for school committee shall also be prepared in like manner and printed for the use of women qualified by law to vote for school committee.

Ballots shall be so printed as to give to each voter a clear opportunity to designate by a cross [X], in a square at the right of the name and designation, if any, of each candidate, and at the right of each question, his choice of candidates and his answer to such question; and upon the ballots may be printed such words as will aid the voter to do this; as "vote for one," "vote for two," "vote for three," "yes," "no," and the like. On the back and outside, when folded, of each ballot, shall be printed the words, "Official Ballot for," followed by the designation of the voting precinct or town for which the ballot is prepared, the date of election, and a facsimile of the signature of the secretary of the Commonwealth or town clerk, as the case may be, who has caused the ballot to be prepared. Special ballots printed for the use of women qualified to vote for school committee shall have the additional endorsement, "For school committee only."

§ 239. The names of candidates for the offices of electors of president and vice-president of the United States shall be arranged in groups, as presented in the several certificates of nomination or nomination papers; and the several groups shall be arranged in the alphabetical order of the surnames of the candidates for president, and the names of the candidates in each group shall be printed upon the ballots in two adjacent columns of equal width. If candidates are nominated at large and for the several congressional districts, the name and place of residence of one of the candidates at large shall be put at the head of each column, and the names of the other candidates with their places of residence, including the numbers of the congressional districts in which they reside, shall follow in the numerical order of the districts. The surnames of the candidates of each political party for the offices of president and vice-president, with the party or political designation thereof, at the right of the surnames shall be placed in one line above the group of candidates for electors of such party. There shall be left at the right of each such party or political designation a sufficient clear square in which each voter may designate by a cross [X] his choice for electors; and no other clear space or margin shall be left in any such group of candidates. There shall be left

at the end of the groups of candidates as many blank spaces as there are persons to be elected to the offices of electors.

§ 240. The official ballots furnished in accordance with the provisions of this act shall, except as otherwise specially provided herein, be of plain white paper and in weight not less than that of ordinary printing paper, shall be in two or more pages, and shall, before distribution, be so folded as to measure when folded not less than four and one half inches nor more than five inches in width, and not less than six inches nor more than thirteen and one half inches in length. The names of all candidates shall be printed in black ink in lines at a right angle with the length of the ballot. The names of all candidates, other than candidates for presidential electors and for president and vice-president, shall be in capital letters not less than one eighth of an inch nor more than one quarter of an inch in height. The initial letters of all names of candidates for presidential electors shall be in capital letters not less than one eighth nor more than one quarter of an inch in height; and the surnames and political designations of the candidates of each party for president and vice-president shall be in capital letters not less than three sixteenths of an inch in height.

The special ballots for the use of women qualified to vote for school committee shall be printed on tinted paper, but of a different tint from that of specimen ballots.

§ 241. There shall be provided for each polling place at which an election for state officers is to be held, two sets of general ballots, each of not less than sixty ballots for every fifty and fraction of fifty registered male voters therein.

When ballots are required by law to be provided by the town clerk of a town for the election of town officers therein, there shall be provided one set of general ballots of not less than seventy-five ballots for every fifty and fraction of fifty registered male voters therein; and likewise one set of special ballots of not less than seventy-five ballots for every fifty and fraction of fifty women registered to vote for school committee therein.

§ 242. All ballots, when printed and folded as is stated in § 240 *ante*, shall be arranged and fastened together in

convenient numbers in packages, books or blocks, in such manner that each ballot may be detached and removed separately. A record of the number of ballots printed and furnished to each polling place shall be kept and preserved by the secretary of the Commonwealth, or town clerk, as the case may be, for the period of one year.

§ 243. The secretary of the Commonwealth shall furnish sufficient partial ballots in state elections to a town for the use of voters who by law may be entitled to vote for a part only of the officers to be voted for in such town. There shall be printed on the back of such ballots, in addition to the official endorsement, such words as shall clearly indicate the class of voters for whose use the ballots are furnished, and such ballots only shall be furnished to such voters.

§ 244. In case a vacancy shall occur or be declared in the list of nominations by reason of the death, withdrawal or ineligibility of a candidate, under the provisions stated in §§ 196-210 *ante*, the name of the candidate nominated in accordance therewith to fill such vacancy, shall, if the ballots are not already printed, be placed on the ballots, instead of the original nomination; or, if the ballots have been printed, new ballots containing the new nomination shall, whenever practicable, be furnished and substituted in place of those already prepared.

(f) *Information to Voters.*

§ 245. The secretary of the Commonwealth in state elections, and the several town clerks in town elections for which ballots are by law provided at the expense of the town, shall prepare and furnish for use in every such election, full instructions for the guidance of voters at such elections, as to obtaining ballots, as to the manner of marking them and the method of gaining assistance, and as to obtaining new ballots in place of those accidentally spoiled; and they shall cause the same, together with such abstracts as they shall deem proper to make of the provisions of law imposing penalties upon voters, to be printed in large, clear type, on separate cards, to be called cards of instruction. They shall in like manner prepare and furnish for each polling place ten or

more copies of the ballots provided for distribution at the election therein. Such copies shall be called specimen ballots, and shall be printed without the facsimile endorsements and on tinted paper.

§ 246. The secretary of the Commonwealth shall, five days at least previous to the day of any state election, transmit to the registrars of voters in each town in which such election is to be held, printed lists containing the names, residences and party or political designations of all candidates duly nominated and to be voted for at each polling place in every such town, substantially in the form of the general ballot to be so used therein; and shall likewise transmit the printed copies of any proposed amendment to the constitution which may be submitted to vote at such election. The registrars of voters shall immediately cause the lists for each voting precinct or town, as the case may be, and any such copies of a proposed amendment to the constitution, to be conspicuously posted in one or more public places in every such voting precinct or town. Sts. 1893, ch. 417, §§ 124-138.

§ 247. At every election of town officers in a town, for which ballots are by law provided at the expense of the town, the town clerk shall, four days at least previous to the day of such election therein, cause to be conspicuously posted in one or more public places in the town, substantially in the form of the general ballot to be used therein, the names and residences and designations, if any, of all candidates duly nominated and to be voted for at such election.

(g) *Delivery of Ballots.*

§ 248. The secretary of the Commonwealth shall send the two sets of ballots with specimen ballots, cards of instruction, and copies of any proposed amendment to the constitution, required by law to be provided by him, separately and at different times or by different methods, to the several town clerks, so that both sets shall be received by the clerks twelve hours, at least, previous to the day of election. The respective town clerks shall, on delivery to them

of such ballots, return receipts therefor to the secretary. Sts. 1893, ch. 417, §§ 140, 141.

§ 249. The town clerk of every town in which ballots for town officers have been by law provided at the expense of the town, shall cause the ballots, with specimen ballots and cards of instruction, to be packed in separate packages with marks on the outside indicating their respective contents; and the packages of ballots for voters shall also be sealed and marked with the number of ballots of each kind enclosed.

§ 250. The town clerk of each town shall, on the day of every state election, before the opening of the polls, send to the election officers of each polling place therein, one set of ballots with accompanying specimen ballots, cards of instruction and copies of proposed amendments to the constitution, if any, which have been furnished and marked for such polling place; and a receipt for the delivery thereof shall be returned to the clerk from the presiding or senior election officer present at the polling place, which receipt, with a record of the number of ballots sent, shall be kept in the clerk's office for the period of one year. The second set of ballots shall be retained by the town clerk until they are called for, for the purposes of voting; and, upon the requisition in writing of the presiding election officer of any polling place, the second set of ballots shall be furnished to such polling place in the manner above provided as to the first set. When ballots are provided for the election of town officers in a town at the expense of the town, the town clerk shall deliver all such ballots, and the specimen ballots and cards of instructions at the polling place on the day of the election before the opening of the polls.

§ 251. In case the ballots to be furnished to any polling place in a town, in accordance with the provisions of this act, shall for any reason fail to be duly delivered, or in case after delivery they shall be destroyed or stolen, it shall be the duty of the clerk of such town to cause other ballots to be prepared substantially in the form of the ballots so to be furnished and wanting; and upon receipt of such other ballots from the clerk, accompanied by a statement by him

under oath that the same have been so prepared and furnished by him, and that the original ballots have so failed to be received or have been so destroyed or stolen, the election officers of such polling place shall cause the ballots so substituted to be used instead of the ballots wanting as above.

CONDUCT OF ELECTIONS AND METHOD OF VOTING.

(a) *Calling of Elections.*

§ 252. The annual state election for the choice of governor, lieutenant-governor, councillors, secretary, treasurer and receiver-general, auditor, attorney-general, and senators and representatives in the general court shall be held on the Tuesday next after the first Monday in November, as prescribed in the constitution. There shall likewise be chosen at the annual state election, in the years in which such officers are by law respectively to be chosen, electors of president and vice-president of the United States, and, in their respective districts or counties, representatives in congress, district attorneys, clerks of the courts, registers of probate and insolvency, registers of deeds, commissioners of insolvency, county commissioners, special commissioners, sheriffs, and county treasurers.

§ 253. Meetings of the qualified voters of each town for the election of state officers and of town officers shall, except as otherwise provided in this act, be called as ordered by the town, subject to the provisions stated in §§ 339-342 *post* for the calling and holding of town meetings in towns. Meetings for the annual state and town elections shall, however, in all cases be called, as above provided, at least seven days before the day prescribed for the holding thereof.

§ 254. All notices or warrants for meetings for the election of state officers, and for the election of town officers for which ballots are provided at the expense of the town, shall specify what officers are to be elected or voted for at such meetings, and whenever a proposed amendment to the constitution or other question is to be submitted to the people, shall contain a copy of the proposed amendment printed in full and of any other question so to be submitted. They

shall specify the time when the polls for the choice of the several officers will be opened, and they shall further specify in towns when the polls may be closed. In towns, meetings for the election of state officers may be opened as early as six o'clock in the forenoon, and shall be opened as early as twelve o'clock, noon. The polls shall be kept open four hours at least, and until the time specified in the warrant when they may be closed; and they may be opened for such longer time as the majority of the voters present shall by vote direct, but they shall not, except as is stated in § 259 *post*, be kept open after the hour of sunset; and after an announcement has been made by the presiding officer of a time so fixed by vote for closing, such time shall not be changed to an earlier hour. In meetings for the election of town officers as aforesaid, the polls shall be kept open four hours at least.

(b) *Conduct of Elections.*

§ 255. In elections of town officers in towns, for which ballots have by law been provided at the expense of the town, the town clerk shall, on the day of election, before the opening of the polls, cause not less than three cards of instruction and not less than five specimen ballots to be posted in or about the polling place outside the guard rail, and shall cause cards of instruction to be posted at or in each marking shelf or compartment inside the guard rail. The town clerk shall likewise on the day of election, before the opening of the polls, deliver the ballots to the ballot clerks, who shall receipt therefor, and their receipt shall be preserved in the office of the clerk for the period of one year. No such ballots shall, however, be delivered to voters until a moderator has been chosen in the manner provided by law.

In elections of state officers in towns, the presiding election officer shall perform the same duties that town clerks perform in the case of elections of town officers.

§ 256. The state ballot boxes, furnished in accordance with the provisions of this act, shall be used for receiving the ballots in all state elections in towns, in all elections

of town officers in towns for which ballots are provided at the expense of the town, and also in taking the vote upon any proposed amendment to the constitution, upon the question of granting licenses for the sale of intoxicating liquors, and upon any other question submitted by statute to the voters of the Commonwealth or of any town, for which ballots are by law provided at the expense of the Commonwealth, or of any town. The election officers at each polling place shall, at the opening of the polls and before any ballots are received, publicly open the ballot box, and ascertain by personal examination, and publicly show that the same is empty, and shall immediately thereafter lock or fasten the box. The clerk of the precinct or town shall make a record of the condition of the box register, and, if a key is used, it shall be taken and retained by the police officer or constable in attendance at the polling place. The ballot box shall not, after it is shown to be empty, be removed from public view until all ballots have been removed therefrom and the box has been relocked or sealed. No ballot shall be removed from the ballot box while the polls are open, and the box shall not be opened until the polls are closed, except that, in order to make room for the deposit of all the ballots cast, the presiding officer may, in the presence of all the election officers, open the box and pack and press down the ballots therein, and except further that, both in towns and precincts of towns, the ballot-box may be opened and ballots taken therefrom for counting, whenever it is deemed necessary or advisable so to do in the unanimous judgment of the selectmen and town clerk, or in the judgment of both the moderator and town clerk of the town, as the case may be, or in the unanimous judgment of the election officers of the voting precinct of the town.

The presiding officer of each polling place of a town shall have charge of the ballot box and ballot box seal, and shall, at the close of each election, return the same, either personally or by the hand of the police officer or constable in attendance at the polling place, to the town clerk.

If for any cause it shall become impossible at any such election, or in taking any such vote, to use the state ballot

box, the voting shall proceed in such manner as the presiding officer of such polling place shall direct, and in such case the clerk thereof shall make a record of the facts pertaining to the failure to use such ballot box, and shall enclose an attested copy of such record in the envelope with the ballots cast at such election or in taking such vote. The foregoing provisions as to the use and custody of the state ballot box shall, so far as applicable, apply to the ballot box substituted therefor.

§ 257. One of the voting lists of the voting precinct or town, as the case may be, transmitted by the registrars of voters, shall be delivered to the ballot clerks, and the other voting list shall be delivered to the election officers in charge of the ballot box, and such lists shall be used by them respectively in checking the names of voters both when receiving their ballots and when depositing their ballots. The officers in charge of the ballot box and of the voting list used thereat shall be of different political parties. Sts. 1893, ch. 417, §§ 143-151.

§ 258. No election officer shall, before the public declaration of the vote at an election, make any statement of the number of ballots cast, the number of votes given for any person, the name of any person who has voted, the name of any person which has not been voted on, or of any other fact tending to show the state of the polls. No persons, other than the election officers, supervisors, and voters admitted in accordance with the provisions of this act, shall, during the progress of an election and until public declaration of the vote has been made, be permitted inside the guard rail, except by authority of the election officers for the purpose of keeping order and enforcing the law. Sts. 1893, ch. 417, §§ 152, 153.

§ 259. No more than four voters, besides election officers and supervisors, in excess of the number of marking shelves or compartments provided, shall be allowed at one time within the space enclosed by the guard rail, and except the election officers and supervisors, no voters shall be admitted therein after the time fixed for closing the polls, but voters previously admitted shall be allowed a period not exceeding

five minutes succeeding the time so fixed, within which to deposit their ballots.

§ 260. The selectmen of a town may make such regulations, not inconsistent with the provisions of this act, in regard to the receiving of ballots, as they may deem expedient.

§ 261. The presiding officer at each polling place in a town, for the time being, shall secure the observance of all the provisions here stated relative to the duties of election officers. He shall possess full authority to maintain regularity and order and to enforce obedience to his lawful commands, during an election, and during the canvass and counting of the votes after the closing of the polls, and shall have full authority to preserve peace and good order at and around the polling place and to keep the access thereto open and unobstructed, and he may require any police officer, constable or other person present to communicate his orders and directions, and to assist in the enforcement of such authority.

§ 262. The board or officer in charge of the police force of each town shall detail a sufficient number of police officers or constables who shall be stationed at each polling place in the town at every election therein, to preserve order and to protect the election officers and supervisors from any interference with or obstruction in the performance of their respective duties, and to aid in enforcing the provisions of this act. Sts. 1893, ch. 417, §§ 154-157.

(c) *Manner of Voting.*

§ 263. A person, when desiring to vote at an election for which ballots are provided at the expense of the Commonwealth or of a town under the provisions of this act, shall, at the polling place for which he is registered as a voter, give his name, and if requested so to do, his residence to one of the ballot clerks, who shall thereupon announce the same in a loud and distinct tone of voice, clear and audible; and if such name is found upon the voting list by the ballot clerk having charge thereof, the ballot clerk shall likewise repeat the name, and the voter shall then be allowed to enter the space enclosed by the guard rail. The ballot clerk shall

give him one, and only one, ballot, and the name of the voter shall be immediately checked on the voting list. If the voter is a woman, she shall receive a special ballot containing the names of candidates for school committee only.

§ 264. The voter on receiving his ballot, shall forthwith and without leaving the enclosed space, retire alone to one of the marking shelves or compartments, and shall, except in the case of voting for electors of president and vice-president, prepare his ballot by marking in the square a cross [X] at the right of the name and designation, if any, of the candidate of his choice for each office to be filled, or by inserting the name of the candidate of his choice in the blank space provided therefor, and marking a cross [X] in the square at the right of the same; and, in case of a question submitted to the vote of the people, by marking a cross [X] in the square at the right of the answer which he desires to give.

§ 265. A voter, who desires to vote for an entire group of candidates for electors of president and vice-president of the United States, shall mark a cross [X] in the square at the right of the party or political designation immediately above such group, and such cross [X] shall count as a vote for each candidate in such group. If a voter desires not to vote for one or more candidates in the group for which he marks, he may erase the name of such candidate or candidates, and the cross [X] in the square above-mentioned shall count as a vote for each of the other candidates in such group. When a voter desires to vote for another person, in place of a candidate whose name he has erased, he may insert in one of the blank spaces at the end of the groups of candidates for electors, the name of the person of his choice, and mark a cross [X] in the square at the right of such name. A voter who does not mark for any group of candidates, may vote for one or more candidates for electors, up to the whole number to be elected, by inserting a name or names in one or more of the blank spaces at the end of the groups of electors, and marking a cross [X] in the square at the right of each name so inserted.

§ 266. A voter who declares to the presiding officer

that he was a voter before the first day of May in the year eighteen hundred and fifty-seven, and cannot read, or who declares that by blindness or other physical disability he is unable to mark his ballot, shall, upon request, be assisted in the marking thereof by one or two of the election officers, which officer or officers shall, if requested by him, be of such political party, represented among the election officers, as the voter may designate; and the officer or officers so assisting shall certify on the outside of the ballot, that it was so marked with his or their assistance, and shall thereafter give no information regarding the same. The presiding officer shall require such declaration of disability to be made before him by the voter under oath, and he is hereby qualified to administer such oath.

§ 267. No election officer or other person shall place upon a ballot any distinguishing mark whatsoever, except as authorized by the provisions of this act.

§ 268. If a voter spoils a ballot, he may successively obtain two others, one at a time, upon returning each spoiled one, and all ballots so returned, shall be immediately cancelled by the election officers.

§ 269. Before leaving the marking shelf or compartment, the voter shall fold his ballot, without displaying the marks thereon, in the same way in which it was folded when received by him, and he shall keep the same so folded until he has voted. No voter shall be allowed to occupy a marking shelf or compartment already occupied by another, nor to remain in such enclosed space more than ten minutes, nor to occupy a voting shelf or compartment for more than five minutes, in case all of the marking shelves or compartments are in use and other voters are waiting to occupy the same.

§ 270. A voter after marking his ballot shall at once proceed to deposit the same in the ballot box, shall let no one see his ballot so as to know how he is about to vote, and, upon so offering to vote, he shall give his name and if requested so to do, his residence, to the presiding officer, who shall thereupon announce the name in a loud and distinct tone of voice, clear and audible; and if such name is

found upon the voting list by the election officer having charge thereof, he shall, in a loud and distinct tone of voice, clear and audible, repeat the name and check it upon the voting list; and the voter may then deposit his ballot in the ballot box, which he shall do with the official endorsement uppermost and in sight. No ballot without the official endorsement, except as otherwise stated in § 251 *ante*, shall be allowed to be deposited in the ballot box. No person shall so vote whose name is not on the voting list, nor until the election officer as above shall find and check his name thereon, unless such person presents a certificate from the registrars of voters as is stated in § 192 *ante*, which certificate shall be checked as therein required.

§ 271. A voter who has entered the space enclosed by the guard rail, shall mark and deposit his ballot without undue delay, and shall leave such enclosed space as soon as he has voted. A voter who has been given a ballot for the purpose of voting, shall deposit it in the ballot box, or shall return it to a ballot clerk; and no person shall take or remove any ballot from the polling place or outside the guard rail, before the close of the polls. No voter, other than an election officer and supervisor, who has once entered such enclosed space, and whose name has been checked on the voting list in charge of the ballot clerk, shall be allowed to re-enter such enclosed space during the election.

§ 272. If in any state election, or town election in which ballots are provided at the expense of the town, the right of a person offering to vote is challenged for any cause recognized by law, the presiding officer shall require the name and residence of the person so offering to vote, to be written by himself or by some one in his behalf, on the outside of the ballot so offered, and the presiding officer shall add thereto the name of the person so challenging and the assigned cause for which the challenge is made, before such ballot shall be received; but nothing in this section shall be construed as permitting election officers to receive any ballot which by law they are required to refuse. No election officer, otherwise than as above required or permitted, and no person other than an election officer shall make any state-

ment or give any information in regard to a ballot cast by a voter so challenged at any such election, except as required by law.

(d) *Counting of Votes.*

§ 273. The blank forms and apparatus provided by the secretary of the Commonwealth, in accordance with the provisions of this act, shall be used in ascertaining the result of the election or vote in all state elections in towns, in all elections of town officers in towns for which ballots are provided at the expense of the town, and also in taking the vote upon any proposed amendment to the constitution, upon the question of granting licenses for the sale of intoxicating liquors, and upon any other question submitted by statute to the voters of the Commonwealth, or of any town, for which ballots are by law provided at the expense of the Commonwealth or of any town. If however, for any cause, it shall become impossible at any such election, or in taking any such vote, to use such blank forms or apparatus, or any of them, the canvass and counting of the votes shall proceed in such manner as the presiding officer of the polling place shall direct; and in such case, the clerk thereof shall make a record of the facts pertaining to the failure to use such blank forms or apparatus, and shall enclose an attested copy of such record in the envelope with the ballots cast at such election or in taking such vote.

§ 274. At every election and in the taking of every vote at which the state ballot box and blank forms and apparatus are used, as is stated in § 256 *ante*, and the preceding section, the clerk of the voting precinct or town, as the case may be, shall, as soon as the polls are closed, make a record of the ballot box register; the election officers in charge of each voting list shall, publicly and in the presence of the other election officers, count, in a distinct and audible voice, the number of names checked on each list, and announce the whole number of names checked thereon; and the ballot box shall then be opened by the presiding officer, and the ballots shall be taken therefrom. The ballots shall, under the direction of the presiding officer, be audibly counted, one by one, and when the counting is completed,

the whole number of ballots cast shall be publicly announced by him. The ballots shall then be divided into blocks or packages, each of a convenient number for canvassing and counting, and, except as hereinafter in this section provided, each block or package shall be canvassed and counted by two election officers representing the two leading political parties detailed for the purpose by the presiding officer; each election officer, in so canvassing and counting votes, shall be under the inspection of an election officer of a different political party; and the result of each such canvass and count shall be reported to the presiding officer, who shall cause each such result to be correctly recorded on the blank forms provided by law for the purpose. At state elections in towns not divided into voting precincts, the canvass and count of votes shall be made by the selectmen and town clerk, who may, however, be assisted by tellers appointed in accordance with the provisions stated in § 224 *ante*. The clerk of the voting precinct or town, as the case may be, shall, when the total result of the canvass and counting of votes has been ascertained, make public announcement thereof in open meeting, and shall, in open meeting, enter, in words at length in his records, the total number of names of male and female voters checked on the voting lists, the total number of ballots cast, the names of all persons voted for, the number of votes received for each person and the title of the office for which he was proposed, the number of blank ballots for each office, and the number of affirmative and negative votes in answer to any question submitted to the voters. Each clerk of a voting precinct shall forthwith make a copy of the record so made by him, seal and certify the same, and deliver it to the town clerk, who shall forthwith enter the same in the town records.

The checked voting lists and all ballots, after being removed from the ballot box, shall be kept within the unobstructed view of the voters present at the polling place, until they have been enclosed and sealed in accordance with the provisions of this act, and all proceedings in the canvass and counting of votes shall be public and within the unobstructed view of the voters as aforesaid; and no

adjournment or postponement shall be had until the canvass and counting are fully completed, and the voting lists and ballots have been enclosed and sealed as by law provided.

When in towns and precincts of towns, the ballots are removed from the ballot box before the closing of the polls, in accordance with the provisions stated in § 256 *ante*, the canvass and counting of the votes shall thereupon be made, subject however to the foregoing provisions of this section.

§ 275. No ballots shall be counted in ascertaining the result in any election or in the taking of any vote, in which the use of a state ballot box is required in accordance with the provisions stated in § 256 *ante*, unless they have been deposited in such ballot box and cancelled thereby, or have been otherwise deposited in accordance with the provisions stated in said section; and no ballots shall be counted in any election for which ballots are by law provided at the expense of the Commonwealth or at that of the town, unless they have been provided in accordance with the provisions of this act. If a voter marks more names than there are persons to be elected to an office, or if for any reason it is impossible to determine the choice of the voter for any office to be filled, his ballot shall not be counted for such office. Ballots cast but not counted, for any purpose, shall be marked "defective," on the outside thereof, and shall be kept and preserved the same as ballots which are counted.

§ 276. The presiding officer at every polling place in a town, at elections of state officers and at elections of town officers in towns, for which ballots are provided at the expense of the town, shall cause all the ballots cast, after they have been duly canvassed and counted and record thereof has been made, publicly to be enclosed in an envelope and sealed with the seal by law provided for the purpose, and also with the private seal of any election officer who may desire to affix the same; and a majority of the election officers of the voting precinct or town shall endorse upon such envelope for what officers and in what polling place the ballots were cast, and the date of the election; and they shall make a certificate on the envelope that all the ballots cast for state or town officers, as the case may be, by the

voters of such precinct or town, and none other, are contained in such envelope.

The presiding officer at each polling place in every such election shall cause the voting lists used at such election to be enclosed in an envelope and sealed as aforesaid, and a majority of the election officers of the voting precinct or town shall certify thereon to the identity of the voting lists so enclosed. The presiding officer shall likewise cause all ballots which are not distributed to voters and all ballots which are returned by voters and cancelled, to be enclosed in an envelope and sealed as aforesaid, and shall make a certificate on the envelope as to the identity of such undistributed and cancelled ballots.

The presiding officer shall forthwith personally deliver to the town clerk or transmit to him by the police officer or constable in attendance at the election, all the ballots cast, all undistributed and cancelled ballots, and the voting lists, sealed as aforesaid, together with the ballot box, ballot box seals, and counting apparatus.

§ 277. The town clerk of a town may, after any such voting list has been used in such town or in any voting precinct thereof, unseal and open the envelope containing such list, and may make a copy thereof upon written application therefor, signed by not less than ten legal voters of such town. Immediately after any such voting list has been so copied, the town clerk shall again enclose the list in an envelope and seal the same, and shall certify on the envelope to the identity and original condition of such lists.

§ 278. Every town clerk shall receive the envelope containing the ballots cast at an election and transmitted to him in accordance with the preceding sections, and shall retain the same in his custody subject to the requirements of law, and until such requirements have been complied with; and, as soon as may be thereafter, the clerk shall cause all such ballots to be destroyed, without examining them or permitting them to be examined by any person whatsoever, and shall make an entry in the town records that all such ballots have been so destroyed.

Every town clerk shall retain in his custody the voting

lists and undistributed and cancelled ballots, transmitted to him in accordance with the provisions of the preceding sections, during the same time as is above required by law for the preservation of ballots; and, as soon as may be thereafter, he shall transmit such voting lists to the registrars of voters of the town, and the registrars shall preserve them for future reference in such manner as they may deem best. The clerk shall cause the cancelled ballots to be destroyed in the same manner as the ballots cast, but may make such disposition of the undistributed ballots as he may deem proper.

(e) *Certificates of Election.*

§ 279. In determining the number of votes cast at an election, no record of votes cast or copy of any such record shall be rejected if the number of votes given for each candidate for an office can be ascertained.

§ 280. The selectmen and town clerk of every town divided into voting precincts shall forthwith, after every state election therein, examine the copies of the records made by the election officers of each precinct, and if any error appears therein, they shall forthwith give notice of such error to the election officers by whom the error has been made; and such election officers shall forthwith make under oath a new and additional record in conformity to the truth, and deliver a copy thereof to the town clerk; and any such additional copy of the records made by the election officers, whether with or without notice as aforesaid, shall be received by the town clerk at any time before the expiration of the day preceding the last day on which such clerk is by law allowed or required to transmit copies of records of the votes cast in the town. All original and additional copies of the records made as above, shall be examined by the selectmen and town clerk of the town, and made part of the records of such election; and in towns the selectmen and town clerk shall certify and attest copies of the records of votes for the several candidates, in accordance with the requirements of the provisions of this act.

§ 281. The town clerk of every town shall, within ten

days from the day of any election therein for representative in congress, governor, lieutenant-governor, councillor, secretary, treasurer and receiver-general, auditor, attorney-general, commissioners of insolvency, clerk of courts, register of probate and insolvency, sheriff, district attorney, or senator, or for electors of president and vice-president of the United States, transmit to the secretary of the Commonwealth copies of the records of the votes for such officers, which copies shall be certified by the selectmen, and shall be attested and sealed by the clerk. The town clerk of every town shall, in like manner, within ten days after an election therein for county treasurer or register of deeds, transmit to the county commissioners of the county for which such officers are to be chosen, copies of the records of the votes for such officers, certified, attested, and sealed as aforesaid; and shall within ten days after an election therein for county commissioner or special commissioners, transmit to the clerk of the courts for the county the records of the votes for such officers, so certified, attested, and sealed; except that the records of the votes cast in the county of Suffolk for register of deeds shall be transmitted to the board of aldermen of the city of Boston, and the records of the votes cast in the city of Chelsea and the towns of Revere and Winthrop in said county for county commissioner and special commissioners shall be transmitted to the clerk of the courts for the county of Middlesex.

The town clerks shall transmit all such copies of the records of votes in envelopes, upon the outside of which they shall specify the offices for which the votes were cast, and, in case officers are elected for divisions of the Commonwealth, the divisions in which the votes are cast.

§ 282. The town clerk on the receipt of a notice from the secretary that the copy of the record of the votes cast in the election in the town was not sealed according to law, shall make and attest another copy of the record of the votes cast at such election, which copy shall be certified by the selectmen, and the clerk shall transmit the same to

the secretary, sealed as required in the case of the original copy. Sts. 1893, ch. 417, §§ 161-180.

§ 283. Whenever, upon examination of the copies of the records of votes, made in accordance with the requirements of the preceding sections, it shall appear to the governor and council, to the board of examiners, or to the county commissioners, that any such copy is incomplete or erroneous, the body so making the examination may order a new copy of the records to be made and transmitted in the manner provided for making and transmitting the original copies; such new copy shall be transmitted by the clerk of the town within seven days after the date of the order requiring the same to be made, and if found to be correct, and in conformity to the requirements of law, shall thereupon have the same force and effect as an original copy correctly made and transmitted.

§ 284. If a representative district for the election of representatives in the general court is composed of one town, the selectmen of the town shall forthwith examine the records of the votes for the office of representative, shall determine what person or persons appear to be elected in accordance therewith; and they shall cause to be entered at length by the town clerk, in the records of the town, the names of all persons for whom votes for representative were given in the district, and the number of votes given for each such person.

§ 285. If a representative district is composed of two or more towns, or of one or more towns and one or more wards of a city, the election officers in every voting precinct in each such district and the selectmen and town clerk of each town therein not divided into voting precincts, shall, as soon as the vote for representatives has been recorded, cause to be made a complete copy of the record of the votes for the office of representative, shall certify and seal such copy and deliver the same to the town clerk.

The town clerks of every town in each such district shall meet at the place designated, in accordance with the provisions of the following section, at noon, or as soon thereafter as possible, on the tenth day succeeding the day of the

election, except that they shall meet on the fourth day succeeding the day of an election to fill a vacancy in such office. The clerks at such meeting shall open, examine, and compare the copies of the records of the votes of every such voting precinct and town, and determine therefrom what person or persons appear to be elected to the office of representative. They shall make in words at length and certify a schedule of the names of all persons for whom votes for representative were given in the district, and the number of votes given for each person; and the clerk of each town shall, within four days after the day of the meeting, make a copy of such schedule in the records of such town. Sts. 1893, ch. 417, §§ 193-195.

§ 286. The town clerks, when examining the copies of the records of the votes for the office of representative in a representative district, shall, if any error appears therein, forthwith give notice of such error to the election officers by whom the error is made; and such election officers shall forthwith make under oath a new and additional record in conformity to the truth, and transmit a copy thereof to the clerks requiring the same. Any additional copy of the records made by the election officers shall be examined by the clerks if received by them within two days from the time appointed for their meeting; and for such purpose their meeting may be adjourned for a period not exceeding two days.

§ 287. The selectmen of a town, or the clerks of towns, as the case may be, acting in a representative district, after having determined, in accordance with the provisions of the preceding sections, what person or persons appear to have been elected to the office of representative in such district, shall, or a majority of them shall, make duplicate certificates of election of the person or persons so appearing to be elected; and they shall, within fifteen days after the day of the election, transmit one of such certificates to the secretary of the Commonwealth, and shall, by a constable or other proper officer, transmit the other certificate to the person named therein as elected. Such certificates of election shall be in substance as follows:—

Commonwealth of Massachusetts, County of . Pursuant to a law of this Commonwealth, the qualified voters of Representative District Number , in their several meetings on the day of November instant, for the choice of Representatives in the General Court, did elect , being inhabitants of said district, to represent them in the General Court, to be holden on the first Wednesday of January next.

Dated at the day of in the year one thousand eight hundred and .

There shall be printed on every such form the first four sections of chapter two of the Public Statutes, and this section and § 217 of ch. 417 of the acts of 1893. Every constable or other officer transmitting such certificate shall make a return to the officers from whom the same was received, stating that such certificate was duly delivered to the person mentioned therein as elected, and his return so made shall be filed with the city or town clerk. Sts. 1893, ch. 417, §§ 197, 198.

§ 288. The town clerk of every town shall, within fifteen days after the day of an election therein for representative in the general court, transmit to the secretary of the Commonwealth an attested copy of the record of votes cast for all candidates for said office in each voting precinct and in each town not divided into voting precincts. In all records of votes cast at elections, and in all copies of such records, the whole number of ballots given shall be distinctly stated in words at length, but an omission so to state the whole number of ballots given shall not render a record or copy thereof invalid in any case in which the true result of the election can be ascertained from other parts of the record or copy, or by a recount made in conformity with the provisions of law. The town clerk of every town shall, within fifteen days after the day of an election therein of state or town officers, certify to the secretary of the Commonwealth the total number of names of male and of female voters checked on the voting list as having voted at such election in each voting precinct in such town. Sts. 1893, ch. 417, §§ 199, 200, 203.

§ 289. The selectmen of a town may make such regulations not inconsistent with the provisions of this act, in regard to the manner of counting and returning the votes as they may deem expedient. Sts. 1893, ch. 417, § 205.

(f) *Recounts of Votes.*

§ 290. If, within the thirty days next succeeding the day of an election in a town, a person who has received votes for any office at such election, shall, by himself or by his agent or attorney, serve upon the clerk of such town a statement in writing claiming an election to such office, or declaring an intention to contest the election thereto of any other person, such clerk shall retain every envelope containing the ballots for such office cast at the election, sealed as provided by law, until such claim is withdrawn or the contest for the election is finally determined by the competent authority. Every envelope with the ballots shall, however, be and remain subject to the order of the body to which any such person claims or may be held to have been elected, or to the order of the officers required by law finally to examine the records or copies of the records and to issue certificates of election to such office, or to the order of a court having jurisdiction of the matter. Any such body or officers may order the clerk to appear before them and bring with him every such envelope with the ballots. The clerk shall, in response to the order, appear with the envelopes and ballots, and such body or officers may open the envelopes, recount the ballots therein, and amend any record or copy thereof made by them in relation to such office in accordance with the result of the recount.

§ 291. If within the six days next succeeding the day of an election for state officers in a town, ten or more qualified voters of any voting precinct of a town, or of any town not divided into voting precincts, shall file with the town clerk a statement in writing that they have reason to believe that the records or copies of records made by the election officers of certain precincts in such ward or town, or of such town, are erroneous, and shall specify wherein they deem them in error, the clerk shall forthwith transmit such statement to

the selectmen, whose duty it is to examine the records or certificates of such election. The selectmen shall thereupon and within the eight days next succeeding the day of election, open the envelope or envelopes containing the ballots, and examine the ballots cast in each such voting precinct or town, as the case may be, and shall determine the questions raised. After making such examination and determination, the selectmen shall again enclose all ballots in their proper envelope, seal each envelope with the seal of the town, or with a seal provided for the purpose, and certify upon each envelope that the same has been opened and again sealed in conformity to law; and they shall likewise make and sign a statement of their determination of the questions raised. The envelopes, together with such statement, shall be returned to the town clerk, and he shall alter and amend such records as have been found to be erroneous, in accordance with such determination; and the records so amended shall stand as the true records of the election. The town clerk shall likewise, in accordance therewith, amend the records of the town, and copies of such amended records of the votes cast at a state election shall be made and transmitted, as are required by the provisions of this title in the case of original copies of records.

In the case however of an election to fill a vacancy in the office of a senator or representative in the general court, any such statement of ten qualified voters of their belief that errors exist, shall be filed within the two days next succeeding the day of election, and the examination of ballots shall be made within the three days next succeeding the day of election. Sts. 1893, ch. 417, §§ 206, 207.

§ 292. If, within the two days next succeeding the day on which the declaration is made of the result of the vote in a town upon the question of granting licenses for the sale of intoxicating liquors therein, ten or more qualified voters in such town shall file with the town clerk a written statement that they have reason to believe that an error was made in ascertaining or declaring the result of the count of the ballots cast upon said question, the clerk shall forthwith transmit such statement to the moderator of the meeting.

The moderator shall thereupon and within the three days next succeeding the day of such declaration, publicly recount such ballots and declare the result of such vote. If the recount does not agree with the original count, the moderator shall forthwith make and sign a certificate of the result of such recount, and file the same with the town clerk. The town clerk shall record the certificate in his book of records of town meetings, directly following his record of the meeting at which such ballots were cast; and the record of the recount shall stand as the true result of the vote cast in such town upon said question.

§ 293. The selectmen and the moderator of a town meeting in any town may appoint tellers, in accordance with the provisions stated in § 224 *ante*, to assist them or him, as the case may be, in making a recount of ballots under the provisions of the preceding sections.

§ 294. No election officer or other officer whose duty it is to recount ballots cast at an election, shall, except as required by law, make any statement or give any information in regard to a ballot deposited by a challenged voter at such election. Sts. 1893, ch. 417, §§ 211-213.

OFFICERS TO BE VOTED FOR AT STATE ELECTIONS.

§ 295. At the annual state election in each year there shall be chosen, as prescribed by the constitution, by the voters of the entire Commonwealth, a governor, lieutenant-governor, secretary, treasurer and receiver general, auditor, and attorney-general; by the voters in each councillor district, one councillor; by the voters in each senatorial district, one senator; and by the voters in each representative district, such number of representatives as the district is by law entitled to elect. At the annual state election in each year in which by the laws of the United States electors of president and vice-president are required to be appointed, there shall be chosen, by the voters of the entire Commonwealth, a number of electors of president and vice-president equal to the whole number of senators and representatives to which the Commonwealth is entitled in congress. Sts. 1893, ch. 417, §§ 247, 248.

§ 296. At the annual state election in the year eighteen hundred and ninety-four, and in every second year thereafter, there shall be chosen by the voters in each congressional district of the Commonwealth a representative in the congress of the United States.

§ 297. At the annual state election in the year eighteen hundred and ninety-five, and in every third year thereafter, there shall be chosen by the voters in each of the districts into which the Commonwealth is divided for the administration of the criminal law, a district attorney, who shall be a resident within the district for which he is chosen.

§ 298. At the annual state election in the year eighteen hundred and ninety-six, and in every fifth year thereafter, there shall be chosen by the voters in the county of Suffolk, a clerk of the supreme judicial court for said county, and two clerks of the superior court for said county, one for the civil business and one for criminal business; and by the voters in each of the other counties, there shall be chosen a clerk of the courts for the county, who shall act as clerk of the supreme judicial court, of the superior court, and of the county commissioners.

§ 299. At the annual state election in the year eighteen hundred and ninety-three, and in every fifth year thereafter, there shall be chosen by the voters of each county a register of probate and insolvency for the county.

§ 300. At the annual state election in the year eighteen hundred and ninety-four, and in every third year thereafter, there shall be chosen by the voters of each district for the registry of deeds, and of each county not divided into districts for such purpose, a register of deeds for such district or county, who shall be a resident within the district or county for which he is chosen.

§ 301. At the annual state election in the year eighteen hundred and ninety-five, and in every third year thereafter, there shall be chosen by the voters of the county of Worcester four commissioners of insolvency, and by the voters of each of the other counties three commissioners of insolvency.

§ 302. At the annual state election in each year there shall be chosen by the voters of the county of Middlesex and

of the city of Chelsea and the towns of Revere and Winthrop, one county commissioner for said county, city and towns, and by the voters of each of the other counties, except the counties of Suffolk and Nantucket, one county commissioner for the county.

At the annual state election in the year eighteen hundred and ninety-five, and in every third year thereafter, there shall likewise be chosen by the voters of the county of Middlesex and of the city of Chelsea and the towns of Revere and Winthrop, two special commissioners for said county, city and towns, and by the voters of each of the other counties, except the counties of Suffolk and Nantucket, two special commissioners for the county.

Not more than one of the county commissioners and special commissioners shall be chosen from the same town.

There shall be three county commissioners in each county, except the counties of Suffolk and Nantucket.

§ 303. At the annual state election in the year eighteen hundred and ninety-five, and in every third year thereafter, there shall be chosen by the voters in each county a sheriff for the county.

§ 304. At the annual state election in the year eighteen hundred and ninety-four, and in every third year thereafter, there shall be chosen by the voters in each county, except the counties of Suffolk and of Nantucket, a county treasurer, who shall be a resident within the county for which he is chosen. Sts. 1893, ch. 417, §§ 249-257.

§ 305. If there is a failure so to choose a register of deeds in the county of Nantucket, or if a vacancy shall occur in that office in said county, the selectmen of the town of Nantucket shall call a meeting for the election of a register of deeds or for the filling of such vacancy, as the case may be; and in case of a vacancy occurring in that office in said county of Nantucket, the selectmen shall appoint some person to fill the office until a person is duly elected to the office and qualified.

§ 306. When elections are held in consequence of a failure to elect in a preceding election or to fill vacancies in any office, in accordance with the provisions of the pre-

ceding sections of this title, proceedings shall be had similar in all respects, so far as applicable, to those had in elections to the same office at the annual state election. Sts. 1893, ch. 417, §§ 219, 222.

ELECTION OF TOWN OFFICERS.

§ 307. Every town at its annual meeting shall in every year, except as is otherwise stated in §§ 308, 309, 310, 313, and 318 *post*, choose from the inhabitants thereof the following-named town officers who shall, unless so otherwise provided, serve during the year:—

A town clerk;

Three, five, seven, or nine selectmen;

Three or more assessors; and, if the town shall vote so to do, three or more assistant assessors;

Three or more overseers of the poor;

A town treasurer, whom the town may at any meeting appoint collector of taxes;

One or more collectors of taxes, if the town shall vote so to do;

One or more auditors;

One or more surveyors of highways;

A road commissioner, if the town has provided for the election of road commissioners;

A sewer commissioner, if the town has provided for the election of sewer commissioners;

One or more constables, who shall also be collectors of taxes, unless other persons are specially chosen or appointed collectors of taxes;

Two or more field-drivers;

Two or more fence-viewers;

and all other usual town officers.

The town shall likewise at its annual meeting or at a meeting held in the same month in which the annual meeting occurs, choose members of the school committee, in accordance with the provisions of law; and the town shall at the annual meeting choose such other officers as are then required by law to be chosen.

In the choice of overseers of the poor no person shall be ineligible for the office by reason of sex;

An auditor shall hold no other office. Sts. 1893, ch. 417, § 266.

A selectman and assessor of taxes may be chosen collector of taxes also. A collector of taxes may be sworn at any time before entering upon the duties of his office; and his oath need not be matter of record, but may be proved by other evidence. A town record of the election of a collector of taxes need not show a determination by the town of the manner in which he should be chosen. *Howard v. Proctor*, 7 Gray, 128.

§ 308. A town which, previous to the passage of this act, has accepted the provisions of any statute authorizing the election of its selectmen in substantially the following manner, or which shall hereafter, at an annual meeting or at a meeting held in accordance with the provisions stated in § 338 *post*, accept the provisions stated in this section, and which has not or shall not have revoked such acceptance, shall elect its selectmen in the following manner:—

If the number of selectmen is fixed by the town to be three, the town shall at the annual meeting, when such acceptance is voted, or at the annual meeting next succeeding the meeting at which such acceptance is voted, elect one selectman for the term of one year, one selectman for the term of two years, and one selectman for the term of three years; and at each annual meeting thereafter shall elect one selectman for the term of three years. If the number of selectmen is required to be five, the town shall at such annual meeting elect one selectman for the term of one year, two selectmen for terms of two years, and two selectmen for terms of three years; and at the annual meeting in each year thereafter, it shall elect one or two selectmen to serve for terms of three years accordingly as the term of office of one or two expires in the year. If the number of selectmen is required to be seven, the town shall at such annual meeting elect two selectmen for terms of one year, two selectmen for terms of two years, and three selectmen for terms of three years; and at the annual meet-

ing in each year thereafter, it shall elect two or three selectmen to serve for terms of three years accordingly as the term of office of two or three expires in the year. If the number of selectmen is required to be nine, the town shall at such annual meeting elect three selectmen for terms of one year, three selectmen for terms of two years, and three selectmen for terms of three years; and at the annual meeting in each year thereafter it shall elect three selectmen to serve for terms of three years.

§ 309. A town which, previous to the passage of this act, has accepted the provisions of any statute authorizing the election of its assessors in substantially the following manner, or which shall hereafter, at an annual meeting or at a meeting held in accordance with the provisions stated in § 338 *post*, accept the provisions stated in this section, and which has not or shall not have revoked such acceptance, shall elect its assessors in the following manner:—

If the number of assessors is fixed by the town to be three, the town shall at the annual meeting when such acceptance is voted, or at the annual meeting next succeeding the meeting at which such acceptance is voted, elect one assessor for the term of one year, one assessor for the term of two years, and one assessor for the term of three years; and at each annual meeting thereafter it shall elect one assessor for the term of three years. If the number of assessors is required to be five, the town shall at such annual meeting elect one assessor for the term of one year, two assessors for terms of two years, and two assessors for terms of three years; and at the annual meeting in each year thereafter it shall elect one or two assessors to serve for terms of three years accordingly as the term of office of one or two expires in the year. If the number of assessors is required to be seven, the town shall at such annual meeting elect two assessors for terms of one year, two assessors for terms of two years, and three assessors for terms of three years; and at the annual meeting in each year thereafter it shall elect two or three assessors to serve for terms of three years accordingly as the term of office of two or three expires in the year. If the number of assessors is required to be nine,

the town shall at such annual meeting elect three assessors for terms of one year, three assessors for terms of two years, and three assessors for terms of three years; and at the annual meeting in each year thereafter it shall elect three assessors to serve for terms of three years. If the number of assessors is required to be four, the town shall at such annual meeting elect two assessors for terms of one year, and two assessors for terms of two years; and at the annual meeting in each year thereafter it shall elect two assessors to serve for terms of two years.

§ 310. A town which, previous to the passage of this act, has accepted the provisions of any statute authorizing the election of its overseers of the poor in substantially the following manner, or which shall hereafter at an annual meeting or at a meeting held in accordance with the provisions stated in § 338 *post*, accept the provisions stated in this section, and which has not or shall not have revoked such acceptance, shall elect its overseers of the poor in the following manner:—

If the number of overseers of the poor is fixed by the town to be three, the town shall at the annual meeting when such acceptance is voted, or at the annual meeting next succeeding the meeting at which such acceptance is voted, elect one overseer of the poor for the term of one year, one overseer of the poor for the term of two years, and one overseer of the poor for the term of three years; and at each annual meeting thereafter it shall elect one overseer of the poor for the term of three years. If the number of overseers of the poor is required to be five, the town shall at such annual meeting elect one overseer of the poor for the term of one year, two overseers of the poor for terms of two years, and two overseers of the poor for terms of three years; and at the annual meeting in each year thereafter it shall elect one or two overseers of the poor to serve for terms of three years accordingly as the term of office of one or two expires in the year. If the number of overseers of the poor is required to be seven, the town shall at such annual meeting elect two overseers of the poor for terms of one year, two overseers of the poor for terms of two years, and three overseers of the poor for terms

of three years; and at the annual meeting in each year thereafter it shall elect two or three overseers of the poor to serve for terms of three years accordingly as the term of office of two or three expires in the year. If the number of overseers of the poor is required to be nine, the town shall at such annual meeting elect three overseers of the poor for terms of one year, three overseers of the poor for terms of two years, and three overseers of the poor for terms of three years; and at the annual meeting in each year thereafter it shall elect three overseers of the poor to serve for terms of three years.

§ 311. A town which votes at an annual meeting to increase or diminish the number of its selectmen, assessors, or overseers of the poor, may at that meeting or at any annual meeting thereafter elect one or more of such officers additional, or omit to elect one or more of such officers, so as to bring the number to the limit fixed by the vote of the town, with terms of office expiring in the manner provided in the preceding three sections; but no action shall be taken so as to prevent the election of at least one selectman, assessor, and overseer in every year.

A town which has by vote accepted the provisions of any of the preceding three sections or of any statute therein referred to, may at any subsequent annual meeting revoke such acceptance, and thereupon the provisions of any such section or statute so accepted shall cease to be operative in such town, except that such revocation shall not affect the term of office of any selectman, assessor, or overseer chosen thereunder. Sts. 1893, ch. 417, §§ 267-270.

§ 312. Members of a board of overseers of the poor of a town, when elected for terms of more than one year, shall, within seven days after the annual town meeting, meet and choose a chairman, and also a secretary, who may be chosen from their own number or may be some person other than a member of the board.

They shall cause books to be kept, wherein shall be entered in a neat and methodical style, and so arranged as to be readily referred to upon such books, the information required by law in regard to all needy persons aided under their direc-

tion, and all further information as to every case of relief given, asked for, or refused, the preservation of which may be of importance to the town or to the Commonwealth, stating the amount and kind of aid given, and the reasons for giving such aid or for refusing the same. Sts. 1893, ch. 423, § 12.

§ 313. A town which, previous to the passage of this act, has accepted the provisions of any statute permitting the election of road commissioners, or which shall hereafter, at an annual meeting or at any meeting held in accordance with the provisions which will be found stated in § 338 *post*, accept the provisions stated in this section, and which has not or shall not have revoked such acceptance, shall elect road commissioners in the following manner:—

The town shall, at the annual meeting when such acceptance is voted, or at the next annual meeting after such acceptance is voted, elect one commissioner for the term of one year, one commissioner for the term of two years, and one commissioner for the term of three years; and at each annual meeting thereafter it shall elect one road commissioner for the term of three years.

A town which has by vote accepted the provisions of this section or of any statute herein referred to, may at a subsequent annual meeting revoke such acceptance, and thereupon the provisions of this section or any statute so accepted shall cease to be operative in such town, and the offices of road commissioners shall be taken to be abolished. Sts. 1893, ch. 417, § 271.

§ 314. Road commissioners, when chosen in towns, shall, in matters concerning streets, ways, bridges, monuments at the terminations and angles of roads, guide-posts, sidewalks, and shade-trees, and, if sewer commissioners are not chosen, in matters of sewers and drains, exclusively have the powers and be subject to the duties, liabilities and penalties of selectmen and surveyors of highways, and shall have all the powers and privileges conferred upon selectmen in section seventeen of chapter fifty-three of the Public Statutes in relation to moving buildings in public streets and highways. Sts. 1893, ch. 423, § 23.

§ 315. In a town which shall not choose road commissioners in accordance with the provisions of law, the selectmen shall, as soon after the annual town meeting as may be, appoint a suitable person to be a superintendent of streets. The superintendent of streets shall be sworn to the faithful discharge of his duties, shall receive such compensation for his services as the town or selectmen may determine, and shall hold office until the next annual town meeting and until his successor is appointed and qualified, unless the provisions of law for the appointment of road commissioners shall have ceased to be operative in such town.

The superintendent of streets may be removed from office by the selectmen when in their judgment the best interests of the town so require.

When a vacancy in the office of superintendent of streets shall occur by removal, or by resignation or otherwise, the selectmen shall appoint a suitable person to fill the vacancy, who shall hold office until the next annual town meeting, and until his successor is appointed and qualified, except as above provided.

§ 316. The superintendent of streets in a town shall, under the direction of the selectmen, have full charge of all repairs and labor required of towns upon streets, ways, bridges, and sidewalks, and the care and preservation of shade-trees; and, also, in towns when no other provision is made, he shall have full charge of all repairs required of towns upon sewers and drains, and in relation to all such matters he shall have the same powers and be subject to the same duties, liabilities, and penalties which have been imposed upon surveyors of highways and road commissioners. Sts. 1893, ch. 423, §§ 25, 26.

§ 317. The auditors of towns shall examine the books and accounts of all officers and committees of their respective towns intrusted with the receipt, custody, or expenditure of money, and all original bills and vouchers on which moneys have been or may be paid from the treasuries of their respective towns. They shall have free access to such books, accounts, bills, and vouchers, as often as once a month, and may make examination thereof, and they shall

examine the same at least once in each year, and shall annually report in writing to their respective towns as to the correctness of all such books, accounts, bills, and vouchers. Sts. 1893, ch. 423, § 20.

§ 318. A town which shall hereafter at an annual meeting or at any meeting held in accordance with the provisions stated in § 338 *post*, accept the provisions stated in this section, and which has not or shall not have revoked such acceptance, shall elect sewer commissioners in the following manner:

The town shall, at the annual meeting when such acceptance is voted, or at the next annual meeting after such acceptance is voted, elect one sewer commissioner for the term of one year, one sewer commissioner for the term of two years, and one sewer commissioner for the term of three years; and at each annual meeting thereafter it shall elect one sewer commissioner for the term of three years.

A town which has by vote accepted the provisions of this section, may at a subsequent annual meeting revoke such acceptance, and thereupon the provisions of this section shall cease to be operative in such town, and the offices of sewer commissioners shall be taken to be abolished. Sts. 1893, ch. 417, § 272.

§ 319. Sewer commissioners, when chosen in towns, shall, in matters concerning sewers and drains, exclusively have the powers and be subject to the duties, liabilities, and penalties of selectmen and road commissioners. Sts. 1893, ch. 423, § 24.

§ 320. There shall be in each town of five thousand inhabitants or more, and in each town having a system of water supply or sewerage, a board of examiners of plumbers, consisting of the chairman of the board of health and, in towns having an inspector of buildings, the inspector of buildings of said town, who shall be members *ex officio* of said board, and serve without compensation, and a third member, who shall be a practical plumber. Said third member shall be appointed by the board of health of said town within three months from the passage of this act (June 10, 1893), for the term of one year from the first day of May in the year of appointment, and thereafter annually

before the first day of June, and shall be allowed a sum not exceeding five dollars for each day of actual service, to be paid from the treasury of such town: *provided*, that if in any town there is no inspector of buildings, said board of health shall appoint a second member of said board of examiners who shall be a practical plumber, and whose term of office and compensation shall be the same as is heretofore provided for said third member. Sts. 1893, ch. 477, § 3.

§ 321. The selectmen may at any time appoint police officers with any or all of the powers of constables, except the power of serving and executing civil process. Such police officers shall hold office during the pleasure of the selectmen; and they may, when on duty, carry such weapons as the selectmen shall authorize. Sts. 1893, ch. 423, § 7.

An appointment "to superintend the police of the town" is sufficient to give the person appointed all the power conferred by this section. *Commonwealth v. Martin*, 98 Mass. 4; also an appointment "on police duty," and the officer need not be sworn. *Commonwealth v. Cushing*, 99 Mass. 592. An appointment of a police officer by the selectmen of a town, "to continue in said office till the next annual town meeting," is a valid appointment during their pleasure. *Commonwealth v. Higgins*, 4 Gray, 34. Police officers may be assigned to agricultural and horticultural exhibitions. Sts. 1892, ch. 180.

§ 322. The selectmen, on the receipt and approval of the bond of a collector of taxes or treasurer, shall give notice of such receipt and approval to the assessors. Sts. 1893, ch. 423, § 8.

§ 323. The election of town clerk, selectmen, assessors, overseers of the poor, town treasurer, auditor, collector of taxes, constables, road commissioners, sewer commissioners, and school committee shall be by ballot; and the election of all other town officers shall be in such manner as the town may determine, unless in any case it shall be otherwise provided by law. A town which chooses its assessors or overseers of the poor for terms of one year, may however, instead of electing assessors or overseers of the poor by ballot, provide by vote, previous to making choice of such

officers, that the persons to be elected selectmen shall act also as assessors or as overseers of the poor, or in both such capacities. Such vote shall in any town, in which ballots are provided at the expense of the town, be passed at a meeting held thirty days at least previous to the annual meeting at which the selectmen are so to be chosen. The voting list shall be used, and the name of every person voting shall be checked thereon, in the election of all town officers, whose election is by law required to be by ballot, and in taking the vote upon the question of granting licenses for the sale of intoxicating liquors in the town; but in the election of other town officers the voting list shall or shall not be so used, as the meeting shall by vote determine. Sts. 1893, ch. 417, §§ 274, 275.

§ 324. Whenever the town clerk, selectmen, assessors, treasurer, collector of taxes, and school committee are voted for in a town on one ballot, the moderator of the town meeting shall cause all the ballots cast for such officers, after they have been duly canvassed and counted, and record thereof has been made, publicly to be enclosed in envelopes, and the envelopes to be sealed and endorsed, and certificate to be made thereon, in the same manner as is required by the provisions stated in § 276 *ante*, in the case of elections of town officers for which ballots are provided at the expense of the town.

If, within the two days next succeeding the day of an election in which all of said officers are voted for on one ballot, as aforesaid, ten or more qualified voters of the town shall file with the town clerk a statement in writing, that they have reason to believe that an error was made in ascertaining or declaring the result of such election, as is stated in § 355 *post*, the moderator shall open the envelopes containing the ballots cast, and determine the questions raised in such statement; and in case it shall appear that a person was elected other than the person declared in town meeting to have been elected, the moderator shall make and file a certificate of such fact, and the town clerk shall record the same and deliver copies thereof to the persons affected thereby, and all other proceedings shall be had the same

as in the case in which a statement is filed under the provisions stated in said § 355.

§ 325. A person elected town clerk of a town, if present at the meeting at which he is chosen, shall forthwith be sworn, either by the moderator or by a justice of the peace, and shall at once enter upon the discharge of his duties. Every other town officer designated by name in § 307 *ante*, unless other provision is specifically made by law or otherwise, shall enter upon the discharge of his duties on the day succeeding his election or as soon thereafter as he is duly qualified, and his term of office shall be reckoned as beginning on the day succeeding the date fixed for the annual meeting in such town. Every such officer shall hold office during the term fixed by law, and until another person is chosen and qualified in his stead.

§ 326. All the town officers designated by name in § 307 *ante*, shall, before entering upon the performance of their duties, severally be sworn to the faithful discharge of their respective duties. Such oath may be administered by the moderator in open town meeting, or by the town clerk. The town clerk shall forthwith after the election or appointment of town officers, who are by law required to take an oath of office, make out a list containing the names of all persons chosen as such officers not sworn by him or by the moderator, and the designation of the office to which each is chosen, and shall deliver such list with his warrant to a constable requiring him within three days to summon each such person to appear and take the oath of office within seven days after the service of such notice; and the constable shall within the seven days serve every such warrant in accordance with its requirements, and make return thereof to the town clerk. The person so chosen and summoned, unless exempt by law from holding the office to which he has been chosen, shall within the seven days, as so required, take the oath of office before the town clerk, or within that period take such oath before a justice of the peace, and file with the town clerk a certificate thereof under the hand of such justice. Sts. 1893, ch. 417, §§ 276-278.

A constable duly chosen and sworn is qualified to act as

collector of taxes, without any further oath, if another person duly chosen collector does not accept the office, although that person is not summoned in writing to accept the office, and his refusal to accept does not appear of record. *Hayes v. Drake*, 6 Gray, 387.

§ 327. No person shall be obliged to serve two years successively in the same town office; and no person shall be obliged to accept the office of constable who holds a commission as an officer of the United States or of the Commonwealth, who is a member of the council, senate, or house of representatives of the Commonwealth, or who is a minister of the gospel, or who is an engineman, or a member of the fire department, or who has been a constable or collector of taxes in the town within seven years next preceding. No person shall be obliged to serve in the office of surveyor of highways oftener than once in three years.

§ 328. The secretary of the Commonwealth shall send, seven days at least previous to the annual meeting, to the town clerk of each town which has not voted that ballots for town officers shall be provided at the expense of the town, in accordance with the provisions of this act, ballots both affirmative and negative for taking the vote upon the question of granting licenses for the sale of intoxicating liquors therein. Such ballots shall contain the words "Shall licenses be granted for the sale of intoxicating liquors in this town? Yes. (or) No.", and no other words, and may be of such form and size as the secretary shall deem proper. Ballots of each kind shall be provided in number equal at least to the number of registered voters in such town. The ballots so furnished shall be distributed to the voters at the polling place under the direction of the town clerk. Sts. 1893, ch. 417, §§ 279, 282.

§ 329. Town officers must demand and receive from their predecessors under oath, their official records, papers, etc. Sts. 1891, ch. 340.

(a) *Failures to Elect and Vacancies.*

§ 330. If there is a failure at an election to choose a town officer, or if a person so chosen to a town office shall not accept

such office, or a vacancy shall occur in a town office, the town may, except as otherwise stated in § 332 *post*, elect a person to such office or fill such vacancy at any legal meeting called and held in accordance with the provisions of this act.

If at an election of town officers for which ballots are provided at the expense of the town, there is a failure to elect a town officer, such officer may be elected at an adjourned or succeeding meeting; and for such meeting ballots shall be prepared and furnished, containing such nominations as have already been made and which subsequently may be duly made for the office, in accordance with the provisions of this act, for the making of nominations and the providing of ballots in town elections. Sts. 1893, ch. 417, § 284.

§ 331. Every person chosen constable at a town meeting shall, if present, forthwith declare his acceptance or refusal of his office. If he does not accept the office, the town shall, in case the ballots are not provided at such election at the expense of the town in accordance with the provisions of this act, proceed to elect another person to the office, and continue so to elect until some person accepts the office and takes the oath therefor.

§ 332. If the assessors of a town, or, in case there are no assessors, if the selectmen shall in any year fail to perform the duties of assessors, the county commissioners of the county in which such town is situated, may appoint three or more suitable persons, inhabitants of the county, to be assessors for such town. The persons so appointed shall be sworn to the faithful discharge of their duties, shall hold office for the remainder of the term of assessors, and shall have the powers, perform the duties, and receive the compensation of assessors for the town. Sts. 1893, ch. 417, §§ 286, 287.

Where a town chose three assessors, two of whom were sworn, and the third did not refuse to accept the trust, but omitted to take the oath of office, and when called upon by the other two declined to act, and the town did not choose another in his stead, it was held that the other two had authority to assess a tax. "The court are of the opinion that, when three assessors are duly chosen by the town, there is a board of assessors. Each is an assessor. But until qualified

by taking the oath, he is not legally competent to act. If a majority do qualify by taking the oath, and the third has not taken the oath, still, if he has notice of their proceeding to execute the office, and declines to take the oath and act with them, their acts will be good, in the same manner as if he had taken the oath, and declined to act with them, because he is an assessor, and the office is full. He may at any time take the oath, and thus be a qualified assessor; unless he has legally expressed his non-acceptance, or unless the town, in consequence of his neglecting or declining to take the oath of office, has filled the vacancy by electing another in his place. But until the town has so done, the office is still full; there is a board, and of these, by force of the statute as well as by long usage, the majority may act." SHAW, C. J., in *George v. Mendon*, 6 Met. 511.

§ 333. Whenever the office of treasurer or collector of taxes is vacant, and whenever the treasurer or collector is prevented from performing the duties of his office, the selectmen may by a writing under their hands appoint a treasurer or collector *pro tempore*, who shall be sworn and give bond in like manner as the treasurer or collector chosen by the town, and he shall hold such office until another is chosen by the town and qualified, or the disability of the treasurer or collector is removed. If a treasurer or collector shall for ten days after his election or appointment fail to give bond as required by law, the selectmen may declare the office vacant, and appoint another in his place as above provided. Sts. 1893, ch. 417, § 288.

"The statute requiring the appointment of a collector *pro tempore* to be made by a writing under the hands of the selectmen is not satisfied by a writing signed with the names of all by one selectman, in the absence of the others, and with no other authority than what is implied by their having agreed that the party should be appointed." HOLMES, J., in *Phelon v. Granville*, 140 Mass. 386.

§ 334. If the office of an auditor in a town shall become vacant, the remaining auditor or auditors, if any, may perform all duties of the office, and may appoint a person to aid in the performance thereof. If however there is no remaining

auditor, the selectmen of the town shall appoint a person duly qualified to fill the office of auditor, until another is chosen by the town and qualified. Sts. 1893, ch. 417, § 289.

§ 335. If from any cause there is a failure to elect or a vacancy occurs in any town office, other than the offices of selectman, town clerk, assessor, treasurer, collector of taxes, and auditor, the selectmen shall, by an appointment in writing signed by them, fill such vacancy, and the person so appointed shall perform the duties of such office until the next annual meeting or until another is chosen by the town and qualified in his stead; except that, if such vacancy occurs in a board consisting of two or more officers, the remaining member or members of such board shall, in writing, give notice of the vacancy to the selectmen of the town, and thereupon the selectmen and such remaining member or members shall, after giving public notice of at least one week, proceed by ballot to fill such vacancy, and a majority of the ballots of the officers entitled to vote shall be necessary to such election; and the person so elected shall perform the duties of the office until the next annual meeting or until another is chosen by the town and qualified in his stead. A person removing from a town in which he holds a town office shall thereby be taken to vacate such office. Sts. 1893, ch. 417, §§ 290, 291.

§ 336. When an election is held in consequence of a failure to elect in a preceding election, or to fill a vacancy in any town office, in accordance with the provisions of the preceding sections, proceedings shall be had similar in all respects, so far as applicable, to those had in an election to the same office at the annual meeting. The provisions as to the qualifications of a person for any such office, which are applicable in the case of an original election, shall apply to every person elected or appointed to fill a vacancy in such office; and each person so elected or appointed shall perform the same duties and have and exercise all the powers and be subject to all the requirements and penalties which by law pertain to such office. Sts. 1893, ch. 417, § 292.

(b) *Ballots may be Provided at the Expense of the Town.*

§ 337. In towns which have accepted the provisions of chapter three hundred and eighty-six of the acts of the year eighteen hundred and ninety, and in towns which shall, after the passage of this act, at meetings duly called for the purpose, vote that ballots for town officers therein shall be provided at the expense of the town, nominations for town officers to be elected by ballot shall be made, ballots and other apparatus therefor shall be prepared and furnished, and elections of all such officers shall be conducted in accordance with the provisions stated in the preceding sections, so far as the same shall be applicable thereto.

A town which has so accepted the provisions of said chapter three hundred and eighty-six, or has so voted that ballots be provided at the expense of the town, may however at any annual town meeting or other meeting called for the purpose and held thirty days at least before the annual town meeting, upon notice duly given in the warrant therefor, revoke such action by the affirmative vote of two thirds of the voters present and voting thereon; and after a meeting at which such acceptance or vote has been revoked, town elections shall be held in such town and all things shall be done in the election of town officers as if said chapter had not been accepted or the town had not so voted that ballots be provided at the expense of the town.

§ 338. Whenever a town, in accordance with the provisions of the preceding section, shall vote that ballots for the election of town officers therein shall be provided at the expense of the town, the town shall at the same meeting determine what town officers, if any, not already required by law to be chosen by ballot, shall thereafter be so chosen, and also, if in any case the number of officers such as are to be chosen by ballot or their terms of office are not already fixed by law, shall determine such number and terms; and for the purpose of such determination, the town may at such meeting accept the provisions of any section of this act, changing the manner of election and terms of office of any such town officers. No new acceptance of any previous statute or of any such section

of this act shall be required in any case in which an acceptance has already been made and not revoked ; but all such matters, in order to be acted upon, shall be notified in the warrant for such meeting. No change shall thereafter be made in the officers to be chosen by ballot or in the number or terms of office thereof, except at a meeting held thirty days at least before the annual meeting at which such change is to become operative. Sts. 1893, ch. 417, §§ 293, 294.

TOWN MEETINGS.

§ 339. The annual meeting of each town shall be held in February, March, or April ; and other meetings may be held at such times as the selectmen may order. Meetings may be adjourned from time to time, and to any place within the town.

§ 340. Every meeting in a town for the election of state officers, and every other town meeting, except as hereinafter provided, shall be held in pursuance of a warrant, under the hands of the selectmen, directed to the constables or to some other persons appointed by the selectmen for the purpose, who shall forthwith notify such meeting in the manner prescribed by the by-laws, or, if there are no by-laws, by a vote of the town. The warrant shall express the time and place of the meeting and the subjects to be there acted upon, and the selectmen shall insert in the warrant all subjects which may, in writing, be requested of them by any ten or more voters of the town. Nothing acted upon at such meeting shall have a legal operation unless the subject-matter thereof is contained in the warrant. The selectmen may by the same warrant call two or more distinct town meetings for distinct purposes. Sts. 1893, ch. 417, §§ 259, 260.

The warrant must be signed by a majority of the selectmen, otherwise the meeting will not be legal. *Reynolds v. New Salem*, 6 Met. 340.

As to the manner of notifying meetings, the time that shall elapse between the notification of the meeting and the holding of the same must, of course, be a reasonable one. In the absence of any vote of the town on the subject, usage would aid in deciding the legality of the notice. If there had been an entirely uniform practice of notifying a certain number of

days before the meeting, for a considerable length of time, and such meetings thus called had been sanctioned by the silent acquiescence of the inhabitants, and their adoption of the meetings, etc., as properly called by transacting at them their ordinary business, a meeting so called would be reasonably notified in point of time; and also where no vote of the town exists as to the time of posting up notice, and such notice is posted up seven days before the meeting, and in proper places and manner in every other respect, and due return of the service of such warrant made by the constable, the votes passed at such meeting are not to be held invalid upon the ground that the meeting was not legally notified. The period of seven days seems a reasonable period. It is that prescribed by the constitution for meetings for choice of senators, ch. 1, § 2. It is that prescribed for the first meeting of corporations. *Rand v. Wilder*, 11 Cush. 296.

If there are proper warrants seasonably issued, with a return of the officer upon each of them saying that he notified and warned the inhabitants pursuant to the warrant, even if it does not distinctly appear by the returns that the postings were as long as they should have been before the respective meetings, the meetings will be considered to be legally warned. *Com. v. Brown*, 147 Mass. 585, at p. 592.

“While a town is limited in the transaction of business by the articles in the warrant, yet a liberal construction has always been given to their language, so as to include all that is properly, even if incidentally, embraced in the subject to which they relate.” DEVENS, J., in *Com. v. Wentworth*, 145 Mass. 50, at p. 52.

It is sufficient if the warrant gives intelligible notice of the subjects to be acted upon. An article in the warrant “to hear the report of any committee heretofore chosen, and pass any vote in relation to the same,” is a form of notice for action on reports of committees of common use and sanctioned by authority, and it is sufficient to enable the town to grant money upon it, if the subject is one that is likely to require money. Whenever practicable, however, a more definite specification of the committee of the objects to be voted on would be better. *Fuller v. Groton*, 11 Gray, 340.

Under an article in the warrant "to elect town officers for the ensuing year," the town may invest such officers with any special authority in the discharge of their duties which it is authorized by statute to confer upon its officers. *Sherman v. Torrey*, 99 Mass. 472.

And an article "to raise such sums of money as may be necessary to defray town charges for the ensuing year," is sufficient to authorize a vote to raise money for specified town purposes. *Westhampton v. Searle*, 127 Mass. 502.

A town was authorized by statute to purchase a water company at a two-thirds vote at a meeting called for that purpose. At such a meeting under an article in the warrant "to see if the town will vote to purchase the same," the requisite vote was in the affirmative, but at a subsequent meeting the vote was rescinded. *Held*, that the vote to purchase completed a contract from which the town could not withdraw. *Braintree Water Supply Co. v. Braintree*, 146 Mass. 482.

§ 341. If by reason of death, resignation, or removal from a town, a majority of the selectmen shall vacate their offices, or if the full number shall fail to be elected or omit to be qualified according to law, the selectmen or selectman remaining or being in office may call a town meeting.

§ 342. If the selectmen unreasonably refuse to call a town meeting, a justice of the peace, upon the application of ten or more legal voters of the town, may call such meeting by a warrant under his hand directed to the constables of the town, if there are any, or, if there is no constable, then to any of the persons applying therefor, directing them to summon the inhabitants, qualified to vote in town affairs, to assemble at the time and place and for the purposes expressed in the warrant. Sts. 1893, ch. 417, §§ 261, 262.

CHAPTER III.

MODERATORS AND THEIR DUTIES.

§ 343. At every town meeting, except for the election of state officers, a moderator shall first be chosen.

§ 344. During the election of a moderator the town clerk if present shall preside; if he is absent or if there is no town clerk the selectmen shall preside; if neither the selectmen nor the town clerk are present the justice of the peace calling said meeting shall preside; and the town clerk and selectmen and said justice of the peace when so presiding shall have the powers and perform the duties of a moderator. Sts. 1893, ch. 417, § 263.

§ 345. In the election of town officers, whose election is not required by statute to be by ballot, the check-list shall be used or not as the town at its meeting shall determine; except that the check-list shall be used in the election of moderators of town-meetings held for the choice of town officers. Sts. 1893, ch. 417, §§ 273, 275.

The record of a town meeting showed that a moderator was chosen with the use of the check-list; that a vote was then passed that the check-list be used in the election of town officers and upon the question of granting licenses, and no other, without a vote of at least one half the meeting; that the moderator resigned and that another person was elected moderator and acted as such. Held, that whether the record showed that this person was elected by ballot and by the use of the check-list or not, it sufficiently showed that he was a moderator *de facto*. *Atty-Gen. v. Crocker*, 138 Mass. 214.

§ 346. The moderator shall preside in the meeting, may in open meeting administer the oaths of office to any town officer chosen thereat, shall regulate the business and proceedings of the meeting, decide all questions of order, and make public declaration of all votes passed. When a vote so declared by

him is, immediately upon such declaration, questioned by seven or more of the voters present, he shall make the vote certain by polling the voters or by dividing the meeting, unless the town has by a previous vote or by its by-laws otherwise provided. Sts. 1893, ch. 417, § 264.

§ 347. No person shall speak in a town-meeting without leave of the moderator nor while another person is speaking by his permission; and all persons shall at his request be silent. Sts. 1893, ch. 417, § 265.

§ 348. If a person behaves in a disorderly manner and after notice from the moderator persists therein, the moderator may order him to withdraw from the meeting; and on his refusal may order the constables or any other persons to take him from the meeting and confine him in some convenient place until the meeting is adjourned. The person so refusing to withdraw shall for such offence forfeit a sum not exceeding one hundred dollars. Sts. 1893, ch. 417, §§ 265, 340.

§ 349. A moderator or other presiding officer who at a town-meeting, before the poll is closed and without the consent of the voter, with a view to ascertain the candidate voted for by him, reads, examines, or permits to be read or examined the names written on such voter's ballot, shall forfeit not exceeding one hundred dollars. Sts. 1893, ch. 417, §§ 280, 302.

§ 350. Moderators and town clerks when required to preside at town meetings may appoint tellers to aid them in checking the names of voters or in assorting and counting votes. Such tellers shall be sworn to the faithful discharge of their duties by the town clerk, who shall make a record of the taking of such oath. Every such teller shall be subject to the same penalties to which the officer so appointing him is subject in the performance of the duties in which such teller assists.

§ 351. Tellers hereafter appointed in towns may be sworn to the faithful discharge of their duties by the moderators of the meetings at which they are appointed, and the town clerk shall make a record of the taking of such oath. Sts. 1893, ch. 417, §§ 116, 212.

The authority of tellers appointed to aid in checking the names of voters and in assorting and counting the votes cast

at a town meeting, does not cease with the resignation of the moderator who appointed them, before they have reported the result of the votes. *Atty-Gen. v. Crocker*, 138 Mass. 214.

§ 352. The moderator of a town meeting shall receive the votes of all persons whose names are borne on the list of voters as certified by the registrars of voters; and shall not be answerable for refusing the vote of a person whose name is not on said list, unless such person presents a certificate from the registrars. Sts. 1893, ch. 417, § 281.

§ 353. No vote shall be received by the presiding officers at any election provided for in this chapter unless presented for deposit in the ballot-box by the voter in person, open and unfolded, and so that such officers can know that only one ballot is presented. Sts. 1893, ch. 417, § 280.

§ 354. Ballots cast by women qualified to vote for school committee, shall contain the words: For school committee, only,— clearly written, printed, or stamped upon the back thereof; and only such ballots so endorsed shall be received from women so voting. Ballots containing such endorsement shall be counted only in the choice of members of school committee. Sts. 1893, ch. 417, § 283.

§ 355. If within two days next following the day of an election in a town for town clerk, selectmen, assessors, treasurer, collector of taxes, or school committee, at which all of said officers are voted for upon one ballot, ten or more qualified voters of such town file with the town clerk a statement in writing that they have reason to believe that an error was made in ascertaining or declaring the result of any such election, specifying wherein they deem such error to have been made, said clerk shall forthwith transmit such statement to the moderator. Such moderator shall thereupon, and within three days next following the day of such election, open the envelope or envelopes containing the ballots cast for candidates for the office the election to which is disputed, and determine the questions raised. If upon such determination it shall appear that some person was elected other than the person declared to have been elected, the moderator shall forthwith file a certificate of such fact, signed by him, stating therein the number of votes cast for each candidate for the office the

election to which is disputed, as determined by the recount, with the town clerk, who shall record the same in his book of records of town meetings, directly following his record of the meeting at which said election was held, and shall within twenty-four hours after such filing cause a copy of such certificate, attested by him, to be delivered to or left at the residence of the person declared in open town-meeting to have been elected, and to the person who by such certificate appears to have been elected. The person who by such certificate appears to have received the highest number of votes shall be deemed to have been elected. Moderators may appoint tellers in accordance with the provisions stated in § 350 *ante*, to assist them in recounting ballots under the provisions of this section. The candidate or candidates whose election is disputed and the opposing candidate or candidates may be present, with counsel, at any recount made under the provisions of this section. Sts. 1893, ch. 417, §§ 208, 209.

PARLIAMENTARY RULES FOR CONDUCTING TOWN MEETINGS.

From Cushing's Manual of Parliamentary Practice.

1. Organization of meeting, how effected.
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Organization of meeting, how effected.

1. Obviously the first thing to be effected in the conduct of any deliberative assembly is *its organization*; that is, the election of a presiding officer, and a clerk or recording officer. In meetings of comparatively small numbers of people, for ordinary purposes, this is accomplished as follows: Some one interested in the objects of the meeting, at the time appointed, requests the members to come to order for the necessary purpose of organization, and as soon as order and quiet are gained requests the company to nominate some one for chairman or presiding officer. He thereupon declares the name first heard by him as nominated, and puts the question to vote, whether this person shall act as chairman. If this is decided in the negative, another nomination must be called for; if decided in the affirmative, such person then takes the chair, and, suggesting to the company the necessity of a clerk, requests a nomination, and proceeds as above specified in the case of the election of a chairman. If other officers are necessary, they may be elected in a similar manner. In the case of larger and more important assemblies, as for example political conventions, it is usual to have a temporary organization as above, and a committee appointed to nominate officers for a permanent organization. In town meetings for the election of national, state, district, and county officers, the selectmen are authorized to preside, and as the town clerk acts as clerk of the meeting, the organization exists at the opening of the meeting. At all other town meetings a presiding officer, called Moderator, must first be chosen. The town clerk shall call the meeting to order and preside during the election of moderator, and if the town clerk is absent the selectmen shall preside, and if the town clerk is not present to act as clerk of the meeting, the selectmen shall call upon the qualified voters present to choose a clerk *pro tempore*, in like manner as town clerks are chosen.

Duties of presiding officer.

2. The duties of a presiding officer are, in general, to preserve decorum, to announce the business before the meeting in its order, to receive all motions made by members, and put to vote all questions properly moved and seconded, and to state the result of all votes, and to inform the meeting when necessary or inquired of upon points of order. "He may speak on points of order in preference to other members." It is also his duty at an adjourned meeting to take the chair at the proper time and call the meeting to

order. It is the rule that the "presiding officer may read sitting, but shall rise to state a motion, or put a question to the assembly."

Duties of a clerk.

3. The general duties of a clerk of a meeting are to take notes of the proceedings and make the entries in his journal of "all things done and passed" in the meeting, but not of what is said or moved—simply without coming to vote. It is also his duty to read all papers which may be required to be read, to call the roll and note the answers when a question is taken by yeas or nays, notify persons of their election to office, and committees of the business referred to them, and keep the custody of papers belonging to the meeting.

How measures are brought before a meeting.

4. It has been said to be one of the duties of the presiding officer to announce the business before the meeting in its order. This general order of business or subjects to be acted upon in town and parish meetings is found in the warrant for the meeting, which should be followed. After the presiding officer has announced to the meeting the subject to be acted upon as contained in the warrant, it is in order and usual for some member to present a proposition to the meeting in reference to such subject in the form of a motion, the member rising and standing uncovered and addressing the presiding officer by his title; as, "Mr. Moderator, I move that," etc. If the motion is one of any considerable length, or any but the most usual motions, it ought to be reduced to writing by the member offering it, for convenience and to avoid mistake. The presiding officer may, however, receive it if he choose, and reduce it to writing himself. Questions of order, such as whether or not there has been a violation of the rules of the meeting, must be decided by the presiding officer without being put to vote, and in case of dissatisfaction with his decision the party so dissatisfied may appeal to the meeting. The question is then put, Shall the decision of the chair stand as the decision of the meeting? "If the presiding officer insists upon voting on an appeal (being otherwise entitled), he cannot, on any parliamentary principle, be prevented." Warrington's Manual.

Motions : how put to vote, etc.

5. All motions, except those of mere routine, and such as pass by general consent, should be seconded; that is, some member should rise, and, standing uncovered, state to the presiding officer that he seconds the motion. The motion is then in a condition to be presented to the meeting for its action, — which is done by the presiding officer stating to the assembly, “It is moved and seconded that,” etc. If it is one not likely to be debated, he adds, “If it be your pleasure that this motion pass, you will please to manifest it by raising the right hand,” or “in the usual manner,” if there is a usual manner in which such votes are taken. After those voting in the affirmative have voted and been counted, if the vote is regarded as close enough to require a count, or the meeting has required a count, the presiding officer calls in a similar manner for the vote of those opposed to the motion; and then states to the meeting the result. If the voters are equally divided, the presiding officer may if he pleases give the casting vote. If he does not, the decision will be in the negative. “The presiding officer is justified in declining to put questions obviously frivolous or tending to disorder.”

Motions before meeting cannot be withdrawn by mover : how disposed of.

6. When a motion has been made, seconded, and stated to the meeting, it is then in the possession of the meeting, and cannot be withdrawn by the mover except by vote of the meeting granting leave. It is the duty of the presiding officer to state, or cause to be read, a motion thus in possession of the assembly as often as any member requests it for his information. A motion thus before a meeting may be disposed of by indefinite postponement, or by postponement to a future day or hour, or by laying it on the table: such disposition being accomplished by motion and vote. If it be a matter of importance, and especially if it be one upon which the members require to be informed by the investigation of facts, the motion is referred to a committee with instructions to examine the subject as may be directed, and report at some future day. If it be one, on the other hand, which members are prepared to act upon, but are not satisfied with the exact form in which the motion has been made, it is in order to amend it.

Amendments, how made and put to vote.

7. Amendments may be made by striking out certain words, by inserting or adding certain words, or by striking out and inserting or adding certain words. An amendment may itself be amended in the same manner,—but this is the limit: there can be no amendment of an amendment to an amendment,—and in putting the question to vote it must be first on the amendment to an amendment, if there be one, and next on the amendment as thus amended, if the amendment to the amendment prevailed. If it is rejected, the question must then be put upon the original amendment. If this prevails, then the question is put on the original motion as amended. If it is rejected, the question is put upon the original motion. If an amendment prevails, or is rejected, it cannot be afterwards altered or amended. But if an amendment be to strike out or insert certain words, and it prevails, or is rejected, an amendment may afterwards be moved to strike out or insert the same words in connection with others, if the other words so far modify the first as to make it a new amendment.

Amendments, how amended.

8. It has been said above that there can be no amendment to an amendment of an amendment. This object must be accomplished by rejecting the amendment to an amendment, and then moving to amend the original amendment as desired. And therefore it is well and customary for the person desiring such amendment to give notice that, if the amendment to the amendment is rejected, he shall move to amend the original amendment in such a manner, stating his amendment so that those desiring his amendment may vote to reject the other.

How question is put on motion to amend by striking out, etc.

9. When there is a motion to amend by striking out words, the form of putting the question to vote is, *whether the words shall stand as part of the original motion*, and not whether they shall be stricken out. The passage proposed to be amended should first be read as it stands; then the words proposed to be stricken out; and lastly the passage as it will stand after the amendment is adopted. An amendment ought not to be something entirely opposed to the original motion, but something of the same nature, intended to make it more effectual or useful for its original purpose, *but this rule is not followed very strictly.*

Privileged questions.

10. When a motion is regularly before the meeting, it has the precedence of all other questions, except such as are termed *privileged questions*. These are motions to adjourn, questions relating to the rights and privileges of the meeting, or of individual members, and motions for the orders of the day.

Motions to adjourn.

11. A motion to adjourn takes precedence of all other questions; but it must be a motion to adjourn simply, without the addition of any particular time, in order to interrupt other business. It is sometimes the case, therefore, that a motion is made and carried early in the day, that, when the meeting adjourns, it be to some particular day, specifying it. A motion to adjourn simply, if carried, except in the case of such assemblies as have regular sitting days, has the effect to dissolve the meeting.

Questions of rights and privileges of members, etc.

12. Questions relating to the rights and privileges of the meeting or its members are such as arise in case of the disturbance of the proceedings or quarrels between members. When these are settled, the question interrupted thereby is to be taken up at the point where it was left.

Order of the day.

13. When any subject has been assigned by the meeting for consideration at a particular time, it takes precedence of other questions at that time, and is called the order of the day.

Motions to reconsider.

14. A motion to reconsider a vote already passed is usual in this country; and if it prevails, the matter of the vote to be reconsidered stands in the same condition as if the vote to be reconsidered had not passed, unless there is a rule of the assembly regulating the matter. A motion to reconsider may be made by any one, whether voting with the majority on the original question, or with the minority, unless there is a rule of the assembly to the contrary.

Quorum, what constitutes: effect of want of.

15. In most deliberative assemblies, it is required, either by law, or by the assembly itself, or by usage, that a certain number shall

be present in order to transact business legally ; but where no rule is established in any of the ways mentioned above, a majority of the members composing the assembly is the required number. As no business can be transacted without a quorum, the meeting should not be opened until there is a quorum present ; and whenever there ceases to be, and notice is taken of the fact, there must be an adjournment, but the question under consideration must be taken up at the next meeting of the assembly at the point where it was when the adjournment was had.

CHAPTER IV.

TOWN CLERKS AND THEIR DUTIES.

IN GENERAL.

§ 356. The town clerk shall record all votes passed at the meeting at which he is elected, and at all other meetings held during his continuance in office. Sts. 1893, ch. 423, § 2.

This does not include the reports of committees, but only the votes passed by the town. Such reports should, however, be put on file, so that reference may be made to them; otherwise the record in relation to them would be unintelligible. *Howard v. Stevens*, 3 Allen, 409.

It is competent and proper for the town clerk to make a record of his own election and qualification; and whenever the oath of office is administered to a town officer in open town meeting by a justice of the peace in presence of the town clerk, the clerk's record of the fact is competent evidence of the administration of the oath. *Briggs v. Murdock*, 13 Pick. 305.

§ 357. He shall administer the oaths of office to all town officers who appear before him for that purpose, and shall make a record thereof, and of oaths of office taken before justices of the peace, of which certificates are filed. Sts. 1893, ch. 423, § 3.

§ 358. When at a town meeting there is a vacancy in the office of town clerk, or when he is not present, the selectmen shall call upon the qualified voters present to elect a clerk *pro tempore*, in like manner as town clerks are chosen. The selectmen shall sort and count the votes and declare the election of such clerk, who shall be sworn to discharge the duties of said office at such meeting, and be subject to like penalties for not discharging them as town clerks are for neglect of the like duties. Sts. 1893, ch. 417, § 285.

§ 359. When other duties than those mentioned in the

preceding section are required to be performed by the town clerk, and there is a vacancy in such office, or such clerk is prevented from performing such duties, the selectmen may in writing under their hands appoint a clerk for the performance thereof, who shall be sworn, and shall immediately after entering upon the duties of his office make a record of such election or appointment.

The town clerk in any town may appoint an assistant town clerk, which appointment shall be in writing, and said assistant shall be duly sworn to the faithful performance of his duties; and such appointment and oath shall be recorded in the records of the town. Such assistant may, in the absence of the town clerk, perform any and all duties which the town clerk could perform if personally present, but such assistant shall not be entitled to any salary or fees as such, and his compensation, if any, shall be paid by the town clerk appointing him; but such assistant shall collect all fees for services performed by him and account to the town clerk therefor during the time he may act as aforesaid. But nothing herein shall prevent the selectmen from appointing a clerk *pro tempore* in accordance with the preceding section. Sts. 1893, ch. 417, § 85; ch. 423, § 4.

§ 360. The town clerk shall transmit to the secretary of the Commonwealth and to the board of railroad commissioners a certified copy of any vote of the town to subscribe for the stock of a railroad company, or to pledge its credit or grant aid to the same, within thirty days from the day on which the vote was taken; and if he neglects or refuses to do so, he shall be punished by fine of not less than five nor more than fifty dollars. Sts. 1893, ch. 423, § 5.

§ 361. The clerk of each city or town in which a chief of police or city marshal is appointed, shall, within one week after such appointment, notify the commissioners of prisons of the name of the person so appointed.

§ 362. The clerk of each town not having a chief of police shall, on the first day of October in each year, send to the commissioners of prisons the names of all the police officers and constables in such town. Sts. 1892, ch. 290, §§ 1, 2.

§ 363. City and town clerks shall, upon payment of their

fees, record, in books kept for the purpose, all mortgages of personal property delivered to them, noting in such books and on each mortgage the time when such mortgage is received; and every such mortgage shall be considered as recorded at the time when it is left for the purpose in the clerk's office. The fees for recording, and for all other services relating thereto, shall be the same as are allowed to registers of deeds, for like services; that is, for entering and recording a deed or other paper, certifying the same on the original and indexing it, and for all other duties pertaining thereto, twenty-five cents, and if it contains more than one page, at the rate of twenty cents for each page after the first; to be paid when the instrument is left for record.

For all copies, at the rate of twenty cents a page.

For entering in the margin a discharge of a mortgage, twenty-five cents. Pub. Stats. ch. 192, § 4; ch. 199, § 20. They shall also record notices to foreclose, with the affidavits of service, and notices to pledgers of property of intention to foreclose, with affidavits of service, and notices of liens on ships. Pub. Stats. ch. 192, §§ 8, 10, 14.

§ 364. Persons intending to be joined in marriage in this Commonwealth shall, before their marriage, cause notice of their intention to be entered in the office of the clerk or registrar of the city or town in which they respectively dwell, or, if they do not dwell within the Commonwealth, in the office of the clerk or registrar of the city or town in which they propose to have the marriage solemnized. If there is no such clerk or registrar in the place of their residence, the entry shall be made in an adjoining city or town.

§ 365. The clerk or registrar shall deliver to the parties a certificate under his hand, specifying the time when notice of the intention of marriage was entered with him, together with all facts in relation to the marriage which are required by law to be ascertained and recorded, except those respecting the person by whom the marriage is to be solemnized. Such certificate shall be delivered to the minister or magistrate before whom the marriage is to be contracted, before he proceeds to solemnize the same.

§ 366. If a clerk or registrar issues such certificate to a

male under the age of twenty-one years, or a female under the age of eighteen years, when he has reasonable cause to suppose the person to be under such age, except upon the application or consent in writing of the parent, master, or guardian of such person, he shall forfeit a sum not exceeding one hundred dollars; but if there is no parent, master, or guardian in this State competent to act, a certificate may be issued without such application or consent.

§ 367. The clerk or registrar may require of any person applying for such certificate an affidavit setting forth the age of the parties: which affidavit shall be sworn to before a justice of the peace, and shall be sufficient proof of age to authorize the issuing of the certificate. Pub. Stats. ch. 145, §§ 16-19.

§ 368. When a marriage is solemnized in another State, between parties living in this Commonwealth, and they return to dwell here, they shall, within seven days after their return, file with the clerk or registrar of the city or town where either of them lived at the time a certificate or declaration of their marriage, including the facts concerning marriages required by law; and for every neglect they shall forfeit ten dollars. Pub. Stats. ch. 145, § 21.

§ 369. The fees of town clerks shall be as follows: For entering notice of an intention of marriage and issuing the certificate thereof, and for entering the certificate of marriage filed by persons married out of the State, fifty cents, to be paid by the parties.

For a certificate of a birth or death, ten cents. Pub. Stats. ch. 199, § 16.

§ 370. For copies of town records and other documents furnished to any person at his request, at the rate of twenty cents a page. And a page means two hundred and twenty-four words. Pub. Stats. ch. 199, §§ 20, 24, 25.

§ 371. When an attachment is made of articles of personal estate which by reason of their bulk or other cause cannot be immediately removed, a certified copy of the writ (without the declaration), and of the return of the attachment, may at any time within three days thereafter be deposited in the office of the clerk of the city or town in which it is made; and

such attachment shall be equally valid and effectual as if the articles had been retained in the possession and custody of the officer.

§ 372. The clerk shall receive and file all such copies, noting thereon the time when received, and keep them safely in his office, and also enter a note thereof, in the order in which they are received, in the books kept for recording mortgages of personal property; which entry shall contain the names of the parties to the suit and the date of the entry. The clerk's fee for this service shall be twenty-five cents, to be paid by the officer and included in his charge for the services of the writ. Pub. Stats. ch. 161, §§ 69, 70.

§ 373. When an act or resolve takes effect upon its acceptance by a municipal or other corporation, a return of the vote or action taken thereon shall be made by the clerk of such municipal or other corporation, within thirty days of such vote or action, to the secretary of the Commonwealth; and when a time is prescribed in such act or resolve within which it may be accepted, and the act or resolve is rejected or no action is taken thereon within the time so prescribed, a return stating such rejection, or a return that no action has been taken, shall be so made within thirty days after the time so prescribed has elapsed. Sts. 1883, ch. 100.

FORM.

Warrant of Town Clerk to Constable to notify Town Officers to take the Oath of Office.

To A. B., one of the Constables of the town of B——.

[L. s.]

Greeting :

The following is a list of those persons who were this day chosen into office, at a meeting of the inhabitants of said town, and who have not taken the oath of office required of them by law; viz. [Here designate those offices to which they were chosen.]

In the name of the Commonwealth of Massachusetts you are hereby required within three days from the date hereof to summon each of the said persons to appear before me, clerk of said town, within seven days from the service of such summons, to take the oath by law prescribed to the office unto which they are respectively chosen.

Hereof fail not, and make return of this warrant to me with your doings thereon, within seven days from the date hereof.

Town Clerk.

TOWN RECORDS.

§ 374. All matters of public record in any office shall be entered or recorded on paper made of linen rags and new cotton clippings, well sized with animal sizing and well finished ; and in the selection of paper for such records preference shall be given to such paper of American manufacture if it is marked in water line with the name of the manufacturer. Sts. 1891, ch. 281.

§ 375. The county commissioners, city governments, and selectmen of the respective counties, cities, and towns, shall have all books of public record or registry belonging thereto substantially bound, and other papers and documents within their respective departments duly filed and arranged conveniently for examination and reference, and shall also cause such of said records as are left incomplete by any clerk or registrar to be made up and completed by his successor from the files and usual memoranda as far as practicable, and certified and preserved in the same manner and with the same effect as if the same had been done by the officer who left them incomplete.

§ 376. City governments and selectmen shall provide, at the expense of their respective cities and towns, fire-proof safes of ample size for the preservation of books of record or registry, and other important documents or papers belonging to such cities or towns ; and the clerk of each city and town shall keep in the safe so provided all such books, papers, and documents, at all times, except when they are wanted for use. Pub. Stats. ch. 37, §§ 2, 4.

§ 377. A city or town may cause to be carefully transcribed such of its records as relate to grants of lands, or the grants or divisions and allotments of land made by the original proprietors of the township, or to any easements, private rights, or ways, and also any records of births, deaths, and marriages kept by such city or town, or by any parish within the same. Pub. Stats. ch. 37, § 5 ; Sts. 1887, ch. 202.

§ 378. A city or town whose territory has in whole or in part been set off from any other city or town may cause to be carefully transcribed such records named in the preceding

section as relate to lands, easements, rights, or ways, situated in the territory so set off. Pub. Stats. ch. 37, § 6.

§ 379. The clerk of each town and city in the Commonwealth shall make and keep an index or indexes of all instruments entered with him and required by law to be recorded, which index or indexes shall be divided into five columns, with appropriate heads or titles giving date of reception, the names of parties, and the book and page on which each instrument is recorded, and the same shall be open for public inspection. Sts. 1885, ch. 190.

§ 380. When the records of a county, city, or town are becoming worn, mutilated, or illegible, the county commissioners, city government, or selectmen shall have fair and legible copies seasonably made; and when the interests of a county, city, or town require it, the county commissioners, mayor and aldermen, selectmen, or overseers of the poor may have copies of records, parts of records, papers, or documents, in the legal custody of any other county, city, or town, so made at the expense of their respective counties, cities, or towns; and such copies shall be certified by the registrar or clerk of the office in which they are made to be true copies of the originals, and they shall be preserved in like manner as the original records, papers, and documents of the place for which they are made.

§ 381. A copy made in pursuance of the provisions of the preceding sections, and compared and certified under oath by the clerk or registrar having the custody of the original to be a true copy, shall have the same force and effect when deposited among the records of the place for which it is made as if it were an original record, or an original paper or document, deposited there. Pub. Stats. ch. 37, §§ 7, 8.

§ 382. Registers of deeds, registers of courts, and the registrars and clerks of courts, cities, and towns, shall keep all records and documents belonging to their respective offices in their sole custody, and shall in no case, except upon summons in due form of law, or when the temporary removal of records and documents in their custody is necessary or convenient for the transaction of the business of the courts or the performance of the duties of their respective offices, cause or permit any record or document to be removed or taken away.

§ 383. Under the direction of the officers having the custody of any county, city, or town records or files, all such records and files shall be open for public inspection and examination, and any person may take copies thereof. And the several clerks and registrars shall, on payment of a reasonable fee therefor, compare and certify all copies properly and correctly made.

§ 384. The legal custody of the books of record and other documents of the ancient proprietors of townships or common lands, when such proprietors have ceased to be a body corporate, shall, unless they have made other legal disposition thereof, be vested in the clerk of the city or town in which such lands or the larger portion of them are situated; and if such records and documents are in the possession of any other person, such clerk shall demand the same. Such clerk may make and certify copies of such records and documents in the same manner as the clerk of the proprietors might have done. Pub. Stats. ch. 37, §§ 12-14.

§ 385. When a church or religious society ceases to have a legal existence, and the care of its records and registries is not otherwise provided for by law, the person having possession of such records or registries shall deliver them to the clerk of the city or town in which such church or society was situated, and such clerk may certify copies thereof. If the person having possession of such records or registries neglects to deliver them to the clerk of the city or town entitled to receive them as aforesaid, such clerk shall demand the same. Sts. 1890, ch. 227.

REGISTRY AND RETURNS OF BIRTHS, MARRIAGES, AND DEATHS.

§ 386. The clerk of each city and town shall receive or obtain, and record and index, the following facts concerning the births, marriages, and deaths therein, separately numbering and recording the same in the order in which he receives them, designating in separate columns as follows:—

In the record of births, the date of birth, the place of birth, the name of the child (if it has any), the sex and color of the child, the names and the places of birth of the parents, the

occupation of the father, the residence of the parents, and the date of the record.

In the record of marriages, the date of the marriage, the place of marriage, the name, residence, and official station of the person by whom married, the names and the places of birth of the parties, the residence of each, the age and color of each, the condition of each (whether single or widowed), the occupation, the names of the parents, and the date of the record.

In the record of deaths, the date of the death, the name of the deceased, the sex, the color, the condition (whether single, widowed, or married), the age, the residence, the occupation, the place of death, the place of birth, the names and places of birth of parents, the disease or cause of death, the place of burial, if the deceased was a married woman her maiden name and the name of her husband, and the maiden name of the mother of any deceased person, and the date of the record. Pub. Stats. ch. 32, § 1 ; Sts. 1890, ch. 402.

§ 387. The clerk or registrar of each city and town shall on the first day of each month make a certified copy of the record of all deaths and births recorded in the books of said city or town during the previous month, whenever the deceased person or the parents of the child born, were resident in any other city or town in this Commonwealth at the time of said death or birth ; and shall transmit said certified copies to the clerk or registrar of the city or town in which such deceased person or parents were resident at the time of said death or birth, stating in addition the name of the street and number of the house, if any, where such deceased person or parents so resided, whenever the same can be ascertained ; and the clerk or registrar so receiving such certified copies shall record the same in the books kept for recording deaths or births. Such certified copies shall be made upon blanks to be furnished for that purpose by the secretary of the Commonwealth. Sts. 1889, ch. 208.

§ 388. Whenever the records of any city or town do not contain the facts relating to a birth, death, or marriage which occurred therein, or whenever such facts are not fully or correctly stated on such records, the clerk or registrar of such city

or town may receive a deposition, under oath, containing such facts as are desired for record, and shall then file said deposition, and record said facts in a book to be kept for that purpose, stating in addition thereto the name and residence of the deponent and the date of such record. The clerk or registrar shall keep such book separate and apart from the official records of his office, and may certify to the facts contained therein: *provided, however*, that such certificate shall state in addition to all the facts so recorded that the certificate is issued in accordance with the provisions of this act. Sts. 1892, ch. 305.

§ 389. Parents shall give notice to the clerk of their city or town of the births and deaths of their children; every householder shall give like notice of every birth and death happening in his house; the eldest person next of kin shall give such notice of the death of his kindred; the keeper of a workhouse, house of correction, prison, hospital, or almshouse, except the state almshouse, and the master or other commanding officer of a ship, shall give like notice of every birth and death happening among the persons under his charge. Whoever neglects to give such notice for the space of six months after a birth or death shall forfeit a sum not exceeding five dollars. Pub. Stats. ch. 32, § 2.

§ 390. A physician who has attended a person during his last illness shall, when requested, forthwith furnish for registration, a certificate stating to the best of his knowledge and belief, the name of the deceased, his age, the disease of which he died, the duration of his last sickness, and the date of his decease. Sts. 1888, ch. 306, § 1.

§ 391. Every sexton, undertaker, or other person having charge of a burial-ground, and every undertaker or superintendent of burials having charge of the funeral rites preliminary to the interment of a human body, shall forthwith obtain and return to the clerk of the city or town in which the deceased resided, or the death occurred, the facts required by this chapter to be recorded by said officer concerning the deceased, and the person making such return shall receive from his city or town the fee of twenty-five cents therefor. All such returns shall be preserved by said clerk or registrar, and filed, arranged and indexed conveniently for examination and reference. Pub. Stats. ch. 32, § 4; Sts. 1887, ch. 202, § 2.

§ 392. Physicians and midwives shall on or before the fifth day of each month report to the clerk of each city or town a correct list of all children born therein during the month next preceding, at whose birth they were present, stating the date and place of each birth, the name of the child (if it has any), the sex and color of the child, the name, place of birth and residence of the parents, and the occupation of the father. The fee of the physician or midwife shall be twenty-five cents for each birth so reported and shall be paid by the city or town in which the report is made. Sts. 1889, ch. 288.

§ 393. The clerk of each city and town shall give public notice that he is prepared to furnish, to all physicians and midwives applying therefor, blanks for returns under the preceding section. Pub. Stats. ch. 32, § 8.

§ 394. The clerk of each city and town shall annually, on or before the first day of March, transmit to the secretary of the Commonwealth certified copies of the records of the births, marriages, and deaths which have occurred therein during the year ending on the last day of the preceding December.

§ 395. The record of the town clerk relative to a birth, marriage, or death shall be *prima facie* evidence, in legal proceedings, of the facts recorded. A certificate, signed by the town clerk for the time being, shall be admissible as evidence of such record. Pub. Stats. ch. 32, §§ 10, 11.

§ 396. The clerk of each city and town (except in such cities and towns as choose a registrar, in which cases the provisions of this section shall apply to the registrar), for receiving or obtaining, recording, indexing, and returning the facts relating to marriages, births, and deaths occurring therein, shall be entitled to receive from the city or town, for each marriage, fifteen cents; for each birth, fifty cents; for each death returned to him by the person specified in §§ 389, 390, and 391, *ante*, twenty cents for each of the first twenty entries, and ten cents for each subsequent entry; for each death not so returned, but by him obtained and recorded, thirty-five cents, as the same shall be certified by the secretary of the Commonwealth; but a city or town containing more than ten thousand inhabitants may limit the aggregate compensation allowed to their clerk or registrar. Pub. Stats. ch. 32, § 12.

“Fees received for these services are received in an official capacity, and form part of the aggregate compensation which may be limited under the statute.” ALLEN, J., in *Phelan v. Lawrence*, 141 Mass. 479.

§ 397. The superintendent of the state almshouse shall obtain, record, and make return of the facts in relation to the births and deaths which occur in his institution, in like manner as is required of town clerks. The clerk of a town in which such almshouse is located shall, in relation to the births and deaths of persons in said almshouse, be exempt from the duties otherwise required of him by this chapter.

§ 398. The secretary shall, at the expense of the Commonwealth, prepare and furnish to the clerks of the several cities and towns, and to the superintendent of the state almshouse, blank books of suitable quality and size to be used as books of record under this chapter, blank books for indexes thereto, and blank forms for returns, on paper of uniform size; and shall accompany the same with such instructions and explanations as may be necessary and useful. City and town clerks shall make such distribution of blank forms of returns furnished by the secretary as he shall direct. Pub. Stats. ch. 32, §§ 13, 14.

§ 399. A city or town containing more than ten thousand inhabitants may choose a person other than the clerk to be registrar, who shall be sworn, and to whom all the provisions of these sections concerning clerks shall apply. The returns and notices required to be made and given to clerks shall be made and given to such registrar under like penalties.

§ 400. A city or town may make rules and regulations to enforce the above provisions, or to secure a more perfect registration of births, marriages, and deaths therein. Pub. Stats, ch. 32, §§ 16, 18.

FORMS.

Certificate of Marriage.

Between of aged years, by occupation a He was
born in and was the son of This will be his marriage.
And of aged years. She was born in and was the
daughter of This will be her marriage.

The intentions of marriage, by the parties above named, were duly entered by me in the records of the town of B—— relating to marriages, according to law.

Dated at B——, this day of A. D. 189 .

Town Clerk.

The parties above named were joined in marriage at by me, this day of A. D. 189 .

Attest,

Intention of Marriage between

Mr. residing in He is years of age, a by occupation, was born in Father's name (in full). Mother's name (in full). This will be his marriage.

And M residing in She is years of age, was born in Father's name (in full). Mother's name (in full). This will be her marriage.

Return of a Birth in B—— to the Town Clerk.

Date of birth, 189 . Full name of Child, Sex, Color, Place of birth (street and number), Christian name of father, Christian name of mother, Present residence of parents, Occupation of the father, Father's birthplace, Mother's birthplace,

Return of Death to the Town Clerk.

Date of death, 189 . Name, Color, Aged years months days. Place of death, Residence, Sex, Single Married Occupation, Wife of Birthplace, Widow of Name of father, Name of mother, Birthplace of father, Birthplace of mother, Cause of death, Primary Duration, Secondary Duration, Place of interment, Date of interment or removal, Undertaker or informant,

Physician's Certificate of Death.

B——, 189 .

This certifies that died on the day of 189 , aged years, months, days.

Cause of death, Primary, Duration. Secondary, Duration.

Physician.

Town Clerk's Certificate of the Registry of a Death.

[The person to whom this Certificate is given shall deliver it to the person having charge of the interment (if other than himself), before the burial when practicable, otherwise within seven days thereafter.]

I, town clerk of do hereby certify that the death of
who died at street, 189, aged years,
months, days, was duly registered by me on the day of
189 .

Town Clerk.

Dated this day of 189 .

B——, 189 .

Permission is hereby given to to remove the body of
who died at B——, 189 , aged years, months, days,
for interment at the particulars required by law having been
duly registered by me.

Town Clerk.

DOGS.

§ 401. Every owner or keeper of a dog three months old or over shall annually, on or before the thirtieth day of April or whenever it is three months old, cause it to be registered, numbered, described, and licensed for one year from the first day of the ensuing May, in the office of the clerk of the city or town wherein said dog is kept, and shall cause it to wear around its neck a collar distinctly marked with its owner's name and its registered number. Pub. Stats. ch. 102, § 80 ; Sts. 1885, ch. 292.

§ 402. An owner of a dog may at any time have it licensed until the first day of the ensuing May ; and a person becoming the owner or keeper of a dog after the first day of May, not duly licensed, shall cause it to be registered, numbered, described, and licensed as provided in the preceding section. Pub. Stats. ch. 102, § 81.

§ 403. The fee for every license shall be two dollars for a male dog, and five dollars for a female dog, unless a certificate of some competent person who performed the operation is filed with the clerk of the city or town, that said female dog has been subjected to the operation of spaying and is thereby deprived of the power to perpetuate her species, in which case the fee shall be two dollars. Sts. 1890, ch. 72.

§ 404. Every owner or keeper of dogs kept for breeding purposes, may receive annually a special license authorizing him to keep such dogs upon the premises described in such license. When the number of dogs so kept does not exceed five, the fee for such license shall be twenty-five dollars; when the number of dogs so kept exceeds five the fee shall be fifty dollars; and no fee shall be required for the dogs of such owner or keeper under the age of six months. Sts. 1887, ch. 307.

§ 405. Every license issued to the owner of a dog shall have printed thereon a description of the symptoms of the disease in dogs known as hydrophobia, said description to be supplied by the secretary of the state board of health to the clerks of the several cities and towns upon application therefor. Pub. Stats. ch. 102, § 83; Sts. 1886, ch. 101, § 4.

§ 406. Town clerks shall give bonds with sureties to the town, to be approved by the selectmen, for the faithful accounting for all moneys received by them for dog licenses, and for the payment of the same, less their fees, into the treasuries of their respective counties. Sts. 1888, ch. 320, § 1.

§ 407. The clerks of cities and of towns shall issue said licenses, and receive the money therefor, and pay the same into the treasuries of their respective counties, except in the county of Suffolk, on or before the first days of June and December of each year, retaining to their own use twenty cents for each license, and shall return therewith a sworn statement of the amount of moneys thus received and paid over by them. They shall also keep a record of all licenses issued by them, with the names of the keepers or owners of dogs licensed, and the names, registered numbers, and description of all such dogs. Pub. Stats. ch. 102, § 84; Sts. 1886, ch. 259.

The fees received by the clerk of a town for licensing dogs under this section, which allows him to retain to his own use a certain sum for each license issued, the balance to be paid into the treasury of the county, are not received in his "official capacity" within the meaning of a resolution of the council fixing his salary at a certain sum, and providing that he shall account for all moneys received in such "capacity." "The licenses were not granted by the city, and the license

fees belonged to the county, and the plaintiff, in collecting and paying them over, acted for the county, rather than for the city." ALLEN, J., in *Phelan v. Lawrence*, 141 Mass. 479.

§ 408. Each county, city, and town treasurer, except in the county of Suffolk, shall keep an accurate and separate account of all moneys received and expended by him under the provisions of this chapter relating to dogs. Pub. Stats. ch. 102, § 85.

§ 409. A license duly recorded shall be valid in any part of the Commonwealth and may be transferred with the dog licensed: *provided*, that said license shall in each case of transfer be again recorded by the clerk of the city or town where such dog is kept; but no license shall be required to be recorded anew unless such dog shall have been kept in such city or town at least thirty days. Sts. 1884, ch. 185.

§ 410. The assessors shall annually take a list of all dogs owned or kept in their respective cities or towns on the first day of May, with the owners' or keepers' names, and return the same to the city or town clerk on or before the first day of July. An owner or keeper of a dog who refuses to answer, or answers falsely to the assessors relative to the ownership thereof, shall be punished by fine of not less than ten dollars, to be paid, except in the county of Suffolk, into the county treasury. Pub. Stats. ch. 102, § 89.

LOST GOODS, STRAY BEASTS, AND UNCLAIMED PROPERTY.

§ 411. Whoever finds lost money or goods of the value of three dollars or more, the owner whereof is unknown, shall within two days cause notice thereof to be posted up in two public places within the city or town where the same was found, and shall also within seven days give notice thereof in writing to the city or town clerk, and pay him twenty-five cents for making an entry thereof in a book to be kept for that purpose; and if the money or goods be of the value of ten dollars or more, the finder shall within one month after such finding cause the same to be advertised in some newspaper or publicly cried, if there is a crier in the place, and notice thereof to be posted up in like manner in two adjoining places.

§ 412. Whoever takes up a stray beast shall cause to be entered with the city or town clerk, in a book to be kept for the purpose, a notice thereof, containing a description of the color and natural and artificial marks of the beast; and shall cause the same to be cried, and notifications thereof containing a like description of the beast to be posted up in the manner provided in the preceding section; otherwise he shall not be entitled to compensation for any expenses which he may incur in relation thereto.

§ 413. If such stray beasts are taken up within ten miles of the agricultural hall in ward twenty-five of Boston, the finder within ten days thereafter shall, in addition to the notice before required, post up a similar notice in said ward at such public place as shall have been designated therefor by the board of aldermen of Boston; and the finder shall be entitled to receive therefor fifty cents, together with eight cents for every mile travelled for the purpose.

§ 414. Every finder of lost goods or stray beasts of the value of ten dollars or more shall also, within two months, and before any use is made of the same, procure from the city or town clerk, or from a justice of the peace, a warrant directed to two disinterested persons, to be appointed by the clerk or justice, and returnable into said clerk's office in seven days from the date, requiring them to appraise the same at their true value, upon oath to be administered by the clerk or justice. Pub. Stats. ch. 95, §§ 1-4.

FORM.

Appointment of Persons to appraise Lost Goods or Stray Beasts.

To A. B. and C. D., both of B——, in the county of E——, [L. s.]

Greeting :

You are hereby appointed to appraise upon oath, at their true value [here describe the goods], . . . found (*and if it be beast add, and taken up*) by E. F., of

And you are directed to make return of this warrant, with your doings thereon, to the town clerk's office of said B—— within seven days from the date hereof. Given under my hand and seal the day of 189 .

L. P., *Town Clerk of B——*

CHAPTER V.

SELECTMEN, THEIR POWERS AND DUTIES.

IN GENERAL.

§ 415. The selectmen shall be assessors of taxes and overseers of the poor in towns where other persons are not specially chosen to those offices, and when acting as assessors they shall take the oath required of assessors. Sts. 1893, ch. 423, § 6.

“There is no statutory requirement that distinct boards of assessors and overseers shall be chosen, and the statute provides that the selectmen shall be assessors of taxes and overseers of the poor in towns where other persons are not specially chosen to those offices.” DEVENS, J., in *Com. v. Wentworth*, 145 Mass. 50, at p. 52.

“The powers and duties of selectmen are not very fully defined by statute. Many of the acts usually performed by them in behalf of towns, and which are recognized as within their appropriate sphere, have their origin and foundation in long continued usage. The management of the prudential affairs of towns necessarily requires the exercise of a large discretion, and it would be quite impossible by positive enactment to place definite limits to the powers and duties of selectmen to whom the direction and control of such affairs are intrusted. Speaking generally, it may be said that they are agents to take the general superintendence of the business of a town, to supervise the doings of subordinate agents, and the disbursement of moneys appropriated by vote of the town, to take care of its property, and perform other similar duties. But they are not general agents. They are not clothed with the general power of the corporate body for which they act. They can only exercise such powers and perform such duties as are necessarily and properly incident to the special and

limited authority conferred on them by their office. They are special agents empowered to do only such acts as are required to meet the exigencies of ordinary town business." *Smith v. Cheshire*, 13 Gray, 319; *Bean v. Hyde Park*, 143 Mass. 245. They are not authorized to institute or defend suits where the town is a party, without special power given by the town. *Walpole v. Gray*, 11 Allen, 149. Nor are they authorized by virtue of their office merely to make a contract, in behalf of a town, for the hiring of a building for the purpose of holding town meetings in it. *Goff v. Rehoboth*, 12 Met. 26.

Where a town voted at a meeting to authorize the selectmen to make a deed of land to a railroad corporation, and the succeeding board of selectmen made the deed, it was held that no title passed by the deed. "The authority was conferred upon an existing board of public officers. It must be presumed that in giving this authority the voters considered the membership of the existing board, and that they did not intend to allow the question to be postponed and afterwards determined by a board of selectmen that might be elected the next or any subsequent year." KNOWLTON, J., in *Littlefield v. Boston and Albany Railroad*, 146 Mass. 268.

§ 416. Every person elected selectman, who enters upon the performance of his duties before taking the oath of office, shall forfeit for each offence a sum not exceeding one hundred dollars. Sts. 1893, ch. 423, § 9.

§ 417. There shall be a perambulation of town lines, and they shall be run and the marks renewed, once in every five years, by two or more of the selectmen of each town, or by such substitutes as they in writing appoint for that purpose. After every such renewal the proceedings shall be recorded in the records of the respective towns.

§ 418. Before a perambulation, the selectmen of the most ancient of the contiguous towns shall give ten days' notice, in writing, to the selectmen of the adjoining town, of the time and place of meeting for such perambulation; and selectmen who neglect to give such notice, or to attend either personally or by their substitutes, shall severally forfeit twenty dollars, to be recovered on complaint to the use of the Commonwealth,

or by action of tort to the use of the town whose selectmen perform their duty.

§ 419. The selectmen of the contiguous towns shall erect, at the joint and equal expense of such towns, permanent monuments to designate their respective boundary lines at every angle thereof (except where such lines are bounded by the ocean or by some permanent stream of water), and wherever a highway crosses such lines. The monuments shall be of stone, well set in the ground, and at said angles at least four feet high from its surface; and the initial letters of the respective names of such contiguous towns shall be plainly and legibly cut thereon; but it shall not be necessary to erect a new monument at said angles in a place where a permanent stone monument two feet in height above the surface of the ground already exists.

§ 420. The selectmen of towns bordering on another state, where the lines between the states are settled and established, shall once in every five years give notice to the selectmen or other proper municipal officers of such towns in the other state as adjoin their towns, of their intention to perambulate the lines between their adjoining towns. If such notice and proposal are accepted by the officers to whom they are made, a perambulation shall be made in the same manner as between towns in this Commonwealth. No boundary erected by authority of this state and an adjoining state shall be removed by such selectmen or other municipal officers.

§ 421. A selectman who refuses or neglects to perform any duty required of him by the two preceding sections shall forfeit twenty dollars to the use of the Commonwealth. Pub. Stats. ch. 27, §§ 3-7.

§ 422. The mayor and aldermen of a city or selectmen of a town, when in their opinion the public good requires it, may offer a suitable reward, to be paid by such city or town, not exceeding five hundred dollars in one case, to any person who in consequence of such offer secures a person charged with a capital crime or other high crime or misdemeanor committed in such place, or detects and secures a person who has committed such crime in such place; and such reward shall be paid by the treasurer upon the warrant of the mayor and aldermen or selectmen. Pub. Stats. ch. 212, § 12.

It has been held that the person for whose arrest a reward is offered must have been charged by a complaint or indictment. *Day v. Otis*, 8 Allen, 477.

§ 423. When more than one claimant applies for the payment of such reward, the mayor and aldermen or selectmen shall determine to whom the same shall be paid, and if to more than one person, in what proportion to each; and their determination shall be final and conclusive.¹ Pub. Stats. ch. 212, § 13.

§ 424. The selectmen of a town may make rules and orders for the regulation of all carriages and vehicles used either wholly or in part therein, whether with or without animal power, with penalties for violations thereof, not exceeding twenty dollars for one offence; and may receive annually one dollar, and no more, for each license granted by them to a person to set up and use any carriage or vehicle within such town: *provided*, that any rules and orders made by the selectmen under the authority hereof shall not take effect until they have been published at least one week in some newspaper published in the said town, if there is any newspaper published in said town, otherwise in the county in which said town is situated. This act shall not impair the right of a town to make by-laws relating to the subject. Sts. 1885, ch. 197.

§ 425. The selectmen shall appoint the following officers: In towns where beef cattle are sold for the purpose of market or barrelling, they shall appoint weighers of beef. Pub. Stats. ch. 60, § 1. They shall appoint measurers of grain. Pub. Stats. ch. 60, § 23. They shall appoint suitable persons to be weighers of coal, in all places where anthracite, bituminous, or mineral coal is sold, except when it is sold by cargo. Pub. Stats. ch. 60, § 80. They shall, in every town of more than fifteen hundred inhabitants, and in every town of less than that number of inhabitants upon the written application of five or more inhabitants of that town, appoint inspectors of petroleum or its products. Pub. Stats. ch. 59, § 6. They shall appoint persons to seize illegal measures for charcoal,

¹ There is no statute provision in reference to the amount of compensation selectmen shall receive for the performance of their general duties; it is left to the town to determine this.

and to prosecute people having them in their possession. Pub. Stats. ch. 60, § 88. The selectmen may appoint the following officers: On the petition of ten or more voters in every town in which pressed or bundled hay is sold, they may appoint inspectors of hay and straw. Pub. Stats. ch. 60, § 35. They may appoint inspectors of vinegar. Pub. Stats. ch. 60, § 71. They may appoint a surveyor of marble and freestone. Pub. Stats. ch. 60, § 53. They may appoint inspectors of milk. Pub. Stats. ch. 57, § 1. They may appoint inspectors of provisions, and of animals intended for slaughter. Pub. Stats. ch. 58, § 1.¹

§ 426. The aldermen of any city except Boston, and the selectmen of any town, may establish the office of probation officer, and fix his salary. When the office has been established, the officer may be appointed by the mayor, subject to the confirmation of the aldermen, or by the selectmen, and shall hold his office until removed by the aldermen or selectmen. He shall in the execution of his official duties have the powers of police officers, and may be a member of the police force of his city or town. The city or town clerk shall forthwith notify the commissioners of prisons of any appointment under this section. Pub. Stats. ch. 212, § 74.

§ 427. The mayor and aldermen of a city and the selectmen of a town may adopt rules and orders not inconsistent with law for the regulation and control of persons who frequent the streets and public places therein playing on hand organs or other musical instruments, beating drums, blowing trumpets, or coasting with sleds or other vehicles, with penalties for the violation thereof not exceeding twenty dollars for each offence. Sts. 1892, ch. 390.

§ 428. When a person by excessive drinking, gaming, idleness, or debauchery of any kind, so spends, wastes, or lessens his estate as to expose himself or his family to want or suffering, or any place to charge or expense for the support

¹ The duties of these officers are, for all practical purposes, sufficiently implied by their titles. Their duties will be found more in detail, in the following chapters of the Public Statutes: weighers of beef, ch. 60, §§ 1, 2; measurers of grain, ch. 60, §§ 21-28; weighers of coal, Pub. Stats. ch. 60, §§ 79-84; inspectors of petroleum, Pub. Stats. ch. 59, §§ 6, 7; seizers of illegal measures for charcoal, Pub. Stats. ch. 60, §§ 85-88; inspectors of hay and straw, ch. 60, §§ 32-40; inspectors of vinegar, ch. 60, §§ 69-71, Sts. 1883, ch. 257, § 2, Sts. 1884, chs. 163, and 307, §§ 1-4; inspector of milk, ch. 57, §§ 1-12; inspector of provisions, ch. 58, §§ 1-6.

of himself or his family, the selectmen of the town of which such spendthrift is an inhabitant or resident, or upon which he is or may become chargeable, may present a complaint to the probate court, setting forth the facts and circumstances of the case, and praying to have a guardian appointed. The court shall cause notice of not less than fourteen days to be given to the supposed spendthrift, of the time and place appointed for the hearing; and if after a full hearing it appears that he comes within the above description, the court shall appoint a guardian of his person and estate. Pub. Stats. ch. 139, § 8.

§ 429. The mayor and aldermen of the cities and the selectmen of the towns within the Commonwealth are hereby authorized to designate and preserve, as hereinafter provided in this act, trees within the limits of the highways for the purposes of ornament and shade; and to so designate not less than one such tree in every thirty-three feet where such trees are growing and are of a diameter of one inch or more. Sts. 1890, ch. 196, § 1.

§ 430. Said mayor and aldermen and selectmen shall, between the first day of September and the thirty-first day of December in each year, designate such trees as are selected by them for the purposes set forth in this act by driving into the same, at a point not less than four nor more than six feet from the ground and on the side toward the centre of the highway, a nail or spike with a head with the letter M. plainly impressed upon it; said nails and spikes to be procured and furnished by the secretary of the state board of agriculture to said mayor and aldermen and selectmen as required by them for the purposes of this act. Said mayor and aldermen and selectmen, between the first day of September and the thirty-first day of December of each succeeding year, shall renew such of said nails and spikes as shall have been destroyed or defaced; and shall also designate, in the same manner as hereinbefore stated, such other trees as in their judgment should be so designated, to carry out the requirements of this act. Sts. 1891, ch. 49.

§ 431. It shall be the duty of the mayor of each city and of the selectmen of each town of the Commonwealth to designate some suitable person or persons, who shall serve without

compensation, and shall be other than the overseers of the poor or those employed by them, whose duty it shall be, under regulations established by the commissioners of state or military aid, to cause to be properly interred the body of any honorably discharged soldier, sailor, or marine who served in the army or navy of the United States during the late war who may hereafter die in such city or town without leaving sufficient means to defray funeral expenses.

§ 432. The expense of such burial shall not exceed the sum of thirty-five dollars. Such burial shall not be made in any cemetery or burial-ground used exclusively for the burial of the pauper dead, or in that portion of any burial-ground so used: and *provided*, that in case relatives of the deceased who are unable to bear the expense of burial desire to conduct the funeral they may be allowed to do so and the expense shall be paid as herein provided. Sts. 1889, ch. 395, §§ 1, 2.

FORMS.

Warrant for calling the Annual Town Meeting.

E——, ss. To either of the Constables of the town of B——, in said county. Greeting:

In the name of the Commonwealth of Massachusetts, you are directed to notify the inhabitants of the town of B—— qualified to vote in elections and in town affairs to meet at the Town Hall in said B——, on the day of next, at o'clock in the forenoon, then and there to act on the following articles:—

1. To choose a moderator to preside in said meeting.
2. To choose all necessary town officers for the year ensuing.
3. To hear the annual report of the selectmen, and act thereon.
4. To raise such sums of money as may be necessary to defray town charges for the ensuing year, and make appropriations of the same.

And you are directed to serve this warrant, by posting up attested copies thereof, one at the Town Hall, and one at each of the public meeting-houses in the said town, fourteen days at least before the time for holding said meeting. The polls will open at o'clock, A. M., and close at o'clock, P. M.

Hereof fail not, and make due return of this warrant, with your doings thereon, to the town clerk, at the time and place of meeting as aforesaid.

Given under our hands this day of in the year one thousand eight hundred and

Selectmen of B——.

Warrant for calling Town Meeting for voting for Governor etc.

E——, ss. To either of the Constables of the town of B——, in said county, Greeting:

In the name of the Commonwealth of Massachusetts, you are required to notify the inhabitants of the town of B——, qualified to vote in elections, to meet at the Town Hall, in W——, on Tuesday, the day of November next, it being the Tuesday next after the first Monday of said month, at of the clock in noon, to bring in their votes for a governor and lieutenant-governor of the Commonwealth, and for senators, on one ballot, for the district of for the year ensuing. The polls will open at o'clock, A. M., and close at o'clock, P. M.

And you are directed, etc. (as in the foregoing form).

If to bring in Votes for Representative to Legislature of State.

To bring in their votes on one ballot for a representative (or representatives, stating the number) from district number to the General Court.

If for the choice of a Representative to Congress.

To give their votes for a representative in the Congress of the United States, for the district.

Notice to Selectmen to Perambulate Boundary Lines between Towns.

To the Selectmen of the town of F——.

Gentlemen, — The subscribers, selectmen (or two of the selectmen) of the town of B——, hereby give notice that we shall meet at on the day of at of the clock in the noon, to perambulate and run the lines between the said towns, and renew the marks, according to the law of the Commonwealth: at which time and place you are hereby requested to attend for this service.

B——, the day of in the year 189 .

Selectmen of B——

Appointment of Substitute to Perambulate Boundary Lines between Towns.

To A. B. of We, the selectmen of the town of B——, do hereby appoint you to perambulate and run the dividing lines

between said town and the town of _____ and renew the marks ; and you are to make returns of your proceedings into the clerk's office of the town of B—— as soon as you have completed this service.

Given under our hands this _____ day of _____ 189 .

Selectmen of B——

CERTAIN LICENSES GRANTED BY SELECTMEN.

(a) *Innholders and Common Victuallers.*

§ 433. The selectmen of a town may grant licenses to persons to be innholders or common victuallers in such town. No such license shall be issued until it has been signed by a majority of the selectmen of the town in which it is granted. A selectman may refuse to sign a license to a person who in his opinion has not complied with the provisions of this chapter ; and any such officer who signs a license granted contrary to the provisions of this chapter shall be punished by fine not exceeding fifty dollars.

§ 434. Every such license shall specify the street, lane, alley, or other place, and the number of the building, or give some other particular description thereof, where the person licensed shall exercise his employment ; and the license shall not protect a person exercising his employment in any other place than that so specified. Pub. Stats. ch. 102, §§ 2, 3.

§ 435. The licenses of innholders and common victuallers, granted under the preceding sections shall expire on the thirtieth day of April of each year ; but such licenses may be granted during the month of April, to take effect on the first day of May next ensuing. Sts. 1890, ch. 73.

§ 436. No innholder's license shall be granted or issued to any person, unless at the time of making application therefor he has upon his premises the necessary implements and facilities for cooking, preparing, and serving food, rooms, beds, and bedding, and stable room and provender for horses and cattle.

§ 437. No common victualler's license shall be granted or issued to any person, unless at the time of making application therefor he has upon his premises the necessary implements and facilities for cooking, preparing, and serving food for strangers and travellers.

§ 438. If an innholder, when requested, refuses to receive and make suitable provision for a stranger or traveller, and also for his horses and cattle, when he may be legally required to do so under these sections, he shall be punished by fine not exceeding fifty dollars, and in addition shall forfeit his license.

§ 439. If a common victualler, when requested, upon any other than the Lord's day, refuses to supply food to a stranger or traveller, he shall be punished by fine not exceeding fifty dollars; and, in addition to said penalty, shall forfeit his license.

§ 440. When in the opinion of the selectmen of a town, a person holding a license as an innholder or a common victualler ceases to be engaged in the business he is licensed to pursue, or fails to maintain upon his premises the implements and facilities required by these sections they shall immediately revoke his license. Pub. Stats. ch. 102, §§ 7-11.

§ 441. No innholder, tavern-keeper, retailer, confectioner, or keeper of a shop or house for the sale of drink or food, or a livery-stable keeper for horse or carriage hire, shall give credit to a student in an incorporated academy or other educational institution within this state.

§ 442. No person shall be approved or licensed for either of the employments aforesaid, if it appears that he has given credit contrary to the provisions of the preceding section. Pub. Stats. ch. 102, §§ 21, 22.

§ 443. Nothing contained in this chapter shall be construed to require the selectmen to grant either of the licenses aforesaid, when in their opinion the public good does not require it. And when such license is granted, no fee shall be charged therefor.

§ 444. The secretary of the Commonwealth shall cause a condensed summary of all laws relating to innholders and common victuallers to be printed for the use of the state, and shall supply selectmen of towns therewith; who shall at the time of granting a license furnish to each person licensed by them a copy of such summary. Pub. Stats. ch. 102, §§ 24, 25.

(b) *Intelligence Offices.*

§ 445. The selectmen of any town may grant licenses to suitable persons to keep intelligence offices, and may revoke the same at pleasure. They shall receive one dollar for each license so granted.

(c) *Junk, Old Metals, and Second-hand Articles.*

§ 446. The selectmen of any town, if by-laws therefor have been adopted in such town, may license suitable persons to be dealers in and keepers of shops for the purchase, sale, or barter of junk, old metals, or second-hand articles, in such town, and may revoke such licenses at pleasure.

§ 447. A city or town may provide by ordinance or by-law that every keeper of a shop for the purchase, sale, or barter of junk, old metals, or second-hand articles, within its limits, shall keep a book, in which shall be written, at the time of every purchase of any such article, a description thereof, the name, age, and residence of the person from whom, and the day and hour when, such purchase was made; that such book shall at all times be open to the inspection of the mayor and aldermen or selectmen, and of any person by them respectively authorized to make such inspection; that every keeper of such shop shall put in some suitable and conspicuous place on his shop a sign having his name and occupation legibly inscribed thereon in large letters; that such shop, and all articles of merchandise therein, may be at all times examined by the mayor and aldermen or selectmen, or by any person by them respectively authorized to make such examination; and that no keeper of such shop shall directly or indirectly either purchase or receive by way of barter or exchange any of the articles aforesaid of a minor or apprentice, knowing or having reason to believe him to be such; and that no article purchased or received shall be sold until a period of at least one week from the date of its purchase or receipt has elapsed. A city or town may also prescribe in like manner the hours in which such shops shall be closed, and that no keeper thereof shall purchase any of the articles aforesaid during such hours.

§ 448. Every such rule, regulation, and restriction shall be incorporated in every such license. Pub. Stats. ch. 102, §§ 27-30.

(d) *Pawnbrokers.*

§ 449. The selectmen of any town, if by-laws therefor have been adopted in such town, may license suitable persons to carry on the business of pawnbrokers in such town, and may revoke such licenses at pleasure. Pub. Stats. ch. 102, § 32.

§ 450. The board of officers licensing pawnbrokers in any place may fix the rate of interest which such pawnbrokers may receive on loans, and may fix different rates which may be received for different amounts of money lent; and no licensed pawnbroker shall charge or receive a greater rate of interest than that so fixed.

§ 451. The selectmen of a town, or any officer authorized by them, may at any time enter upon any premises used by a licensed pawnbroker for the purposes of his business, ascertain how he conducts his business, and examine all articles taken in pawn or kept or stored in or upon said premises, and all books and inventories relating thereto; and every such pawnbroker, his clerk, agent, servant, or other person in charge of the premises, shall exhibit to such officer on demand any or all of such articles, books, and inventories. Pub. Stats. ch. 102, §§ 34, 35.

(e) *Stables.*

§ 452. Whoever occupies or uses a building in a maritime place for a livery stable, excepting such part thereof as the mayor and aldermen or selectmen direct, shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such building, and in like proportion for a longer or shorter time.

§ 453. Whoever erects, occupies, or uses a building for a stable for more than four horses in any part of a city or town, except such part as the mayor and aldermen or selectmen direct, shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such building, and in like proportion for a longer or shorter time. And the supreme judicial court or a justice thereof, in term time or vacation, may issue an injunction to prevent such erection, occupancy, or use, without such direction. Pub. Stats. ch. 102, §§ 38, 39.

(f) *Steam-Engines, Furnaces, and Boilers.*

§ 454. No furnace for melting iron or making glass, and no stationary steam-engine designed for use in a mill for planing or sawing boards or turning wood, or in which any other fuel than coal is used to create steam, shall be erected or put up to be used in a city or town which adopts this and the four following sections, or has adopted the corresponding sections of earlier statutes, at a legal meeting of the city council of the city or the inhabitants of the town called for that purpose, unless the mayor and aldermen or selectmen thereof have granted a license therefor, prescribing the place where the building shall be erected in which the steam-engine or furnace is to be used, and the materials and construction thereof, with such regulations as to the height of flues and protection against fire as they deem necessary for the safety of the neighborhood. Such license may be granted on a written application, and shall be recorded in the records of the city or town. Pub. Stats. ch. 102, § 40.

The owner of a brick building in a city used as a manufactory of shoes, and situated within five hundred feet of a dwelling-house, was licensed by the board of aldermen of a city to "erect for use a stationary engine to be propelled by steam power at his shoe manufactory on P. Street." Held, that the license sufficiently complied with the provisions of this section. *Alter v. Dodge*, 140 Mass. 594.

§ 455. Upon application for such license, the mayor and aldermen or selectmen shall assign a time and place for the consideration of the same, and cause at least fourteen days' public notice thereof to be given, at the expense of the applicant, in such manner as they may direct, in order that all persons interested may be heard thereon.

§ 456. In a city or town which adopts the provisions in §§ 454-458, or has adopted the corresponding sections of earlier statutes, at a legal meeting of the city council of the city or the inhabitants of the town called for that purpose, the mayor and aldermen or selectmen, after due notice in writing to the owner of such steam-engine or furnace, except for making glass, erected or in use therein before the time of such adoption, and a hearing of the matter, may adjudge the same to be

dangerous or a nuisance to the neighborhood, and make and record an order prescribing such rules, restrictions, and alterations as to the building in which the same is constructed or used, the construction and height of its smoke-flues, with such other regulations as they deem necessary for the safety of the neighborhood; and the city or town clerk shall deliver a copy of such order to a constable, who shall serve on the owner an attested copy thereof, and make return of his doings thereon to said clerk within three days from the delivery thereof to him. Pub. Stats. ch. 102, §§ 41, 42.

§ 457. No stationary engine, propelled by steam or other motive-power, shall be hereafter erected or put up for use in a city or town in which this section or chapter seventy-four of the statutes of the year eighteen hundred and sixty-two has been adopted in the manner which is stated in § 454 *ante*, within five hundred feet of a dwelling-house or public building, unless a license therefor has been first granted and recorded in the manner herein provided. Pub. Stats. ch. 102, § 47.

The adoption of this statute must be at a meeting of the inhabitants of a town called for the purpose. *Quinn v. Lowell Electric Light Co.* 140 Mass. 106.

§ 458. A steam-engine or furnace erected or used contrary to the provisions of the four preceding sections shall be deemed a common nuisance; and the mayor and aldermen or selectmen may remove the same in the same manner as boards of health may remove nuisances.

§ 459. The selectmen of a town, or any person by them authorized, may, after notice to the parties interested, examine any steam-engine or steam-boiler therein, whether fixed or portable; and for that purpose may enter any house, shop, or building; and if upon such examination it appears probable that the use of such engine or boiler is unsafe, they may issue a temporary order to suspend such use; and if after giving the parties interested, so far as known, an opportunity to be heard, they adjudge such engine or boiler unsafe or defective or unfit to be used, they may pass a permanent order prohibiting the use thereof until it is rendered safe. If after notice to the owner or person having charge thereof, such engine or

boiler is used contrary to either of such orders, it shall be deemed a common nuisance, without any other proof thereof than its use.

§ 460. The selectmen may abate and remove a steam-engine or steam-boiler erected or used contrary to the provisions of the preceding section in the same manner as boards of health may remove nuisances. Pub. Stats. ch. 102, §§ 48-50.

(g) *Explosive Compounds.*

§ 461. The city council of any city and any town may make ordinances and by-laws, not inconsistent with the provisions hereof, for the protection of life and property, in regard to the keeping, storage, use, manufacture, or sale of explosive compounds, and may regulate the transportation thereof through the streets or highways of such city or town, and affix penalties not exceeding fifty dollars for each violation thereof.

§ 462. The mayor and aldermen and the selectmen respectively may license, upon such terms as may be prescribed in such ordinances or by-laws, the keeping, storage, transportation, use, manufacture, or sale of explosive compounds, within the limits of such city or town. Pub. Stats. ch. 102, §§ 60, 61.

§ 463. The city council of any city, and the selectmen of any town, may adopt such rules and regulations as they may deem reasonable in relation to the sale or use, within the limits thereof, of toy pistols, toy cannon, and all other articles in which explosive compounds of any kind are used, or of which such compounds form a part, and may affix penalties for violation of such rules and regulations, not exceeding fifty dollars for any one offence; but no such rule or regulation shall take effect until it has been approved by the superior court, or in vacation by a justice thereof, and with such approval entered and recorded in the manner stated in § 24 *ante*. Stats. 1882, ch. 272.

§ 464. The words "explosive compound," as used in this chapter, shall be understood to include gun-cotton, nitro-glycerine, or any compound of the same, and any fulminate or substance, except gunpowder, which is intended to be used by exploding or igniting the same, in order to produce a force

to propel missiles or to rend apart substances. Pub. Stats. ch. 102, § 68.

(h) *Billiard Tables, and Bowling Alleys.*

§ 465. The selectmen of any town may grant a license to any person to keep a billiard, pool, or sippio table, or a bowling alley, for hire, gain, or reward, upon such terms and conditions as they deem proper, to be used for amusement merely, but not for the purpose of gaming for money or other property, subject to the provisions stated in §§ 467-470 *post*, and may revoke the same at pleasure. Pub Stats. ch 102, § 111.

§ 466. The provisions stated in § 453 *ante* shall apply to the erection, occupancy, or use of buildings for bowling alleys in any town. Pub. Stats. ch. 102, § 114.

§ 467. Licenses granted to keepers of intelligence offices, dealers in junk, old metals, and second-hand articles, pawn-brokers, and keepers of billiard-saloons, pool or sippio rooms or tables, and bowling alleys, shall be signed by the clerk of the city or town in which they are granted, and every such license shall be recorded by the clerk of the city or town, in a book kept for that purpose, before being delivered to the licensee; such license shall set forth the name of the person licensed, the nature of the business, and the building or place in such city or town in which it is to be carried on, and shall continue in force until the first day of May next ensuing, unless sooner revoked. The board issuing such a license shall be entitled to receive two dollars for each license, for the use of the city or town.

§ 468. Such licenses may be granted during the month of April, to take effect on the first day of May then next ensuing.

§ 469. No license issued as aforesaid shall be valid to protect the holder thereof in a building or place other than that designated in the license, unless consent to removal is granted by the mayor and aldermen or selectmen.

§ 470. When such a license is revoked, such clerk shall note the revocation upon the face of the record of the license, and shall give written notice to the holder of the license by delivering the same to him in person or leaving it at the place

of business designated in the license. Pub. Stats. ch. 102, §§ 124-127.

(i) *Theatrical Exhibitions and Public Shows.*

§ 471. The mayor and aldermen of a city or the selectmen of a town may, except as provided in section nine of chapter forty-eight of the Public Statutes, license theatrical exhibitions, public shows, public amusements, and exhibitions of every description, to which admission is obtained upon payment of money or the delivery of any valuable thing, or by a ticket or voucher obtained for money or any valuable thing, upon such terms and conditions as they deem reasonable; and they may revoke or suspend the same at their pleasure. Pub. Stats. ch. 102, § 115.

(j) *Fishing Associations.*

§ 472. A fishing association, before purchasing and holding real estate or doing any acts in pursuance of its organization, shall obtain written authority from the selectmen of the town within which its works are to be located. Pub. Stats. ch. 106, § 74.

(k) *Race-Grounds and Trotting-Parks.*

§ 473. No land within a city or town shall be laid out or used as a race-ground or trotting-park without the previous consent of and location by the mayor and aldermen or selectmen, who may regulate and alter the terms and conditions under which the same shall be laid out, used, or continued in use, and may discontinue the same when in their judgment the public good so requires; and no land shall be used for any of the following purposes: all racing, running, trotting, or pacing of a horse or other animal of the horse kind for a bet or wager of money or other valuable thing, or for a purse or stake, made within this state, except trials of the speed of horses for premiums offered by legally constituted agricultural societies. Pub. Stats. ch. 209, § 12.

(l) *Steamboats on Inland Waters.*

§ 474. The mayor and aldermen of a city or the selectmen of a town may license any person to run a steamboat for the

conveyance of passengers on lakes, ponds, or waters not within the maritime jurisdiction of the United States.

§ 475. Such licenses shall be granted for a term not exceeding one year, and shall be recorded by the clerk of the city or town in which they are granted, who shall receive a fee of one dollar for recording each license. Every such license shall set forth the name of the vessel and of the master and owner, and the number of passengers such vessel is permitted to carry at any one time, and shall be posted in a conspicuous place thereon, and the number of passengers specified in such license shall in no case be exceeded. Pub. Stats. ch. 102, §§ 120, 121.

(m) *Skating Rinks and Picnic Groves.*

§ 476. The selectmen of any town may grant a license to any person to establish, keep open, and maintain a skating rink to be used for the amusement of roller skating for hire, upon such terms, conditions, and regulations as they deem proper, subject to the provisions in §§ 467-470 *ante*; and they may grant a license to any person to establish, let, keep open, and maintain a grove to be used for picnics or other lawful gatherings and amusements, for hire, upon such conditions and regulations as they deem proper, subject to the provisions of the said sections. Sts. 1885, chs. 196, 309.

DUTIES OF SELECTMEN WITH REGARD TO RAILROADS.

(a) *Fixing of the Route.*

§ 477. The directors shall submit the map and report of the proposed railroad to the mayor and aldermen of every city and to the selectmen of every town named in the articles of association; and such mayor and aldermen or selectmen shall thereupon appoint a place and time for a hearing, of which notice shall be given by publication in one or more newspapers published in the county for two successive weeks, the last publication to be at least two days prior to the hearing, and by posting copies of the notice in two or more public places in the city or town at least two weeks before such hearing.

§ 478. When the mayor and aldermen of a city or the selectmen of a town named in the articles of association, after such notice, exhibition of the map, and hearing, agree with the directors as to the proposed route or as to any route of their railroad in said city or town, such agreement shall fix the same; and said mayor and aldermen or selectmen shall sign and give to the directors a certificate setting forth such route. Pub. Stats. ch. 112, §§ 39, 40.

§ 479. The route fixed under the preceding section may include such spurs, branches, and connecting and terminal tracks, in any city or town, as may be necessary to enable the corporation conveniently to collect and deliver passengers and freight therein; but no such branch, spur, or connecting or terminal track shall be laid longitudinally within the limits of a public way without the consent of the mayor and aldermen or the selectmen, who in giving such consent may impose such conditions as to the location, construction, and use thereof as may be agreed upon between themselves and the directors. Corporations owning or operating any such tracks so laid longitudinally in a public way shall, in respect to the same, be liable to the city or town for all loss or damage caused thereto by the construction and use of such tracks, and by the negligence or default of the agents or workmen of such corporations thereon. Pub. Stats. ch. 112, § 42.

(b) *Examination of Condition of Road.*

§ 480. Upon the complaint and application of the mayor and aldermen of a city or the selectmen of a town within which a part of any railroad is located, the board of railroad commissioners shall examine the condition and operation thereof; and if twenty or more legal voters in a city or town, by petition in writing, request the mayor and aldermen or selectmen to make such complaint and application, and they decline so to do, they shall indorse upon the petition the reason of such non-compliance and return it to the petitioners, who may within ten days thereafter present it to said board; and the board may thereupon proceed to make such examination in the same manner as if called upon by the mayor and aldermen or the selectmen, first giving to the petitioners and to the cor-

poration reasonable notice in writing of the time and place of entering upon the same. If upon such examination it appears to the board that the complaint is well founded, it shall so adjudge, and shall inform the corporation operating such railroad of its adjudication in the same manner as is provided in section sixteen of chapter one hundred and twelve of the Public Statutes. Pub. Stats. ch. 112, § 17.

(c) *Railroad Police.*

§ 481. The mayor and aldermen of a city or the selectmen of a town, upon the petition of a railroad corporation having a passenger station therein, or of a common carrier of passengers by water for hire having a usual place of receiving or discharging passengers therein, may appoint as many as they may deem proper of the persons in the employment of said petitioner as police officers for the purposes and with the powers hereinafter set forth.

§ 482. A copy of the record of all such appointments shall be filed by the petitioner with the clerk of each place in which such corporation draws cars by its own motive-power, or such carrier is accustomed to receive or discharge passengers, and in which it is intended that such police shall act; and the filing of such copy shall constitute the persons named therein railroad or steamboat police, respectively, within such towns or cities, and upon the boats or vessels of such carriers by water while within the boundaries of the Commonwealth. Pub. Stats. ch. 103, §§ 13, 14.

AUCTIONEERS, HAWKERS, AND PEDLERS.

(a) *Auctioneers.*

§ 483. The mayor and aldermen or selectmen of any city or town may, by writing under their hands, license one or more suitable persons who have resided in their respective cities and towns for a period of six months before application is made for such license, to be auctioneers within the same for the term of one year, and may receive to the use of the city or town for each license two dollars. They shall record every license in a book to be kept by them for that purpose. Sts. 1886, ch. 289.

§ 484. Each auctioneer shall, if required, give bonds in a reasonable penal sum and with sufficient sureties to the treasurer of the city or town where he is licensed, with condition that he shall in all things conform to the laws relating to auctioneers. Pub. Stats. ch. 67, § 3.

§ 485. Licenses may be granted upon such conditions respecting the places of selling goods and chattels within a city or town as the mayor and aldermen or selectmen deem expedient; and if an auctioneer makes a sale by auction at a place not authorized by his license, he shall be liable to like penalties as if he had sold without a license. Pub. Stats. ch. 67, § 12.

(b) *Hawkers and Pedlers.*

§ 486. Any person may go about from town to town, or from place to place in the same town, exposing for sale and selling fruits, provisions, live animals, brooms, agricultural implements, hand tools used in making boots and shoes, fuel, newspapers, books, pamphlets, agricultural products of the United States, and the products of his own labor or of the labor of his family; but nothing in this section shall be so construed as to include among the things that may be so exposed for sale or sold any articles of the growth or production of foreign countries. Pub. Stats. ch. 68, § 1.

§ 487. The selectmen of a town may make regulations prohibiting or regulating and providing for issuing licenses for the sale by minors of any goods, wares, or merchandise, the sale of which is permitted by the preceding section; such licenses to be issued on the terms and conditions prescribed in such regulations. Any minor who shall sell any such articles without a license, when one is required, or who shall violate any such regulation or any of the terms or conditions of any such license, shall be punished by a fine not exceeding ten dollars for each offence. Sts. 1892, ch. 331.

§ 488. The majority of the selectmen of a town in which a hawker wishes to sell goods, may sign a certificate for him stating that he is of good morals and integrity, and that he is, or has declared his intention of becoming, a citizen of the United States, which facts he must previously have made oath to before a justice of the peace. On being shown this cer-

tificate, the secretary of the Commonwealth may grant the applicant a license to sell goods in that town, on being paid the proper fee, which shall go to the treasurer of the town in which the hawker sells his goods. Pub. Stats. ch. 68, §§ 4-6.

§ 489. Every person licensed to peddle as hereinbefore provided shall post his name, residence, and the number of his license in a conspicuous manner upon his parcels or vehicle; and when his license is demanded of him by a mayor, alderman, selectman, town or city treasurer or clerk, constable, police officer, or justice of the peace, he shall forthwith exhibit it, and, if he neglects or refuses so to do, shall be subject to the same penalty as if he had no license. This chapter, or a synopsis thereof, shall be printed on every license. Pub. Stats. ch. 68, § 13.

FIRES, FIRE DEPARTMENTS, AND FIRE DISTRICTS.

(a) *Extinguishment of Fires.*

§ 490. The selectmen of a town may annually, in March or April, appoint such number of suitable persons to be firewards as they deem necessary; and each person so appointed shall forthwith have notice thereof, and within seven days after such notice shall enter with the town clerk his acceptance or refusal of the office. Whoever neglects so to enter his acceptance or refusal shall, unless excused by the selectmen, forfeit ten dollars.

§ 491. When a fire breaks out in any place, the firewards shall immediately repair thereto, and shall carry a suitable staff or badge of their office. Pub. Stats. ch. 35, §§ 1, 2.

§ 492. The firewards, or any three of them present at a place in immediate danger from a fire, or, where no firewards are appointed, the selectmen or mayor and aldermen present, or in their absence two or more of the civil officers present, or in their absence two or more of the chief military officers of the place present, may direct any house or building to be pulled down or demolished when they judge the same to be necessary in order to prevent the spreading of the fire. Pub. Stats. ch. 35, § 3.

One fireward has no more authority than any other person to direct the destruction of a house to prevent the spreading of a conflagration, although it may be impossible for the other firewards or the other officers named in the statute to get to the place when the occasion for action upon the subject arises. *Parson v. Pettingell*, 11 Allen, 507.

§ 493. In towns which, by vote of the legal voters respectively, have accepted the provisions of this section, or of chapter two hundred and one of the statutes of the year eighteen hundred and seventy-three, the engineer of a fire department in command at a fire shall, to the exclusion of all other persons, have the power conferred by the preceding section. Pub. Stats. ch. 35, § 4.

§ 494. If such pulling down or demolishing of a house or building is the means of stopping the fire, or if the fire stops before it comes to the same, the owner shall be entitled to recover a reasonable compensation from the city or town; but when such building is that in which the fire first broke out, the owner shall receive no compensation. Pub. Stats. ch. 35, § 5.

“The plain intent of the statute is, that no house or building shall be demolished unless it shall be judged necessary by three firewards, or by the other officers authorized to act in their absence or where no firewards have been appointed. It is a joint authority expressly given to the officers designated, acting together, and cannot be exercised by a minority or by any one of them. It is not sufficient, therefore, that a general conclusion or judgment was arrived at by three firewards, or the other officers mentioned, that it was necessary to destroy some buildings in order to put a stop to the further extension of a fire. They must go further. They must determine upon the particular house or building which they shall adjudge necessary to be destroyed for the purpose. This cannot be left to the individual judgment of any of the firewards.” *BIGELOW, J., in Ruggles v. Inhabitants of Nantucket*, 11 Cush. 433.

The provision of this section does not apply to a building which is pulled down by such order, after it is so far burnt that it is impossible to save it from destruction by fire. *Taylor v. Plymouth*, 8 Met. 462.

§ 495. Such firewards or other officers may, during the continuance of a fire, require assistance for extinguishing the same, and for removing furniture, goods, or merchandise from a building on fire or in danger thereof; and may appoint guards to secure the same. They may also require assistance for pulling down or demolishing a house or building when they judge it necessary; and may suppress all tumults and disorders at such fire.

§ 496. They may direct the stations and operations of the enginemen with their engines, and of all other persons for the purpose of extinguishing the fire; and whoever refuses or neglects to obey such orders shall forfeit for each offence a sum not exceeding ten dollars. Pub. Stats. ch. 35, §§ 6, 7.

§ 497. When a fire occurs in woodlands, the firewards, or any two of them, of a town in which woods are burning, or of a town containing woodlands endangered by such fire, being present at a place in immediate danger of being burned over, may direct such back fires to be set and maintained, and such other precautions to be taken to prevent the spread of the fire, as they may deem necessary. Pub. Stats. ch. 35, § 9.

§ 498. A city or town in which an aqueduct is situated may put conductors into the pipes for the purpose of drawing therefrom, free of expense, as much water as is necessary when a building is on fire therein, if such conductors are so secured that water shall not be drawn therefrom except for the purpose of extinguishing fires.

§ 499. When the selectmen consider it necessary for the protection against fire of persons and property in their town to take water from the conductors or pipes therein of an aqueduct corporation, they may order the engineers of the fire department to request the corporation to put into such conductors or pipes, in such places as said engineers shall think necessary, connections or conductors for the purpose of attaching hydrants or conducting water into reservoirs. Pub. Stats. ch. 110, §§ 15, 16.

(b) *Forest Firewards.*

§ 500. In all towns it shall be the duty of the selectmen to appoint annually, in March or April, one or more persons to be

called forest firewards, who shall, in respect to fires in woodlands, have and exercise the powers prescribed for firewards in the preceding sections. In towns of less than three hundred voters, the selectmen may serve as forest firewards if the towns shall so elect.

§ 501. It shall be the duty of forest firewards to post copies of chapter 163 of the Acts of 1882, and of this Act (Sts. 1886, ch. 296) in two or more public places, to investigate all cases of fires in woodlands and report thereon to the selectmen of the town, who in their discretion shall cause complaints to be made for violation of the provisions hereof. Sts. 1886, ch. 296, §§ 2, 3.

(c) *Enginemen and Hosemen.*

§ 502. The mayor and aldermen or selectmen of places provided with fire-engines may appoint suitable persons for enginemen, who shall continue in office during the pleasure of the authority appointing them.

§ 503. Such engines shall be manned as follows: each common engine, or suction engine when used as a common engine only, with not exceeding thirty men; each suction engine, when used as such, with not exceeding forty-five men; but this provision shall not affect the present right of any place to have a greater number of enginemen appointed than is herein prescribed.

§ 504. The mayor and aldermen or selectmen may select from the enginemen any number for each engine, who shall under the direction of the firewards attend fires with axes, fire-hooks, fire-sails, and ladders, and do such further duty as the mayor and aldermen or selectmen shall from time to time prescribe; and they shall be entitled to all the exemptions and privileges of other enginemen.

§ 505. Each company of enginemen so appointed shall meet annually in May and choose a foreman, or director, and a clerk, and shall establish such rules and regulations, not repugnant to law, respecting their duty as enginemen, as shall be approved by the mayor and aldermen or selectmen; and they shall annex penalties thereto not exceeding ten dollars, which may be recovered by their clerk in an action of tort.

§ 506. Each company shall meet together once a month, and oftener if necessary, for the purpose of examining their engine and its appendages and seeing that they are in good repair and ready for use. They shall by night and day, under the direction of the firewards, use their best endeavors to extinguish any fire that may happen in their city or town, or in the vicinity thereof.

§ 507. When the proprietors of an engine apply to the mayor and aldermen or selectmen of a city or town in which the engine is owned, setting forth that they desire that the same should be employed for the benefit of such place, the mayor and aldermen or selectmen may appoint enginemen in the same manner, with the same privileges, and subject to the same regulations, as if the engine belonged to the place; and if the proprietors do not agree as to the place where the engine shall be kept, the mayor and aldermen or selectmen shall determine such place.

§ 508. If the mayor and aldermen or selectmen upon such application refuse or delay for the space of fourteen days so to appoint enginemen, the proprietors may apply therefor in writing to the county commissioners, giving notice in writing to such mayor and aldermen or selectmen seven days at least before the sitting of the commissioners, that they may appear and show cause, if any they have, why such enginemen should not be appointed; and if sufficient cause is not shown by them, the commissioners may appoint the number of enginemen prescribed in § 503 *ante*.

§ 509. Enginemen appointed under the two preceding sections shall, if such can be obtained, be persons living at or near the place where the engine is kept, and they shall enjoy all the privileges and exemptions of other enginemen.

§ 510. Selectmen, engineers of fire départements, and the board of engineers of fire districts, may, in towns having one or more steam fire-engines or in which water for extinguishing fires is supplied from hydrants or reservoirs, appoint to each hose-carriage such number of men, not exceeding twenty, as they deem expedient.

§ 511. If an engineman is negligent in his duties, the mayor and aldermen or selectmen shall discharge him and appoint another in his stead.

§ 512. Persons appointed enginemen or members of the fire department in any town, and who have done duty as such for one year preceding the first day of May in any year, shall be entitled to receive from the treasurers of their respective towns a sum equal to the poll-tax for state and county taxes paid by them, or by their parents, masters, or guardians, and such further compensation as the town determines.

§ 513. The chief engineer or other officer who holds the first office in a fire department, and the foreman or director of each company in a place where no fire department is established by law, shall annually on or before the first day of May make out and certify to the assessors of their respective places a list of all persons in their department or companies who through the year preceding have performed all the duties therein required by law. The assessors shall within ten days thereafter examine such lists and certify to the treasurers of their respective places the amount to be paid to each person named therein. Such treasurers shall, after deducting all taxes due from the persons so named, pay the amount so certified to them, or, if minors, to their parents, masters, or guardians; and upon refusal of the treasurer to pay any sums so certified and returned, the person entitled may recover such sum in an action of contract.

§ 514. If such chief engineer or other officer wilfully refuses to make such certificate, he shall forfeit for each person whose name ought to have been so certified a sum not exceeding five dollars, to be recovered in an action of tort to the use of such person, or on complaint to the use of the county; and if such engineer or other officer makes a false certificate in such case, he shall forfeit not less than twenty nor more than fifty dollars, to be recovered in an action of tort to the use of the city or town, or on complaint to the use of the county.

§ 515. The provisions of the three preceding sections shall be in force only in those cities and towns which adopt the same by vote of their city council or at their annual town meeting, or which have so adopted the provisions of sections eighteen, nineteen, and twenty of chapter twenty-four of the General Statutes. When such adoption is revoked by the city council, or by the town at an annual meeting, said provisions shall cease to be in force therein. Pub. Stats. ch. 35, §§ 12-25.

(d) *Fire Departments.*

§ 516. The selectmen of a town may establish a fire department therein in the manner hereinafter provided, and such department and every other fire department, unless different provisions are specially made therefor, shall be organized in the manner, and the members thereof may exercise the powers, and shall be subject to the liabilities, hereinafter mentioned. Pub. Stats. ch. 35, § 28.

§ 517. Every town having a fire department is required to keep the following apparatus for saving life at fires, and to take them to fires occurring in buildings over two stories in height: first, a device capable of shooting a missile with a cord attached over the top of any building in town; second, a "chute" made of unflammable canvas; third, a "lifenet." Sts. 1888, ch. 310.

§ 518. The selectmen of such town shall annually in April appoint for such department as many engineers, not exceeding twelve, as they may think expedient, for the term of one year from the first day of May following, and until others are appointed in their stead, but the selectmen may, for cause, remove from office any engineer, after seven days notice to him and hearing; and the selectmen shall fill all vacancies. Sts. 1886, ch. 113.

§ 519. They shall immediately after such appointment issue a notice to each of said engineers to meet at a time and place designated in the notice, at which meeting the engineers shall choose a chief engineer, a clerk, and such other officers as they may deem necessary for their complete organization.

§ 520. The engineers, in relation to the extinguishment of fires, shall exercise the powers of firewards, and in relation to the nomination and appointment of enginemen shall exercise the powers and perform the duties of selectmen. They may appoint such number of men to the engines, hose, hook, ladder, and sail carriages, and to constitute fire companies for securing property endangered by fire, as they may think expedient; but the number of men appointed shall not exceed, to each suction fire-engine, fifty; to each common engine, thirty-five; to each hose-carriage, except as provided for by § 510 *ante*,

five; to each hook-and-ladder and sail carriage, twenty-five; and to each fire company, twenty-five.

§ 521. The engine, hose, hook-and-ladder, and sail carriage men, and fire companies may organize themselves into distinct companies, elect the necessary officers, and establish such rules, regulations, and by-laws as may be approved by the board of engineers; and may annex penalties for the breach of the same, not exceeding ten dollars for each offence; and the same may be recovered by the clerk to the use of the company in an action of tort.

§ 522. The engineers and all persons appointed by them shall be subject to the same duties and liabilities, and entitled to the same privileges and exemptions, as enginemen appointed by selectmen.

§ 523. The board of engineers shall have the care and superintendence of the public engines, hose, fire-hooks, ladder-carriages, and ladders in their respective towns, together with the buildings, fixtures, and appendages belonging thereto, and with all pumps, reservoirs for water, and apparatus owned by the town and used for extinguishing fires; and shall cause the same to be kept in repair, and when worn out to be replaced; and shall, from time to time, make such alterations therein and additions thereto as they may deem necessary; but such alterations, additions, or repairs shall not in any one year exceed one hundred dollars, unless the town has authorized a larger appropriation.

§ 524. They may at any meeting establish such rules and regulations as they judge proper, to prohibit or regulate the carrying of fire, firebrands, lighted matches, or other ignited materials, openly in the streets or thoroughfares of their town, or of such parts thereof as they may designate; or to prohibit owners or occupants of buildings within their town, or such part thereof as they may designate, from erecting or maintaining any defective chimney, hearth, oven, stove, or stove-pipe, fire-frame, or other fixture, deposit of ashes, or mixture or other material which may produce spontaneous combustion, or whatever else may give just cause of alarm or be the means of kindling or spreading fire.

§ 525. They may make rules and regulations, not repug-

nant to law, for their own government and for the conduct of citizens at fires, and may annex penalties for the breach thereof, not exceeding twenty dollars for one offence; any such penalty may be recovered by the chief engineer in an action of tort, and shall be appropriated by the engineers to the improvement of the fire apparatus of their town; but such rules and regulations shall not be binding until approved by the inhabitants of the town at a meeting held for the purpose, and published as the town may direct.

§ 526. No act hereafter passed establishing a fire department in a town shall take effect until it is accepted and approved by the inhabitants of such town at a meeting held for the purpose.

§ 527. A city or town which has established a fire department may by vote of the city council in such city, or of the inhabitants of such town at a meeting called for the purpose, fix the term of office for the engineers, enginemen, and other members of such department, to begin at a future day, and to end in one year from such day, and so on from year to year. In such cases all provisions of this chapter referring to the month of May shall be construed to refer to the first month of the year thus appointed.

§ 528. For the purposes of the preceding section, a city or town may, at the same time, abridge or protract the current term of office of engineers, enginemen, and other members of fire departments; but no term shall be made shorter than six or longer than eighteen months, and the incumbents of such offices shall hold office until others are appointed in their stead.

(e) *Fire Districts.*

§ 529. Fire departments may be established in districts containing not less than one thousand inhabitants, the officers of which shall have charge of and be responsible for the engines and other apparatus for the extinguishment of fire therein, in the same manner as firewards and enginemen of towns.

§ 530. Before a district is constituted and organized, a petition shall be presented to the town at a legal meeting,

stating the limits of the proposed district, and requesting the town to raise taxes for the establishment and maintenance of a sufficient fire department for the reasonable protection from fire of the inhabitants and property within said limits. If the town refuses or neglects so to do, the inhabitants of the proposed district may proceed to constitute and organize the same, and to establish a fire department therein, as hereinafter provided.

§ 531. The selectmen, upon the application in writing of not less than seven freeholders, inhabitants of such proposed district, setting forth the limits thereof, and requiring them to notify a meeting of the inhabitants thereof duly qualified to vote in town affairs, for the purpose of considering the expediency of organizing such district and establishing a fire department, shall forthwith give notice to such inhabitants, in the manner of notifying town meetings, to assemble at some suitable place within the district for said purpose, the substance of which shall be expressed in the notification. If the selectmen refuse or neglect to notify such meeting, a justice of the peace may notify the same.

§ 532. If at any such meeting the voters present determine to organize such district, they shall choose a clerk, who shall be sworn. He may be removed by the district, or may resign, and in case of a vacancy another may be chosen; or in such case, and in case of any disability in such clerk to perform the duties required by law, the selectmen of the town wherein such fire district is situated may appoint a clerk *pro tempore*, who shall be sworn and shall perform such duties until the vacancy is filled or the disability is removed.

§ 533. The district at such meeting may vote to establish a fire department, to consist of a chief engineer, and as many assistant engineers, enginemen, hosemen, and hook-and-ladder men, as they may deem necessary, not exceeding, for each suction engine, seventy-five; for each common engine, thirty-five; for each one hundred and fifty feet of leading hose kept for use within the district, five; and not exceeding twenty-five hook-and-ladder men. Each of said officers and members shall be furnished with a certificate under the hands of the chief engineer and clerk, declaring his station in the department.

§ 534. The chief engineer and assistant engineers shall be chosen annually by the district, and shall be sworn.

§ 535. Meetings of the district shall be called by the clerk, when requested in writing by the chief engineer, or by two assistant engineers, or by seven voters of the district; and he shall give notice of the same by posting written notifications in at least six public places in the district not less than seven days prior to the meeting, or by publishing the same in a newspaper, if one is printed in the town where the district is situated, which notifications shall briefly state the purposes of the meeting. At each of the meetings a moderator shall be chosen, who shall have the powers of the moderator of a town meeting. After the choice of a clerk, he shall preside at subsequent meetings with like powers until a moderator is chosen.

§ 536. The selectmen of towns containing fire districts shall, at least ten days before the annual fire-district election, make correct alphabetical lists of all the persons qualified to vote in such election; shall cause such lists to be posted up in two or more public places in said district; and shall perform the same duties in reference to the correction of said lists as they are required by law to perform in reference to the correction of check-lists for town elections.

§ 537. In fire districts composed of portions of two or more towns, the duties required of the selectmen by the preceding section shall be performed by the prudential committee. Pub. Stats. ch. 35, §§ 30-48.

§ 538. The polls at fire-district elections shall be kept open not less than two and not more than six hours.

§ 539. Such districts may, at meetings called for the purpose, raise money for the purchase of engines and other articles necessary for the extinguishment of fires, for the purchase of land, for the erection and repairs of necessary buildings, for the erection and maintenance of street lamps within their limits, and for other incidental expenses of the fire department. They shall choose a prudential committee, which shall expend for the purposes prescribed by the district the money so raised.

§ 540. Such districts shall also choose a treasurer, who

shall give bond for the faithful discharge of the duties of his office in such sum as the prudential committee may require, and with sureties to their satisfaction. The treasurer shall receive all sums of money belonging to the district, and shall pay over and account for the same according to its order, or to the order of the prudential committee.

§ 541. When the treasurer is prevented from performing the duties of his office, or when his office is vacant, the prudential committee may in writing appoint a treasurer *pro tempore*, who shall give a bond in like manner as provided in the preceding section, and shall hold his office until another is chosen.

§ 542. The clerk shall certify to the assessors of the town all votes of the district authorizing interest to be added to taxes, and all sums of money voted to be raised, which sums shall be assessed and collected by the officers of the town in the same manner as town taxes, and shall be paid over to the treasurer of the district. The assessors, treasurer, and collector of a town in which such district is organized shall have the same powers and perform the same duties in reference to the assessment and collection of the money voted by the fire district as they have and exercise in reference to the assessment, collection, and abatement of town taxes, and the sums so voted shall be assessed upon the property real and personal within the district.

§ 543. The board of engineers may from time to time make and publish rules and regulations for their own government, and for that of other members of the department and of persons present at fires, and for regulating or prohibiting the carrying of fire or ignited substances in or through the streets or ways of the district, and may prescribe penalties for the violation thereof, not exceeding twenty dollars for each offence. The board may appoint enginemen, hosemen, and hook-and-ladder men, and remove them, and fill vacancies in the companies.

§ 544. Engineers shall have and exercise the same powers and authority relative to the extinguishment of fires, and the demolishing for that purpose of buildings within their district, as firewards of towns; and the inhabitants of districts shall

be liable for acts done by such engineers, or by their orders, in the same manner as towns are liable for acts done by firewards.

§ 545. Engineers and other members of the fire department of such district shall have the immunities and privileges of firewards and enginemen of towns, and shall receive such compensation as the district determines.

§ 546. No by-law, rule, or regulation, adopted by the district, and having a penalty attached to it, shall be in force until it is approved by the superior court for the county in which such fire district is. Pub. Stats. ch. 35, §§ 50-58.

§ 547. Such district, at a meeting called for that purpose, may alter the limits thereof so as to include any adjacent territory and its inhabitants, if a majority of the voters of said territory have petitioned therefor, setting forth the limits of the territory to be annexed ; or may exclude any person, or the estate of any person, who has thus petitioned, if the town within which the district is situated has assented thereto.

§ 548. Fire districts heretofore legally organized shall continue and be subject to the provisions of this chapter in relation to fire districts.

§ 549. No association, society, or club, organized as firemen, shall be allowed in any city or town, except by the written permission of the mayor and aldermen or selectmen. Pub. Stats. ch. 35, §§ 60-62.

(f) *Fire Inquests.*

§ 550. The board of fire engineers in every city, except the city of Boston, and in every town in which a board of fire engineers is established, and the board of selectmen in any town in which no board of fire engineers is established, shall make investigation of the cause, origin, and circumstances of every fire occurring in such city or town in which property has been destroyed, and shall especially make investigation as to whether such fire was the result of carelessness or design. Such investigation shall be begun within two days, not including the Lord's day, of the occurrence of such fire. The board making the investigation shall within two weeks of the occurrence of the fire furnish to the clerk of the city or town, as

the case may be, for careful record by him in a book to be provided by the insurance commissioner, a written statement of all the facts relating to the cause and origin of the fire, the kind, value, and ownership of the property destroyed, and such other information as may be called for by the blanks provided by the commissioner. Such book of record shall be kept by the clerk in his office, and he shall make returns or a transcript therefrom of the record of each year upon blank forms to be provided by the commissioner, and shall forward the same to him within fifteen days from the first day of January.

§ 551. Whenever from any such investigation there appears to the board making the same reasonable grounds for believing that the fire was caused by design, such board shall cause application to be made to a police, district, or municipal court or to a trial justice of the county in which such city or town is situated for an inquest to be held to make inquiry relative to such fire. The court or trial justice shall thereupon hold such inquest and take the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matters herein required to be examined and inquired into, and shall cause such testimony to be reduced to writing, verified and transmitted to the district attorney of the court for his action; and shall also report in writing to the owners of property or other persons interested in the matter under inquiry any facts and circumstances ascertained by such inquest, which shall in the opinion of the court or justice require their attention.

§ 552. The fees and expenses of the inquest shall be returned to the mayor and aldermen of the city or selectmen of the town in which the property was destroyed, and when audited and certified by them shall be paid by such city or town. Sts. 1889, ch. 451, §§ 1, 2, 6.

§ 553. In any city in which there is no board of fire engineers the chief or head of the fire department shall have all the powers and perform all the duties, with like effect, of the board of fire engineers named in the three preceding sections. Sts. 1891, ch. 229.

OFFENCES AGAINST THE PUBLIC PEACE.

§ 554. If persons to the number of twelve or more, being armed with clubs or other dangerous weapons, or if persons to the number of thirty or more, whether armed or not, are unlawfully, riotously, or tumultuously assembled in a city or town, it shall be the duty of the mayor and of each of the aldermen of such city, of each of the selectmen of such town, of every justice of the peace living in any such city or town, and of the sheriff of the county and his deputies, to go among the persons so assembled, or as near to them as may be with safety, and in the name of the Commonwealth to command all the persons so assembled immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, it shall be the duty of each of said magistrates and officers to command the assistance of all persons there present in seizing, arresting, and securing such persons in custody, so that they may be proceeded with for their offence according to law. Pub. Stats. ch. 206, § 1.

§ 555. When property of the value of fifty dollars or more is destroyed, or when property is injured to that amount, by persons to the number of twelve or more, riotously, routously, or tumultuously assembled, the city or town within which the property was situated shall, if the owner of such property uses all reasonable diligence to prevent its destruction or injury, and to procure the conviction of the offenders, be liable to indemnify the owner thereof to the amount of three fourths of the value of the property destroyed, or of the amount of such injury thereto, to be recovered in an action of tort.

§ 556. A city or town which pays any sum under the provisions of the preceding section may recover the same against any or all of the persons who destroyed or injured such property. Pub. Stats. ch. 206, §§ 8, 9.

THE SUPPRESSION OF COMMON NUISANCES.

§ 557. In a city or town which adopts this and the following section, or has adopted the corresponding provisions of earlier statutes, at a legal meeting of the city council or inhabitants

of the town, if the mayor and aldermen or selectmen, after due notice in writing to the owner of a burnt, dilapidated, or dangerous building, and a hearing of the matter, adjudge the same to be a nuisance to the neighborhood, or dangerous, they may make and record an order prescribing such disposition, alteration, or regulation thereof as they deem necessary; and thereupon the city or town clerk shall deliver a copy of the order to a constable, who shall forthwith serve an attested copy thereof upon such owner, and make return of his doings thereon to said clerk. Pub. Stats. ch. 101, § 1.

§ 558. The mayor and aldermen of a city, or selectmen of a town, shall have the same power and authority to abate and remove any such nuisance as are given to the board of health of a city or town in sections twenty-one, twenty-two, and twenty-three of chapter eighty of the Public Statutes. Pub. Stats. ch. 101, § 5.

A piggery in which swine are kept in such numbers that their natural odors fill the surrounding air, and make the occupation of the neighboring houses and passage over the adjacent highways disagreeable, is a nuisance. *Com. v. Perry*, 139 Mass. 198.

§ 559. All buildings, places, or tenements, resorted to for prostitution, lewdness, or illegal gaming, or used for the illegal keeping or sale of intoxicating liquors, shall be deemed common nuisances.

§ 560. The mayor and aldermen or selectmen of any place, upon complaint made to them under oath that the complainant has reason to believe, and does believe, that a booth, shed, or other temporary erection, situated within one mile of a musterfield, cattle-show ground, or other place of public gathering, is used and occupied for the sale of spirituous or fermented liquor, or for the purpose of gaming, may, if they consider the complaint well founded, order the owner or occupant thereof to vacate and close the same forthwith. If the owner or occupant refuses or neglects so to do, the mayor and aldermen or selectmen may forthwith abate such booth, shed, or erection as a nuisance, and pull down or otherwise destroy the same, in any manner they choose, or through the agency of any force, civil or military. Pub. Stats. ch. 101, §§ 6, 10.

JURORS.

§ 561. The selectmen of each town shall once in every year prepare a list of such inhabitants of the town, not absolutely exempt, as they think well qualified to serve as jurors, being persons of good moral character, of sound judgment, and free from all legal exceptions; which list shall include not less than one for every one hundred inhabitants of the town, and not more than one for every sixty inhabitants, computing by the then last census, except that in the counties of Nantucket and of Dukes County it may include one for every thirty inhabitants. Sts. 1891, ch. 131.

§ 562. The list when so prepared shall be posted up by the selectmen in public places in the town ten days at least before it is submitted for revision and acceptance, and shall then be laid before the town; and the town may alter it by adding the names of any persons liable to serve, or striking any names therefrom.

§ 563. The selectmen shall cause the names borne on the list to be written, each on a separate paper or ballot, and shall roll up or fold the ballots so as to resemble each other as much as possible, and so that the name written thereon shall not be visible on the outside; and they shall place the ballots in a box to be kept by the town clerk for that purpose.

§ 564. If a person whose name is so placed in the jury box is convicted of a scandalous crime, or is guilty of gross immorality, his name shall be withdrawn therefrom by the selectmen, and he shall not be returned to serve as a juror. Pub. Stats. ch. 170, §§ 7-9.

§ 565. All persons who are qualified to vote in the choice of representatives in the General Court shall be liable to be drawn and to serve as jurors, except as is hereinafter provided. Pub. Stats. ch. 170, § 1.

§ 566. The following persons shall be exempt from serving as jurors, to wit:

The governor, lieutenant-governor, members of the council, secretary of the Commonwealth, members and officers of the senate and house of representatives during the session of the General Court, judges and justices of a court (except justices

of the peace), county and special commissioners, clerks of courts, registers of probate and insolvency, registers of deeds, sheriffs and their deputies, constables, marshals of the United States and their deputies, and all other officers of the United States, attorneys at law, settled ministers of the gospel, officers of colleges, preceptors and teachers of incorporated academies, practising physicians and surgeons regularly licensed, cashiers of incorporated banks, constant ferrymen, persons who are more than sixty-five years old, members of the volunteer militia, members of the ancient and honorable artillery company, the superintendent, officers, and assistants employed in or about a state hospital, state almshouse, jail, lunatic hospital, house of correction, house of industry, reform school, or state prison, keepers of light-houses, conductors and engine-drivers of railroad trains, and teachers in public schools, shall be exempt from service as jurors, and enginemen and members of the fire department of the city of Boston; and enginemen and members of the fire department of other places may be exempt by the vote of the city council of the city or the inhabitants of the town. Pub. Stats. ch. 170, § 2.

No officer or soldier shall be liable to jury duty while in the active militia service; and any officer or soldier who has served continuously and faithfully for nine years in the volunteer militia shall be exempt for life thereafter from the performance of jury duty. Pub. Stats. ch. 14, § 153.

§ 567. No person shall be liable to be drawn and serve as a juror in any court oftener than once in three years, except as provided in the following section, but he shall not be so exempt unless he actually attends and serves as a juror in pursuance of the draft. Pub. Stats. ch. 170, § 3.

“Any court” in the foregoing includes courts of the United States. *Swan's Case*, 16 Mass. 220.

§ 568. The inhabitants of the counties of Nantucket and Dukes County shall be liable to be drawn and serve as jurors once in every two years.

§ 569. The clerks of the supreme judicial court and superior court, in due season before each term, and at such other times as the respective courts may order, shall issue writs of *venire facias* for jurors, and shall therein require the atten-

dance of the jurors on such day of the term as the court may order. Pub. Stats. ch. 170, §§ 4, 10.

§ 570. No *venires* shall be issued for the drawing and summoning of jurors for the sitting of the supreme judicial court for the county of Barnstable, unless at the time now provided by law for the issuing of *venires* for the drawing and summoning of jurors for the sitting of said court in said county, there shall be for trial some suit in which a trial by jury has been requested by one of the parties thereto, or which is of such a character that it must be tried by a jury. Sts. 1889, ch. 173.

§ 571. All jurors, whether required to serve on a grand or traverse jury, or by force of the laws relating to highways, or on any other occasion (except inquests and proceedings relating to the commitment of insane persons), shall be selected by drawing ballots from the jury box, and the persons whose names are borne on the ballots so drawn shall be returned to serve as jurors.

§ 572. When jurors are to be so drawn, the town clerk and selectmen shall attend at the clerk's office, or at some other public place appointed for the purpose, and, if the clerk is absent, the selectmen may proceed without him. The ballots in the jury box shall be shaken and mixed together, and one of the selectmen without seeing the names written thereon shall openly draw therefrom a number of ballots equal to the number of jurors required. If a person so drawn is exempt by law, or is unable by reason of sickness or absence from home to attend as a juror, or if he has served as a juror in a court within three years then next preceding, his name shall be returned into the box and another drawn in his stead.

§ 573. When a person is drawn and returned to serve as a juror in a court, the selectmen shall indorse on the ballot the date of the draft, and return it into the box; and whenever there is a revision and renewal of the ballots in the box, the selectmen shall transfer to the new ballots the date of all the drafts made within three years then next preceding.

§ 574. A town may at a legal meeting order that all drafts for jurors therein shall be made in open town meeting, in which case the draft shall be made by the selectmen in the

manner prescribed in the two preceding sections, except that it shall be done in a town meeting. In such town, when a *venire* is served upon the selectmen, they shall cause a town meeting to be notified and warned for that purpose, in the manner ordered by the town or otherwise prescribed by the law.

§ 575. The meeting for drawing jurors, whether the draft is made in town meeting or before the selectmen and town clerk only, shall be held not less than seven nor more than twenty-one days before the day when the jurors are required to attend. Pub. Stats. ch. 170, §§ 17-21.

§ 576. The constable shall, four days at least before the time when the jurors are required to attend, summon each person who is drawn, by reading to him the *venire* with the indorsement thereon of his having been drawn, or by leaving at his place of abode a written notification of his having been drawn, and of the time and place of the sitting of the court at which he is to attend, and shall make a return of the *venire* with his doings thereon to the clerk, before the opening of the court from which it was issued. Pub. Stats. ch. 170, § 22.

It is not necessary that notice to jurors, who are drawn to assess damages caused by the laying out of a highway or railroad, should be served by a constable; such notice may be served by the officer to whom the warrant for summoning a jury is directed. *Wyman v. Lexington, &c. R. R.* 13 Met. 316.

It is not necessary that the town clerk or selectmen of a town should endorse upon a *venire* for jurors, the names of the persons who are drawn. *Com. v. Besse*, 143 Mass. 80.

§ 577. Grand jurors shall be drawn, summoned, and returned in the same manner as jurors for trials; and when drawn at the same time with jurors for trials, the persons whose names are first drawn, to the number required, shall be returned as grand jurors, and those afterwards drawn shall be jurors for trials.

§ 578. In case of deficiency of grand jurors in any court, writs of *venire facias* may be issued to the constables of such cities or towns as the court may direct, to return forthwith such further number of grand jurors as may be required. Pub. Stats. ch. 213, §§ 3, 4.

DOGS.

§ 579. The mayor of each city and the chairman of the selectmen of each town shall annually, within ten days from the first day of July, issue a warrant to one or more police officers or constables, directing them to proceed forthwith either to kill or cause to be killed all dogs within such city or town not licensed and collared according to the provisions of this chapter, and to enter complaint against the owners or keepers thereof; and any person may, and every police officer and constable shall, kill or cause to be killed all such dogs whenever or wherever found. Such officers, other than those employed under regular pay, shall receive one dollar for each dog so destroyed from the treasurers of their respective counties, except that in the county of Suffolk they shall receive it from the treasurers of their respective cities or towns. All bills for such services shall be approved by the mayor of the city or chairman of the selectmen of the town in which said dogs are destroyed, and shall be paid from moneys received under the provisions of this chapter.

§ 580. Each police officer or constable to whom the warrant named in the preceding section is issued, shall return the same on or before the first day of the October following to the mayor or chairman of selectmen issuing the same, and shall state in said return the number of dogs killed, and the names of the owners or keepers thereof, and whether all unlicensed dogs in his city or town have been killed, and the names of persons against whom complaints have been made under the provisions of this chapter, and whether complaints have been entered against all the persons who have failed to comply with said provisions. Pub. Stats. ch. 102, §§ 90, 91.

§ 581. The warrants required to be issued by the above two sections may be in the following form, viz. : —

COMMONWEALTH OF MASSACHUSETTS.

[Seal.]

M , ss. To , constable of the town (or city) of

In the name of the Commonwealth of Massachusetts, you are hereby required to proceed forthwith to kill or cause to be killed all dogs within the said town not duly licensed and collared according

to the provisions of chapter one hundred and two of the Public Statutes, and you are further required to make and enter complaint against the owner or keeper of every such dog.

Hereof fail not, and make due return of this warrant with your doings therein, stating the number of dogs killed and the names of the owners or keepers thereof, and whether all unlicensed dogs in said town (or city) have been killed, and the names of persons against whom complaints have been made under the provisions of said chapter, and whether complaints have been made and entered against all the persons who have failed to comply with the provisions of said chapter, on or before the first day of October next.

Given under my hand and seal at aforesaid, the day of ,
in the year eighteen hundred and .

Mayor of [or Chairman of the Selectmen of]
Pub. Stats. ch. 102, § 108.

§ 582. Whoever suffers loss by the worrying, maiming, or killing of his sheep, lambs, fowls, or other domestic animals by dogs, without the enclosure of the owners or keepers of such dogs, may, if the damage is done in a city, inform the officer of police of said city who shall be designated to receive such informations by the authority appointing the police, and, if the damage is done in a town, may inform the chairman of the selectmen of the town wherein the damage was done, who shall proceed to the premises where the damage was done and determine whether the same was inflicted by dogs, and if so appraise the amount thereof if not exceeding twenty dollars; if in the opinion of said officer of police or chairman the amount of said damage exceeds twenty dollars he shall appoint two disinterested persons, who with himself shall appraise under oath the amount thereof. The said appraisers shall also consider and include in such damages the labor and time necessarily expended in the finding and collecting of the sheep, lambs, fowls, or other domestic animals so injured or separated, and the value of those lost or otherwise damaged by dogs. The said officer of police or chairman shall return a certificate of the damages found, except in the county of Suffolk, to the treasurer of the county where the damage is done within ten days after such appraisal is made. The treasurer shall thereupon submit the same to the county

commissioners, who within thirty days shall examine all such bills, and if any doubt exists may summon the appraisers and all parties interested and make such examination as they may think proper, and shall issue an order upon the treasurer of the county in which the damage was done for all or any part thereof as justice and equity may require. The treasurer shall pay all orders drawn upon him for the above purpose in full on or after the first day of July in each year if the amount in his hands standing to the credit of the dog fund is sufficient therefor; otherwise he shall pay such amount *pro rata* upon such orders in full discharge thereof on demand. The appraisers shall receive from the county, or in the county of Suffolk from the city or town treasurer, out of the moneys received under the provisions of this chapter relating to dogs, one dollar each for every such examination made by them; and the mayor or the chairman of selectmen acting in the case shall receive twenty cents per mile one way for his necessary travel. Sts. 1889, ch. 454, § 1.

§ 583. In the absence or sickness of the mayor or chairman of the selectmen, it shall be the duty of any one of the aldermen of the city or of the selectmen of the town who may be duly informed of damage supposed to have been done by dogs to discharge forthwith the duties imposed by the preceding section upon the mayor or chairman. Pub. Stats. ch. 102, § 100.

§ 584. The mayor and aldermen of a city or the selectmen of a town may offer a reward not exceeding ten dollars for the killing of any dog found to have worried, maimed, or killed any sheep, lambs, fowls, or other domestic animals, thereby causing damage for which the owner thereof may become entitled to compensation from the dog fund as provided for in the last section but one, or for evidence which shall determine to the satisfaction of the mayor and aldermen of a city or the selectmen of a town who is the owner or keeper of the dog or dogs by which such damage is done. The county commissioners, except in the county of Suffolk, are authorized and directed to pay the said reward from the dog fund upon a certificate signed by the mayor and aldermen of a city or selectmen of a town.

§ 585. If the selectmen of a town or the mayor and aldermen of a city shall determine, after a hearing of which due notice has been given to parties interested, who is the owner or keeper of any dog or dogs found to have worried, maimed, or killed any sheep, lambs, fowls, or other domestic animals, thereby causing damages for which the owner thereof may become entitled to compensation from the dog fund as provided for in § 582 *ante*, they shall serve upon the owner or keeper of said dog a notice directing him within twenty-four hours to kill or confine such dog or dogs. Sts. 1889, ch. 454, §§ 2, 3.

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

§ 587. The mayor and aldermen or selectmen may cause special service of any such order to be made upon any person, requiring that a dog owned or kept by him shall be muzzled or restrained from running at large, by causing a certified copy of such order to be delivered to him ; and if he refuses or neglects for twelve hours thereafter to muzzle or restrain such dog as so required, he shall be punished by fine not exceeding twenty-five dollars. Pub. Stats. ch. 102, §§ 101, 103.

§ 588. In the county of Suffolk, all moneys received for licenses or recovered as fines or penalties under the provisions of this chapter relating to dogs shall be paid into the treasury of the city or town in which said licenses are issued or said fines or penalties recovered. All claims for damage done by dogs in Suffolk County shall be determined by appraisers as specified in § 582 *ante*, and when approved by the board of aldermen or selectmen of the city or town where the damage

was done, shall be paid in full on the first Wednesday of January of each year by the treasurer of such city or town, if the gross amount received by him and not previously paid out under the provisions of these sections relating to dogs is sufficient therefor; otherwise such amount shall be divided *pro rata* among such claimants in full discharge of their claims.

§ 589. Moneys received by a county treasurer under the provisions of the sections relating to dogs and not paid out for damages, shall in the month of January be paid back to the treasurers of the cities and towns in proportion to the amounts received from such cities and towns; and the money so refunded shall be expended for the support of public libraries or schools. In Suffolk County, moneys so received by the treasurer of a city or town, and not so paid out, shall be expended by the school committee for the support of public schools. Pub. Stats. ch. 102, §§ 105, 107.

§ 590. The city council of any city, and any town, may make such additional by-laws and regulations concerning the licensing and restraining of dogs as they deem expedient, and may affix penalties not exceeding ten dollars for a breach thereof; but such by-laws and regulations shall relate only to dogs owned or kept in such city or town; and the annual fee required for a license shall in no case be more than one dollar in addition to the sum required by § 403 *ante*. Pub. Stats. ch. 102, § 109.

CHAPTER VI.

ASSESSORS OF TAXES.

ASSESSMENT OF TAXES.

(a) *Assessors.*

§ 591. Every assessor, assistant assessor, or other person chosen to assess taxes or determine or assist in determining the value of property for the purpose of taxation shall before entering upon the duties of his office take an oath which shall be in substance as follows: I, having been chosen to assess taxes and estimate the value of property for the purpose of taxation for the town [or city] of _____, for the year [or years] ensuing, do swear that I will truly and impartially, according to my best skill and judgment, assess and apportion all such taxes as I may during that time assess, that I will neither overvalue nor undervalue any property subject to taxation, and that I will faithfully discharge all the duties of said office. Sts. 1893, ch. 423, § 10.

§ 592. Assistant assessors, when chosen, shall be sworn, and shall in their respective wards or districts assist the assessors in taking a list of the ratable polls, in estimating the value of the real and personal estate in said wards or districts, and in making out lists of persons qualified to vote at elections.

If a person chosen assessor, having notice of his election, neglects to take the oath of office, he shall forfeit a sum not exceeding fifty dollars. Sts. 1893, ch. 423, §§ 11, 39.

§ 593. Every assessor, assistant assessor, or other person chosen to assess taxes or determine or assist in determining the value of property for the purpose of taxation, who having notice of his election neglects to take the oath prescribed by the preceding section before entering upon the duties of such

office, shall be liable to the penalty provided in the preceding section. Sts. 1893, ch. 423, § 10.

(b) *Manner of Assessing Taxes.*

§ 594. When a state tax is to be assessed, the treasurer shall send his warrants for the assessing thereof by mail to the assessors of the several cities and towns in the Commonwealth.

§ 595. The assessors shall assess state taxes for which they receive warrants from the treasurer, according to the rules prescribed in this chapter. They shall in like manner assess all county taxes which are duly certified to them, all city or town taxes voted by their places, and all taxes duly voted and certified by school and other districts therein.

§ 596. Assessors of cities and towns in which any national bank or banking association is located, shall, for the purpose of ascertaining the rate at which taxes shall be assessed, omit from the valuation upon which the rate is to be based the value of all shares held by non-residents of said cities and towns, and no tax of any city or town shall be invalidated by reason of any excess, in consequence of the provisions of this section, of the amount of such tax over the amount to be raised.

§ 597. The assessors shall each year assess taxes to an amount not less than the aggregate of all sums appropriated, granted, or lawfully expended by their respective cities or towns since the last preceding annual assessment and not provided for therein; of all sums which are required by law to be raised by taxation by the said cities or towns during said year; and of all sums which are necessary to satisfy final judgments recovered against the said cities or towns; but such assessments shall not include sums for the payment of which cities or towns have lawfully voted to contract debts, and the assessors may deduct from the amount required to be assessed the amount of all the estimated receipts of their respective cities or towns (except from loans or taxes) which are lawfully applicable to the payment of the expenditures of the

year, but such deduction shall not exceed the amount of such receipts during the preceding year. Pub. Stats. ch. 11, §§ 31-34.

§ 598. A town which is required by §§ 96-115 *ante*, to establish a sinking fund for the payment of its indebtedness, may, instead, by a majority vote provide for the payment of such indebtedness in such annual proportionate payments as will extinguish the same within the time prescribed in said sections; and when such vote has been passed, the amount required thereby shall, without further vote, be assessed by the assessors in each year thereafter, until the debt shall be extinguished, in the same manner as other taxes are assessed under the provisions of the preceding section. Sts. 1882, ch. 133, § 1.

§ 599. The assessors of any city or town owing debts incurred to obtain funds for subscriptions for the capital stock and securities of any railroad corporation shall each year assess, in addition to the other amounts required by law, a sum sufficient to pay the interest on all debts so incurred, or, if there is any income derived from the capital stock or securities of such corporations owned by such city or town as aforesaid, a sum sufficient to pay the excess of such interest payable by such city or town over such income.

§ 600. If the assessors neglect to obey a warrant received from the state treasurer, or to assess a county, town, or district tax which is required by §§ 595, 597, and 599 *ante*, each assessor so neglecting shall forfeit a sum not exceeding two hundred dollars; and the commissioners in the respective counties shall forthwith appoint other suitable persons to assess such tax according to the warrant of the treasurer. The persons so appointed shall take the same oath, perform the same duties, and be liable to the same penalties, provided in the case of assessors of towns. Pub. Stats. ch. 11, §§ 35, 36.

RULES FOR ASSESSING TAXES.

The poll tax is found by dividing the amount of the state tax by the number of taxable polls, then dividing the amount of the county tax by the number of taxable polls, and adding the quo-

tients; but if either of the quotients exceeds \$1.00, it must be placed at \$1.00 for the purpose of determining the poll tax, so that in no case can this tax exceed \$2.00 for each poll.

Divide the whole amount to be raised for town purposes by the amount of the taxable property, and the quotient will be the tax upon \$1.00. Multiply the tax upon \$1.00 by the taxable property of an individual; to the product add his poll tax, and the sum will be his tax. If the poll taxes should not pay the state and county taxes, any deficiency in either must be added to the amount to be raised for town purposes. Herrick's Town Officer, p. 403.

(c) *Notices and Lists.*

§ 601. Before proceeding to make an assessment, the assessors shall give seasonable notice thereof to the inhabitants of their respective places, at any of their meetings, or by posting up in their city or town one or more notifications in some public place or places, or by some other sufficient manner. Such notice shall require the inhabitants to bring in to the assessors, within a time therein specified, true lists of all their polls and personal estates not exempted from taxation, and may or may not require them to include real estate in their lists of property subject to taxation. Unless such requirement is made in said notice, the omission of real estate from the list brought in to the assessors shall not deprive the owner of such real estate of his right to an abatement of the tax thereon, if he files with his application to the assessors for abatement a list of the real estate on which the same is claimed, with his estimate of the fair cash value of each parcel thereof, and makes oath that said list and estimate are true, according to his best knowledge and belief. Pub. Stats. ch. 11, § 38.

§ 602. Any mortgagor or mortgagee of real estate may bring in to the assessors of the town or city where such real estate lies, within such time as shall be specified for bringing in the lists as provided in the preceding section, a statement, under oath, of the amount due on each separate lot or parcel of such real estate, and the name and residence of every holder of an interest therein as a mortgagee or mortgagor. When such property is situated in two or more places, or

when a recorded mortgage includes for one sum two or more estates or parts of an estate, an estimate of the amount of the mortgagee's interest in each estate or part of an estate shall be given in such statement. The assessors shall, from such statements or otherwise, ascertain the proportionate parts of such estates that are the interests of mortgagees and mortgagors respectively, and shall assess the same. Whenever, in any case of mortgaged real estate, a statement is not brought in as herein provided, no tax for the then current year on such real estate shall be invalidated for the reason that a mortgagee's interest therein has not been assessed to him.

§ 603. The preceding provisions shall be included in the notice to be given by the assessors under the provisions of the last section but one. Sts. 1882, ch. 175, §§ 1, 2.

§ 604. The notice to be given to assessors under the provisions of the three preceding sections shall require all persons and corporations to bring in to the assessors, within a time therein specified, not later than the first day of July in the then current year, true lists of all real and personal estate held by such persons and corporations respectively for literary, benevolent, charitable, or scientific purposes on the first day of May in said year, together with statements of the amounts of all receipts and expenditures by such persons or corporations for said purposes during the year next preceding said first day of May; such lists and statements to be in such detail as may be required by the tax commissioner: *provided* that the assessors may accept any such list and statement after the time so specified if they shall be satisfied that there was good cause for the delay; but no list or statement shall be received after the first day of August in the then current year: *provided* also, that instead of making such list and statement as of the first day of May, as above provided, any such corporation may at its option make such list and statement as of the last day of its financial year next preceding said first day of May. Sts. 1882, ch. 217, § 1; Sts. 1888, ch. 323.

§ 605. The assessors shall in all cases require a person bringing in a list to make oath that the same is true; which oath may be administered by one of the assessors, or by their

secretary or head clerk, unless such person is absent from the city or town in which the tax is to be laid during the whole period when it may be made, in which case the oath may be administered by a notary public, the jurat to be duly authenticated by his seal. Sts. 1891, ch. 381.

Corporations are required to bring in such lists. *Otis Company v. Ware*, 8 Gray, 509. But it is not intended that such lists should contain an estimated value of the property. *Newburyport v. County Commissioners*, 12 Met. 211.

§ 606. They shall receive as true (except as to valuation) the list brought in by each individual according to the directions of § 601 *ante*, unless, on being thereto required by the assessors, he refuses to answer on oath all necessary inquiries as to the nature and amount of his property. Pub. Stats. ch. 11, § 40.

The assessors cannot correct this list upon any information, however satisfactory, as to the existence of other taxable property, which is not communicated to the tax-payer. Having furnished them with his list under oath, he is entitled, before he can be assessed upon other property, to have them hear his statements or explanations in regard to it. *Moors v. Street Commissioners*, 134 Mass. 432.

A list enumerated in detail the real and personal property of the maker in that town, but did not in terms state that it was all his property liable to taxation there. The jurat recited that "the statement and valuation is correct and true according to his best knowledge and belief." Held, that there was a substantial compliance with the requirements of the statute. *Lanesborough v. Berkshire County Commissioners*, 131 Mass. 424.

§ 607. They shall ascertain as nearly as possible the particulars of the personal estate, and of the real estate in possession or occupation, as owner or otherwise, of any person who has not brought in a list as required by them, and shall make an estimate thereof at its just value, according to their best information and belief. Pub. Stats. ch. 11, § 41.

It is sufficient to make a general estimate of each class of property. *Tobey v. Wareham*, 2 Allen, 594.

§ 608. Such estimate shall be entered in the valuation, and shall be conclusive upon all persons who have not seasonably brought in lists of their estates, unless they can show a reasonable excuse for the omission, and except as is stated in §§ 601 and 634.

§ 609. In making the estimate provided for in the two preceding sections, the assessors shall specify the amount of each class of personal property mentioned in clauses numbered eighth, ninth, tenth, and eleventh in § 619 *post* and enter the same, in column number five, upon the blank-books furnished under the directions in § 617 *post*: *provided*, that an error or over-estimate of any class shall not be taken into account in determining whether a person is entitled to an abatement, but only the aggregate amount of such estimate.

§ 610. After personal property has been legally assessed in any city or town to an executor, administrator, or trustee, an amount not less than that last assessed by the assessors of such city or town in respect of such property shall be deemed to be the sum assessable, unless a true list of such property is brought in to the assessors in accordance with the directions in § 601 *ante*.

§ 611. The assessors of each place shall at the time appointed make a fair cash valuation of all the estate, real and personal, subject to taxation therein.

§ 612. The assessors, when they think it convenient, may include in the same assessment their state, county, and town taxes, or any two of them. Pub. Stats. ch. 11, §§ 42-46.

§ 613. The assessors shall in each year assess upon the polls the state and county taxes, and if either of said taxes exceeds in amount the sum of one dollar upon each poll, the excess above said amount, and in every case the whole amount assessed for other purposes, shall be apportioned upon property as provided by this chapter. Pub. Stats. ch. 11, § 48.

The omission to comply with this provision renders the whole tax illegal. *Gerry v. Stoneham*, 1 Allen, 319.

§ 614. They may, for the purpose of avoiding fractional divisions of the amount to be assessed in the apportionment thereof, add to that amount a sum not exceeding five per

cent thereof. And this overlay is authorized notwithstanding the limit of taxation now provided by law may, by such overlay, be exceeded. Sts. 1887, ch. 226.

§ 615. They shall make, upon the blank-books furnished in accordance with § 617 *post* a list of the valuation and the assessment thereon, and, before the taxes assessed are committed for collection, shall deposit the same, or an attested copy thereof, in their office, or, if there is no office, with their chairman, for public inspection. The residents and non-resident property holders of each city or town shall at all reasonable times have free access to its respective list of valuation and assessment, and if the assessors refuse or neglect to submit the said list to the inspection of any of said residents or non-resident property holders on request, each assessor so refusing or neglecting shall forfeit a sum not exceeding one hundred dollars in each case. Sts. 1888, ch. 307.

Depositing the list the day before is sufficient. *Tobey v. Wareham*, 2 Allen, 594.

§ 616. The first part of the list shall exhibit the valuation and assessment of the polls and estates of the inhabitants assessed.

The second part shall exhibit the valuation and assessment of the estates of non-resident owners, and shall contain in separate columns the following particulars, to wit:—

The names of the non-resident owners of the property assessed, or such description of them as can be given.

Their places of abode, if known.

The description of their estate.

The true value of such estate.

The tax thereon. Pub. Stats. ch. 11, § 51.

§ 617. The secretary of the Commonwealth shall furnish to each city and town, on or before the first day of May in each year, suitable blank-books for the use of the assessors in the assessment of taxes, which books shall contain blank columns numbered from one to twenty-three, inclusive, with uniform headings for a valuation list, and blank tables for aggregates, in the following form:—

Valuation List for the of May 1, 18 .

Col. No. 1	NAMES AND RESIDENCES OF PERSONS ASSESSED.											
2	Number of polls.											
3	Total cash tax on polls.											
4	Value of each person's whole stock in trade.											
5	Description of taxable cash assets.											
6	Value of cash assets.											
7	Value of machinery used in manufacturing establishments.											
8	Number of live stock, each kind specified separately.											
9	Value of each kind of live stock.											
10	Description of all other ratable personal estate not before named.											
11	Value of same.											
12	Aggregate of each person's ratable personal estate.											
13	Total tax on personal estate.											

14	Buildings of all kinds, described by naming their uses.	
15	Value of buildings, exclusive of land.	
16	Description, by name or otherwise, of each and every lot of land owned by each person.	
17	Acres.	Number of acres or feet in each lot of land.
	Feet.	
18	Value of same.	
19	Superficial feet of wharf.	
20	Value of same.	
21	Aggregate value of real estate.	
22	Total tax on real estate.	
23	Total cash tax on polls, personal and real estate.	

TABLE OF AGGREGATES.

For the of of Polls, Property, Taxes, etc., as assessed May 1, 18 .

1	Number of residents assessed on property, specifying number of individuals, and number of firms, corporations, associations, trustees, etc.																
2	Number of non-residents assessed on property, specifying number of individuals, and number of firms, corporations, associations, trustees, etc.																
3	Whole number of persons assessed, specifying number assessed for tax on property, and number assessed for a poll tax only.																
4	Number of polls assessed, specifying number of male polls, and number of female polls.																
5	Tax on each poll, male or female.																
6	Value of personal estate assessed, specifying value of same, excluding resident bank stock, and value of resident bank stock.																
7	Value of real estate assessed, specifying value of buildings exclusive of land, and of land exclusive of buildings.																
8	Total valuation of assessed estate in the city or town.																
9	Tax for state, county, and city or town purposes, including overlays, specifying amount assessed on personal estate, on real estate, and on polls.																
10	Rate of total tax per \$1000.																
11	Number of horses assessed.																
12	Number of cows assessed.																
13	Number of sheep assessed.																
14	Number of neat cattle other than cows assessed.																
15	Number of swine assessed.																
16	Number of dwelling-houses assessed.																
17	Number of acres of land assessed.																
18	Number and value of fowl assessed.																

Pub. Stats. ch. 11, § 52; Sts. 1883, ch. 41; Sts. 1890, ch. 242, §§ 1, 2; Sts. 1891, ch. 65.

§ 618. The assessors shall enter in the books furnished in accordance with the provisions of the preceding section the valuation and assessment of the polls and estates of the inhabitants assessed, in the following order: —

In Column Number One. The names of the inhabitants or persons assessed for polls or estates, with the street and number of their residence.

In Column Number Two. The number of polls for which any person named in the preceding column is taxable.

In Column Number Three. The total amount of cash tax on polls.

In Column Number Four. The amount of each person's whole stock in trade, including all goods, wares, and merchandise, at home or abroad, of ratable estate, whether paid for or otherwise.

In Column Number Five. A description of all ratable cash assets, viz.: Amount of money at interest more than the person assessed pays interest for, including public securities; the amount of money on hand, including deposits in any bank or in any savings bank, which is not exempted by law from taxation; the number of shares of stock which are taxable, with the name of the corporation, in any bank, railroad, insurance, manufacturing, or other incorporated company; and a specification of the amount of each class of personal property mentioned in the following section.

In Column Number Six. The true ratable value of the several items enumerated in the preceding column, placed opposite the description of said property or shares.

In Column Number Seven. The true value of machinery used in all kinds of manufacturing establishments, including steam-engines, etc., the value of such machinery to be entered opposite the description of the building in which it is used.

In Columns Number Eight and Nine. The whole number of taxable live stock, including horses, mules, asses, oxen, cows, steers, heifers, sheep, and swine; each kind to be stated separately, with the value affixed to each.

In Columns Number Ten and Eleven. A description of all

other ratable personal estate, not before enumerated, such as carriages, income, plate, furniture, tons of vessels, etc., with the true value of the same.

In Column Number Twelve. The aggregate of each person's ratable personal estate.

In Column Number Thirteen. The total tax on each person's personal estate.

In Column Number Fourteen. Buildings of all kinds shall be described in the following order:—

Dwelling-houses; barns; shops of all kinds, naming their uses; stores; warehouses; distil-houses; breweries; tanneries and other manufactories of leather; ropewalks; grist-mills; saw-mills; steam and other mills not above enumerated; cotton factories, with the number of spindles and looms used in the same; woollen factories, with the number of sets of cards used in the same; linen factories, with the number of spindles and looms; print-works; bleacheries; gas-works; paper-mills; card factories; boot and shoe factories; india-rubber factories; carriage and car factories; piano-forte and musical-instrument factories; sewing-machine factories; chair, pail, tub, and other wooden-ware factories; oil factories; glass factories; all kinds of iron and brass works; and other buildings not above named.

In Column number Fifteen. The true value of buildings enumerated in the preceding column, placed opposite the description of the same, including water-wheels; such value to be exclusive of land and water power and of the machinery used in said buildings.

In Columns Number Sixteen, Seventeen, and Eighteen. A description by name or otherwise of each and every lot of land assessed, the same placed opposite the name of the person or party to whom it is taxable, with the number of acres or feet in each lot, the number of quartz-sand beds, of stone quarries and ore beds, and the true value thereof.

In Columns Number Nineteen and Twenty. The number of superficial feet of wharf, and the total value of the same.

In Column Number Twenty-one. The aggregate value of each person's taxable real estate.

In Column Number Twenty-two. The total tax on real estate.

In Column Number Twenty-three. The aggregate cash tax assessed to each person on polls, and on personal and real estate. Pub. Stats. ch. 11, § 53; Sts. 1883, ch. 41.

The valuations of property in previous years for the purpose of assessing taxes are not evidence of its value in subsequent years; but an assessment already made on this basis will not be held to be bad on this ground. *Lowell v. County Commissioners*, 152 Mass. 372.

The tax assessors in the valuation list of a single parcel of land entered the estate as follows: House W. St. \$3,200; House M. St. \$1,600; Stable, \$400; Greenhouse, \$200; Land, 6 acres, \$1,800. Aggregate value of real estate, \$7,200. Held, "although the owners had divided the tract of land into two house lots, yet as they were contiguous this did not require the assessors to make a separate valuation of each lot, but they might value the whole tract as one lot." MORTON, C. J., in *Bemis v. Caldwell*, 143 Mass. 299.

§ 619. The assessors shall fill up the table of aggregates by an enumeration of the necessary items included in the lists of valuation and assessments required by law, and shall on or before the first day of October in each year deposit in the office of the secretary of the Commonwealth an attested copy of the same, containing: First. The number of residents assessed on property, specifying the number of individuals and the number of firms, corporations, associations, institutions, trustees, and so forth. Second. The number of non-residents assessed on property, specifying the number of individuals and the number of firms, corporations, associations, institutions, trustees, and so forth. Third. The whole number of persons assessed, specifying the number assessed for a tax on property and the number assessed for a poll tax only. Fourth. The number of polls assessed, specifying the number of male polls and the number of female polls. Fifth. The tax on each poll, male or female. Sixth. The value of personal estate assessed, specifying the value of the same, excluding resident bank stock, and the value of resident bank stock. Seventh. The value of real estate assessed, specifying the value of buildings exclusive of land, and of land exclusive of buildings. Eighth. The total valuation of assessed estate

in the city or town. Ninth. The tax for state, county, and city or town purposes, including overlayings, specifying the amount assessed on personal estate, on real estate, and on polls. Tenth. The rate of total tax per one thousand dollars. Eleventh. The number of horses assessed. Twelfth. The number of cows assessed. Thirteenth. The number of sheep assessed. Fourteenth. The number of neat cattle, other than cows, assessed. Fifteenth. The number of swine assessed. Sixteenth. The number of dwelling-houses assessed. Seventeenth. The number of acres of land assessed. Eighteenth. The total number and value of fowl assessed. Sts. 1890, ch. 242; Sts. 1891, ch. 65.

§ 620. The assessors shall make similar returns in the first four years of the last half of each decade; and in every fifth and tenth year of each decade they shall deposit in the office of the secretary of the Commonwealth, on or before the first day of October, a certified copy, under oath, of the assessors' books of those years; and said books thus deposited shall contain an aggregate sheet properly filled in accordance with the provisions of the preceding section, which shall be in like manner certified by the assessors, and in every fifth and tenth year of each decade the secretary shall furnish duplicate copies of blank-books to the cities and towns for the foregoing purpose: *provided*, that, in the case of the city of Boston, the returns required by this section to be deposited in the office of the secretary may be thus deposited on or before the first day of November, in the several years respectively. Pub. Stats. ch. 11, § 55. The returns and copies of assessors' books, required by this and the previous section to be deposited by the assessors in the office of the secretary of the Commonwealth shall hereafter be deposited as follows: Copies of the assessors' books shall be deposited as required on or before the first day of October in the year eighteen hundred and eighty-three and in every third year thereafter; and in such years the secretary of the Commonwealth shall furnish to the cities and towns duplicate copies of the blank books required for this purpose. And the other returns specified in said sections shall be so deposited on or before the first day of October in each year. Sts. 1883, ch. 91.

§ 621. The assessors shall enter upon the valuation list, in the appropriate columns, after the enumeration of the taxable persons and estates therein contained, a statement and description of all the property and estate, and the fair ratable value thereof, situate in their respective cities or towns, or which would be taxable there but for the provisions of the third, seventh, and ninth divisions of § 660, with the names of the persons or corporations owning the same and the purpose for which it is used, which are exempted from taxation by the provisions of law aforesaid, with a reference to the law by which such exemption is allowed.

§ 622. The assessors, or other persons empowered to assess the taxes in a city or town, shall, at the close of said valuation list, subscribe and take the following oath : —

“ We (the assessors, or mayor and aldermen, as the case may be, of) do hereby solemnly swear that the foregoing list is a full and true list of the names of all persons known to us who are liable to taxation in (here insert the name of the city or town) during the present year, and that the real and personal estate contained in said list, and assessed upon each individual in said list, is a full and accurate assessment upon all the property of each individual liable to taxation, at its full and fair cash value, according to our best knowledge and belief.” Pub. Stats. ch. 11, §§ 58, 59.

FORMS.

Notice to bring in Lists of Polls and Estates for Taxation.

NOTICE.

TO THE INHABITANTS AND OTHER PERSONS LIABLE TO PAY TAXES
IN THE TOWN OF B——D.

The assessors of the town of B——d hereby give notice to the inhabitants of said town, and all other persons liable to pay taxes therein, that they will receive on and after the first day of May instant, until and including the fifteenth day of June next, the valuation of estates, and all persons liable to be taxed in said town are hereby required to bring in to us true and perfect lists of all the polls (males twenty years old and upwards) and schedules and

estimates of the real and personal estates possessed by them on the first of May, instant, for which they are liable to pay taxes in said town.

A. B.)
 C. D. } *Assessors of B—d.*
 E. F. }

B—d, May 1, 189 .

See § 601 *ante*, as to omission of real estate from such schedules.

In large towns, where the assessors have an office, the above may be dated at their office, and the requirement be to bring in the lists to such office.

Form of Certificate of the Oath administered to the Person returning and subscribing a List as above required.

Essex, ss. B—d, May, 189 . Then personally appeared the above-named R. S., and made oath that the foregoing statement and list by him subscribed is true. Before me,

A. B., *one of the Assessors of the town of B—d.*

Request for Information made to Assessors of Town from which Tax-payer has removed.

B—d, 189 .

To the Assessors of T—d.

Gentlemen, — By authority of chapter eleven, section eighty-five, of the Public Statutes, we require such written statement of any facts within your knowledge as will assist the assessors of this town in determining the value of the personal estate of G. K., and also the amount of personal estate on which he was last assessed in T—d.

Very respectfully, for

The Board of Assessors,

E. F. *one of the Assessors of the town of B—d.*

T—d, 189 .

To the Assessors of B—d.

Gentlemen, — G. K., a resident of T—d last year, was assessed by us as follows, viz. : —

Real Estate

Personal Estate

Very respectfully, for

The Board of Assessors,

C. D., *one of the Assessors of the town of T—d.*

(d) *Collector's List and Warrant.*

§ 623. The tax list committed to the collectors shall contain a certificate signed by the assessors, which shall state what portion of the amount assessed upon each poll is assessed as state tax and county tax respectively, and shall be, in substance, as follows:—

Names.	No. of Polls.	Poll-Tax.	Tax on Real Estate.	Tax on Personal Property.	Total.	Time when paid.
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Non-Residents.

Names.	Places of abode, if known.	Tax.
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Assessors in cities shall enter in the list opposite the name of each resident male tax-payer the place of his residence, giving the street and number if possible. Pub. Stats. ch. 11, § 61; Sts. 1889, ch. 467, § 1.

§ 624. The assessors shall, within a reasonable time, commit said tax-list with their warrant to the collector, or, if no collector is chosen, to a constable, or, if there is no constable, to the sheriff or his deputy for collection; but the assessors of a town shall not commit a tax-list to the collector until the bonds of such collector and of the town treasurer have been given and approved as required by law. Pub. Stats. ch. 11, § 62.

A warrant without a tax-list will not authorize a collector to collect by distress, but the two need not be attached together. *Barnard v. Graves*, 13 Met. 85.

Where a warrant is directed to a person as "constable or collector," it is sufficient if he is qualified to act at the time of the delivery of the warrant to him, though he was not at the time of its date. *Hays v. Drake*, 6 Gray, 387.

§ 625. The warrant shall specify the duties of the collector as prescribed by law in the collection of taxes; the times when and the persons to whom he shall pay them in; shall be substantially in the form heretofore used; and need not be under seal. Pub. Stats. ch. 11, § 63.

A warrant to the collector of taxes of a town, if it properly states what the collector is to do, and the preliminary steps to be taken by him in the collection of the tax, complies with the requirements of this section, and it is not invalid if it does not direct the collector what to do with the money when he has received it. *Leominster v. Conant*, 139 Mass. 384.

§ 626. When a warrant issued for the collection of taxes is lost or destroyed, the assessors may issue a new warrant therefor, which shall have the same force and effect as the original warrant. Pub. Stats. ch. 11, § 64.

FORM.

Warrant from Assessors to Collectors of Taxes.

Essex, ss.

To Collector of the town of in the County of Essex,
Greeting:

In the name of the Commonwealth of Massachusetts you are hereby required by us, the subscribers, assessors of said town, to levy and collect of the several persons named in the list herewith committed to you, and of each one his respective proportion therein set down of the sum total of such list, the sum of it being this town's proportion of a tax of granted by the last General Court of said Commonwealth for defraying the necessary charges and expenses of the county aforesaid, and a tax of voted and agreed upon by the town aforesaid at a meeting legally held for that purpose, on the day of last, for defraying the necessary charges and expenses thereof; together with the sum of being the overlayings on said taxes.

And you are to complete and make up an account of the collection of the whole sum, and transmit and pay over the same as follows; to wit: to Esq., treasurer of the county aforesaid, or his successor in that office, on or before the day of next, the sum of ; to treasurer of said town, or his successor in that office, on or before the day of next, the sum of

And if any person shall refuse or neglect upon demand by you made to pay the sum he is assessed in said list, you are to distrain the goods of such person to the value thereof, and the goods so distrained to keep at the expense of the owner for the space of four days at the least, and to sell the same within seven days after the seizure by public auction for the payment of the tax and the charges

of keeping and of the sale; first giving notice of such sale by posting up a notification thereof, in some public place in the town, forty-eight hours at least before the sale. If the distress shall be sold for more than the tax and the charges of keeping the same and making the sale, you are to return the surplus to the owner on demand, with an account in writing of the sale and charges. If any person shall refuse or neglect for fourteen days after demand thereof made to pay his tax, and you cannot find sufficient goods upon which it may be levied, besides tools or implements necessary for his trade or occupation, beasts of the plough necessary for the cultivation of his improved lands, military arms, utensils for housekeeping necessary for upholding life, and bedding, and apparel necessary for himself and family, you are to take the body of such person and commit him to prison, there to remain until he shall pay the tax and charges of commitment and imprisonment, or be otherwise discharged by order of law.

Given under our hands by virtue of a warrant (or certificate) from the commissioners of the county aforesaid, and the vote of said town passed on the day aforesaid, this day of in the year eighteen hundred and

	A. B. }	} <i>Assessors of B—d.</i>
	C. D. }	
	E. F. }	
County Tax,	\$	
Town Tax,	\$	
Overlaying,	\$	

The above are sold by stationers furnishing law blanks.

(e) *Discount and Interest on Taxes.*

§ 627. Towns at their annual meetings, and city councils of cities, may allow a discount of such sums as they think expedient to persons making voluntary payment of their taxes within such periods of time as they prescribe. In such case the collectors shall make such discount accordingly.

§ 628. When such discount is allowed, the assessors, at the time of committing their warrant to the collector, shall post up, in one or more public places within the city or town, notice of the rates of discount.

§ 629. When a city or town has fixed a time within which taxes assessed therein shall be paid, such city by its city council, and such town at the meeting when money is appropriated or raised, may vote that, on all taxes remaining unpaid

after a certain time, interest shall be paid at a specified rate, not exceeding seven per cent per annum; and may also vote that, on all taxes remaining unpaid after another certain time, interest shall be paid at another specified rate, not exceeding seven per cent per annum; and the interest accruing under such vote or votes shall be added to, and be a part of, such taxes. Pub. Stats. ch. 11, §§ 65-67.

FORM.

Notice of the Rates of Discount to be posted up by Assessors at the time of committing their Warrant to the Collector.

The assessors of the town of B—d hereby give notice that they have committed to A. B., collector of taxes for said town, their warrant for the collection of taxes, and that by a vote of said town the following discounts will be allowed to all who shall voluntarily pay their taxes, viz.:—

On all taxes paid within 30 days	per cent.
“ “ “ “ 60 “	per cent.
“ “ “ “ 90 “	per cent.

	E. F.	} <i>Assessors of B—d.</i>
	J. K.	
	L. M.	
B—d,	189 .	

(f) *Abatements.*

§ 630. A person aggrieved by the taxes assessed upon him may apply to the assessors for an abatement thereof; and if he makes it appear that he is taxed at more than his just proportion, or upon an assessment of any of his property above its fair cash value, they shall make a reasonable abatement, and tenants paying rent for real estate, and under obligation to pay the whole or a major part of the taxes assessed thereon, may so apply in behalf of the owner and with like effect as if the owner had applied, and no neglect of the owner to file a list of his estate shall prevent the making an abatement, if it appears that such abatement should be made. Sts. 1888, ch. 315. But assessors cannot make this abatement after their term of office has expired. *Cheshire v. Howland*, 13 Gray, 321.

When a person is liable to taxation for personal and real estate in a city or town, his *sole remedy* for an over-taxation

caused by an excessive valuation of his property, or by including in the assessment property of which he is not owner, or for which he is not liable to taxation, is by an application to the assessors for an abatement; but this does not apply to the case of one who is taxed in a town where he does not reside, upon his poll and personal estate. *Osborn v. Danvers*, 6 Pick. 98; *Preston v. Boston*, 12 Pick. 7; *Bates v. Boston*, 5 Cush. 93. Upon petition for abatement, taxes upon the same or other property of the petitioner cannot be increased. *Lowell v. County Commissioners*, 3 Allen, 546.

If certain distinguishable items of a tax upon personal property, assessed by a town to non-residents, are improperly assessed there, the only remedy is by an application for an abatement under this section. *Norcross v. Milford*, 150 Mass. 237.

§ 631. If legal costs have accrued before making such abatement, the person applying for the abatement shall pay the same. Pub. Stats. ch. 11, § 70.

§ 632. If the assessors refuse to make an abatement to a person, he may, within one month thereafter, make complaint thereof to the county commissioners by filing the same with their clerk, and if upon a hearing it appears that the complainant is overrated, the commissioners shall make such an abatement as they deem reasonable, and may make such order relating to the payment of costs as justice may seem to require: *provided*, that taxable costs shall not be allowed to a party who has failed to file a list of his estate as required by law. Pub. Stats. ch. 11, § 71; Sts. 1882, ch. 218.

A tax-payer who has brought in a list containing all the requisite particulars of his taxable property, is not entitled to an abatement because the assessors valued the items in gross, instead of separately as directed by the statute. *Lowell v. County Commissioners*, 152 Mass. 372.

§ 633. No person shall have an abatement unless he has filed with the assessors a list subscribed by him of his estate liable to taxation, and made oath that such list is full and accurate according to his best knowledge and belief. When such list is not filed within the time specified by the assessors

for bringing it in, no complaint from the judgment of the assessors shall be sustained by the county commissioners, unless they are satisfied that there was good cause why such list was not seasonably brought in, and except in cases provided for in the following section. Pub. Stats. ch. 11, § 72. The list must be brought to the assessors before the tax is assessed. *Porter v. County Commissioners of Norfolk*, 5 Gray, 365.

The exhibition to the assessors of a plan of the tax-payer's real estate is not the carrying in of a list; nor is a reference by oral communication to a former list, carried in two years before. Nor is the fact that the assessors are satisfied without a list equivalent to bringing in a list. *Winnisimmet Company v. Assessors, etc.*, 6 Cush. 477.

A person cannot have an abatement of tax before filing with the assessors the list required by the foregoing section, although there is good cause shown why such a list was not seasonably brought in; and although he has offered to make out a schedule of his estate, which the assessors have declined to receive, and has made before them an oral statement of his estate under oath. *Charlestown v. County Commissioners*, 101 Mass. 87.

A list with the name of each shareholder, his residence, and the number of his shares furnished to the assessors of taxes where a bank is located, in the case of national banks, satisfies the requirements of this section. *Bank of Commerce v. New Bedford*, 155 Mass. 313. The word "person," in the sections of the statutes relating to abatement of taxes, applies to a corporation. *Bank of Commerce v. New Bedford, ibid.*

§ 634. When the assessors of a city or town have given notice to the inhabitants thereof to bring in true lists of their polls and estates not exempt from taxation, in accordance with the provisions stated in § 601 *ante*, no part of the tax assessed on personal estate to a person who did not within the time specified therefor bring in such list shall be abated unless such tax exceeds by more than fifty per cent the amount which would have been assessed to that person on personal estate if he had seasonably brought in said list; and if said tax exceeds by more than fifty per cent the said amount, the abatement

shall be only of the excess above said fifty per cent: *provided*, that this section shall not affect any person who can show a reasonable excuse for not seasonably bringing in such list.

§ 635. No abatement shall be allowed to a person unless he makes application therefor within six months after the date of his tax bill. Pub. Stats. ch. 11, §§ 73, 74.

§ 636. A person having an abatement made shall, if his tax has been paid, be reimbursed out of the treasury of the city or town to the amount of the abatement allowed, together with all charges, except the legal costs provided for in § 631 *ante*. Pub. Stats. ch. 11, § 75.

Charges do not include the petitioner's costs in prosecuting his petition for abatement, nor interest upon the amount abated which had been paid by him under protest. *Lowell v. County Commissioners*, 3 Allen, 546.

§ 637. Every person whose tax is abated shall be entitled to a certificate thereof from the assessors, clerk of the commissioners, or other proper officer.

§ 638. When a collector is satisfied that any poll tax, or tax upon personal property, or any portion of said tax, committed to him or to any of his predecessors in office for collection, cannot be collected by reason of the death, absence, poverty, insolvency, bankruptcy, or other inability to pay of the person assessed, he shall notify the assessors thereof in writing, stating the reason why such tax cannot be collected, and verifying the same by oath. In such case the assessors, after due inquiry into the circumstances, may abate such tax, or any part thereof. When such abatement is made, the assessors shall certify the same in writing to the collectors; and said certificate shall discharge the collector from further obligation to collect the tax so abated. But no poll-tax shall be abated under the provisions of this section within the calendar year in which the tax is assessed. Pub. Stats. ch. 11, §§ 76, 77.

§ 639. When a collector of taxes of a city or town is satisfied that any sum heretofore added to the annual tax of any parent, master, or guardian, as or for the costs of books, cannot be collected for any of the reasons set forth in the preceding section he may make such statements, and the assessors may

make such abatements, as are provided for in said section, and the certificate of the assessors abating such tax or any part thereof, shall discharge the collector from further obligation to collect the same. Sts. 1885, ch. 67.

(g) *Omitted Assessments.*

§ 640. When the assessors of any city or town, after their rate of taxation has been declared, and whether before or after their warrant has been committed to the collector, discover that the real or personal estate of any person, to an amount not less than one hundred dollars and liable to taxation, has been omitted from the last annual assessment of taxes in such city or town, said assessors shall between the fifteenth and twentieth days of December next ensuing proceed forthwith to assess such person for such estate in like manner as he should have been assessed in such last annual assessment. The taxes so assessed shall be entered in the tax-list of the collector of the city or town, and he shall collect and pay over the same in the manner specified in his warrant. No tax shall be invalidated for the reason that, in consequence of the provisions of this section, the whole amount of the taxes assessed in a city or town exceed the amount authorized by law to be raised. Sts. 1888, ch. 362.

(h) *Reassessment of Taxes.*

§ 641. Every tax, except a poll-tax, which is invalid by reason of any error or irregularity in the assessment, and which has not been paid, or which has been recovered back, may be reassessed by the assessors for the time being, to the just amount to which, and upon the estate or to the person to whom, such tax ought at first to have been assessed, whether such person has continued an inhabitant of the same city or town or not. No alienation of the real estate assessed shall defeat such reassessment, if made within two years after the tax first assessed was committed to the collector.

§ 642. Taxes reassessed under the provisions of the preceding section shall be committed to, and collected and paid over by, the collector for the time being, in the same manner as other taxes, except that the name of the person to whom

the taxes were originally assessed shall be stated in the warrant; and the bond of such collector shall apply to such reassessed taxes.

(i) *Apportionment of Taxes on Real Estate Subsequently Divided.*

§ 643. When the assessors have assessed a tax upon real estate, and such real estate has been subsequently divided by sale, mortgage, or otherwise, by the owner or owners thereof, or upon a petition for partition, and record of such division has been made in the registry of deeds for the county or district in which such real estate is situated, the assessors at any time before said real estate has been sold for payment of taxes, upon the written request of the owner or mortgagee of any portion thereof, shall apportion said tax, and the costs and interest accrued thereon, upon the several parcels into which said real estate has been divided, in proportion to the value of each parcel thereof, and only the portion of said tax, interest, and costs so apportioned upon any such parcel shall thereafter continue to be a lien upon it; and no one of such owners or mortgagees shall thereafter be liable for the tax so apportioned upon any parcel not owned in whole or in part by him at the time of such apportionment.

§ 644. Notice of the request and of the time appointed for such apportionment shall be sent by mail by the assessors to all persons interested in said real estate whose addresses are known to them. Pub. Stats. ch. 11, §§ 79-82.

(j) *Additional Duties of Assessors.*

§ 645. When any person liable to be taxed for personal property has changed his domicil, the assessors of the city or town where he resides shall require forthwith of the assessors of the city or town where such person was last taxed as an inhabitant such written statement of any facts within their knowledge as will assist in determining the value of the personal estate of such person, and also the amount he was last assessed in such city or town; and such information shall be furnished by the assessors of the city or town where he was

last taxed or assessed. When the assessors of any city or town have received notice from the assessors of any other city or town of the amount at which a person, who had been an inhabitant thereof, was last taxed on personal property, such notice shall be filed in their office, subject to public inspection; and they shall not assess such person upon any less amount of personal estate than he was last assessed, until he has brought in to such assessors a list of his personal estate in accordance with the provisions stated in §§ 601 and 605 *ante*. Whoever neglects to perform any duty imposed upon him by this section shall be punished by fine of not less than fifty nor more than two hundred dollars.

§ 646. The assessors shall annually, on or before the first Monday of August, return to the tax commissioner the names of all corporations, except banks of issue and deposit, having a capital stock divided into shares, chartered by the Commonwealth or organized under the general laws for the purposes of business or profit, and established in their respective cities and towns or owning real estate therein, and of all companies, copartnerships, and other associations having a location or place of business in this Commonwealth in which the beneficial interest is held in shares assignable without consent of the other associates specifically authorizing such transfer, and a statement in detail of the works, structures, real estate, and machinery owned by each of said corporations, companies, copartnerships, and associations, and situated in such city or town, with the value thereof, on the first day of May preceding, and the amount at which the same is assessed in said city or town for the then current year. They shall also, at the same time, return to the tax commissioner the amount of taxes laid, or voted to be laid, within said city or town, for the then current year, for state, county, and town purposes. Pub. Stats. ch. 11, §§ 85, 86.

§ 647. When the assessors of any city or town ascertain that the aggregate values of such city or town have been diminished since the first day of May of the preceding year, they shall return with the table of aggregates, or with the books which they are required by the §§ 619 and 620 *ante* to deposit in the office of the secretary of the Commonwealth,

a statement in writing, under oath, of the causes which in their opinion have produced such diminution.

§ 648. The assessors shall, on or before the first day of October in each year, make and forward to the tax commissioner a statement showing the whole amount of exempted property entered upon the valuation lists of their respective cities and towns in accordance with the provisions stated in § 621 *ante*, and the amount in each class, and stating separately the aggregate amount belonging to each of the four classes embraced in the third division of § 660 *post*. They shall also include in said statement a tabular statement of the statistics derived from the returns described in § 663 *post*. Pub. Stats. ch. 11, §§ 88, 90.

§ 649. The tax commissioner shall cause to be printed and distributed to assessors suitable printed forms for such lists and statements, and assessors shall forward to the tax commissioner all such lists and statements received by them, with the statements required by the preceding section. Sts. 1882, ch. 217, § 3.

§ 650. The assessors shall, on or before the first Monday of August, return to the tax commissioner the aggregate amount of the assets of their respective cities or towns, and the amount of indebtedness of such cities or towns, for which notes, bonds, or other similar evidences of debt, the payment of which is not provided for by the taxation of the then current year, were outstanding on the first day of May then next preceding, with a concise statement of the various purposes for which such indebtedness was incurred, and the amount incurred for each purpose. Pub. Stats. ch. 11, § 91.

§ 651. The return required by the preceding section shall state the amount of any sinking fund established, and if not so established whether action has been taken in accordance with the provisions stated in § 598 *ante* and the amounts raised and applied thereunder for the current year. Sts. 1882, ch. 133, § 2.

§ 652. The assessors shall, in each year, on or before the first Monday in August, return to the tax commissioner a statement showing the whole number of steam-boilers located in their respective cities and towns on the first day of May

then next preceding, by whom and when built, and the aggregate estimated amount of horse-power which such boilers are capable of furnishing. Such return shall also state the number of accidents causing permanent injuries to persons which have arisen from the use of such boilers during the year, with the causes thereof, as far as may be ascertained by the assessors. Pub. Stats. ch. 11, § 92. The tax commissioner shall, in due season, forward to the assessors blanks suitable for making the returns required by this section. Pub. Stats. ch. 13, § 6.

§ 653. The assessors of any city or town shall, upon application to any one of them by any person assessed therein, give such person a certificate, which shall state what portion of the whole amount of such person's tax is assessed as state tax, county tax, and town tax, respectively; and in such case the collector shall receive and receipt for either of such taxes separately, or for all together, as may be desired by the taxpayer; and in such case also the state tax assessed upon poll and property, and the county tax assessed upon poll and property, shall each constitute an entire and indivisible tax: *provided*, that the tax bills of male persons who are assessed for poll taxes only shall state the apportionment of such taxes between state and county assessments, and such persons shall not be entitled to have the certificate provided for by this section, but the collector shall receipt on said bills for such taxes, separately, or together as the payment may be, and shall thereupon deliver such bills. Pub. Stats. ch. 11, § 93, and Sts. 1889, ch. 467, § 2.

(k) *Responsibility and Compensation of Assessors.*

§ 654. The assessors shall not be responsible for the assessment of a tax in a city, town, parish, religious society, fire district, or school district, for which they are assessors, when such tax is assessed by them in pursuance of a vote for that purpose, certified to them by the clerk or other proper officer of such city, town, parish, religious society, fire district, or school district, except for the want of integrity and fidelity on their own part. Pub. Stats. ch. 11, § 94.

Assessors who act with fidelity and integrity in assessing a tax, in pursuance of a vote duly certified to them, are not

responsible in any form of action for accidentally assessing a person not an inhabitant of the town or liable to be taxed. *Baker v. Allen*, 21 Pick. 382.

Nor are they liable for omitting to tax an individual who is liable to taxation, by which he lost his right to vote, unless it is shown affirmatively that the omission was caused by want of integrity or fidelity. *Griffin v. Rising*, 11 Met. 339.

But they are liable for assessing and issuing a warrant for the collection of a tax when the town is not legally organized. *Dickinson v. Billings*, 4 Gray, 42.

§ 655. Each assessor shall be paid by his city or town two dollars and fifty cents a day for every whole day that he is employed in that service, with such other compensation as the city or town shall allow. Pub. Stats. ch. 11, § 95.

He is entitled to the statute compensation, if it exceeds that provided by the town; but it must appear from the vote of the town that the sum voted is intended to be in addition to the statute compensation, if he is to take both. *Moody v. Newburyport*, 3 Met. 431.

PERSONS AND PROPERTY SUBJECT TO TAXATION AND WHERE TAXABLE.

(a) *Persons and Property Taxable.*

§ 656. A poll-tax shall be assessed, in the manner hereinafter provided, on every male inhabitant of the Commonwealth above the age of twenty years whether a citizen of the United States or an alien.

§ 657. All property, real and personal, of the inhabitants of this state, not expressly exempted by law, shall be subject to taxation as hereinafter provided. Pub. Stats. ch. 11, §§ 1, 2.

§ 658. Real estate, for the purposes of taxation, shall include all lands within this state, and all buildings and other things erected on or affixed to the same. Pub. Stats. ch. 11, § 3.

Real estate for the purpose of taxation, includes all lands, and all buildings and other things erected on or affixed to the same. This language will include a dam and sluice-way of a water company. *Flax Pond Water Co. v. Lynn*, 147 Mass. 31, at p. 33.

“ A tax on real estate is regarded as a distinct and separate tax.” HOLMES, J., in *Ingram v. Cowles*, 150 Mass. 155, at p. 157.

A building affixed to land cannot be taxed as “ real estate ” apart from the land to which it is attached. If a building is owned separately from the land as personal property, it cannot be taxed as real estate to the owner so as to create a lien, so that the purchaser will not succeed to any personal liability of the owner to pay the tax. *McGee v. Salem*, 149 Mass. 238.

Owners of real estate, including trustees with the legal title, properly taxed for it, are personally liable for the tax. *Richardson v. Boston*, 148 Mass. 508.

An action of contract to recover a tax lies after one year’s neglect to pay the same, in like manner as for an individual debt. *Felker v. Standard Yarn Co.*, 148 Mass. 226.

Land owned by a manufacturing company under a canal passing through its premises is taxable to it, although its right to use the water is subject to that of others to have the water flow through the canal for use beyond its premises. *Lowell v. County Commissioners*, 152 Mass. 372.

§ 659. Personal estate shall, for the purposes of taxation, include goods, chattels, money, and effects, wherever they are, ships and vessels at home or abroad, except as is stated in § 662 *post*, money at interest, and other debts due the persons to be taxed more than they are indebted or pay interest for, but not including in such debts or indebtedness any loan on mortgage of real estate, taxable as real estate, except the excess of such loan above the assessed value of the mortgaged real estate, public stocks and securities, bonds of all railroads, including street railways, stocks in turnpikes, bridges, and moneyed corporations, within or without the state, the income from an annuity, from ships and vessels engaged in the foreign carrying trade within the meaning of said § 662, and so much of the income from a profession, trade, or employment as exceeds the sum of two thousand dollars a year, and which has accrued to any person during the year ending on the first day of May of the year in which the tax is assessed, but no income shall be taxed which is derived from property subject to taxation: *provided*, that no taxes shall be assessed in any city or town for state, county, or town purposes upon the shares in the capital

stock of any corporation organized or chartered in the Commonwealth paying a tax on its corporate franchises under the provisions of chapter thirteen of the Public Statutes for any year in which it pays such tax, but such shares shall be taxable to the owners thereof for school-district and parish purposes, and this proviso shall apply to corporations mentioned in the forty-sixth section of said chapter thirteen. Pub. Stats. ch. 11, § 4 ; Sts. 1882, ch. 76 ; Sts. 1887, ch. 228 ; Sts. 1888, ch. 363.

A clerk in a post-office, who is appointed by the deputy postmaster, and his appointment approved by the postmaster-general, is taxable for the income derived from his appointment as such clerk. This was held on the ground that he is not an officer of the United States, it having been decided in the Supreme Court of the United States that the several states have no authority to tax an officer of the government of the United States for his office or its emoluments. *Melcher v. Boston*, 9 Met. 73.

Returns required by the statutes of another state, to the assessors, showing all the property and estate of a person, have no tendency to show what his income was, and are inadmissible in evidence. *Nelson v. B. & M. R. R.*, 155 Mass. 356.

Railroad stocks and bonds are not "public stocks and securities" within the meaning of this section, but are "debts due," and the money invested in them is "money at interest" from which the owner is entitled, in determining the amount for which his personal estate shall be taxed under this section, to have money upon which he is paying interest deducted. *Hale v. County Commissioners*, 137 Mass. 111.

Money deposited in a national bank (although bearing no interest) is liable to be taxed to the depositor, without any deduction on account of debts due from him. *Gray v. Street Commissioners*, 138 Mass. 414.

Under this section, taken in connection with ch. 13, §§ 43, 46, 57 of the Public Statutes, the shares of stock of a corporation organized under the laws of this Commonwealth to build a railroad in a foreign country are taxable to the owner for state, county, or town purposes (although the corporation pays a tax on its franchise to the Commonwealth). *Pratt v. Street*

Commissioners, 139 Mass. 559. The income from an annuity is taxable to those entitled to receive it. *Williston Seminary v. County Commissioners*, 147 Mass. 427.

(b) *Property and Persons Exempted from Taxation.*

§ 660. The following property and polls shall be exempted from taxation:—

First, The property of the United States.

Second, The property of the Commonwealth, except real estate of which the Commonwealth is in possession under a mortgage for condition broken.

But in all cases where land belonging to the Commonwealth, and which on the twenty-eighth day of March in the year eighteen hundred and sixty-seven was in the control of the commissioners of public lands, has been sold by any commissioners of the Commonwealth, and agreements for deeds given, such land shall be free from taxation for the space of three years thereafter, unless previously built upon or otherwise improved by the purchasers or their assigns; and upon the expiration of three years from the date of such sale, such lands shall be taxable to the purchasers thereof, or their assigns, in the same manner and to the same extent as if deeds of the same had been executed and delivered. Pub. Stats. ch. 11, § 5, cls. 1, 2.

Third, The personal property of literary, benevolent, charitable and scientific institutions and temperance societies incorporated within this Commonwealth, and the real estate belonging to such institutions occupied by them or their officers for the purposes for which they were incorporated; but such real estate when purchased by such a corporation with a view to removal thereto, shall not, prior to such removal, be exempt for a longer period than two years; but none of the real or personal estate of such corporations organized under general laws shall be exempt when any portion of the income or profits of the business of such corporations is divided among their members or stockholders or used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes. The personal property and real estate belonging to grand army and veteran associations incorporated

within this Commonwealth for the purpose of owning property for the use and occupation by posts of the grand army of the republic shall, to the extent of twenty thousand dollars, if the same shall be in actual use and occupation by such associations, be deemed to be the property of charitable institutions, and exempt from taxation, provided the net income from said property is used for charitable purposes in aid of needy soldiers of the war of the rebellion, and their dependents. Sts. 1889, ch. 465.

An institution for the education of boys, consisting of a farm, which was used to sustain the scholars, and upon which they worked is exempt from taxation. *Mount Hermon Boys' School v. Gill*, 145 Mass. 139.

An accumulating fund held in trust for the future benefit of an incorporated educational institution is exempt from taxation. *Williston Seminary v. County Commissioners*, 147 Mass. 427.

A society for the prevention of cruelty to animals is a "benevolent" and "charitable" institution, and so is exempt from taxation. *Mass. Society, etc. v. Boston*, 142 Mass. 24.

Real estate which a corporation organized for the education and religious instruction of children owns and permits to be used as purely incidental to the management of a parochial school situated on another's adjoining property, and entirely controlled and supported by others than itself, is not exempt from taxation. *St. James Educational Institute v. Salem*, 153 Mass. 185.

If a corporation organized for "the purpose of diffusing knowledge and promoting intellectual improvement," occupies a hall in a building owned by it for a few evenings only each winter, for a course of lectures on literary and scientific subjects, and during the rest of the year lets the hall for various purposes, the estate is not exempt from taxation, although the income derived from letting the hall is devoted exclusively to making provision for such course of lectures. *Salem Lyceum v. Salem*, 154 Mass., 15.

Fourth, All property belonging to common-school districts, the income of which is appropriated to the purposes of education.

Fifth, The Bunker Hill Monument.

Sixth, The wearing apparel and farming utensils of every person; his household furniture not exceeding one thousand dollars in value; and the necessary tools not exceeding three hundred dollars in value of a mechanic. Pub. Stats. ch. 11, § 5, cls. 4-6.

Seventh, Houses of religious worship owned by a religious society, or held in trust for the use of religious organizations, and the pews and furniture (except for parochial purposes); but portions of such houses appropriated for purposes other than religious worship shall be taxed at the value thereof to the owners of the houses. Pub. Stats. ch. 11, § 5, cl. 7.

A parsonage erected for a religious society on its land, and near its church edifice, for the use of its ministers as a dwelling-house exclusively, free of rent, is not exempt from taxation. "It is true that it would aid in the support of public worship, if the clergyman or other religious instructor could be provided with a dwelling for his occupation, but the Legislature has not undertaken to exempt that which would do this, but the house of religious worship only." *DEVENS, J., in Third Congregational Soc. v. Springfield*, 147 Mass., 396.

Eighth, Cemeteries, tombs, and rights of burial, so long as the same shall be dedicated for the burial of the dead. Pub. Stats. ch. 11, § 5, cl. 8.

Ninth, The estate, both real and personal, of incorporated agricultural societies. Such portions of real estate and buildings belonging to incorporated horticultural societies as are used for their offices, libraries, and exhibitions, are exempt from taxation. Pub. Stats. ch. 11, § 5, cl. 9; Sts. 1884, ch. 176.

This exemption is not extended to sewer, nor to highway assessments. *Mt. Auburn Cemetery v. Cambridge*, 150 Mass. 12, at p. 18.

Tenth, The property, to the amount of five hundred dollars, of a widow or unmarried woman above the age of twenty-one years, of any person above the age of seventy-five years, and of any minor whose father is deceased, whether such property be owned by such person separately, or jointly, or as tenant in common with another or others: *provided*, that the whole

estate real and personal of such person does not exceed in value the sum of one thousand dollars exclusive of property otherwise exempted under the provisions of this section; *and provided, further*, that no property shall be so exempted which in the judgment of the assessors has been conveyed to such person for the purpose of evading taxation. A person aggrieved by such judgment may appeal to the county commissioners within the time and in the manner allowed by law for an appeal in respect of the abatement of taxes. Sts. 1885, ch. 169.

Eleventh, Mules, horses, and neat cattle, less than one year old; and swine and sheep less than six months old.

Twelfth, The polls and any portion of the estates of persons who by reason of age, infirmity, and poverty, are in the judgment of the assessors unable to contribute fully towards the public charges. Pub. Stats. ch. 11, § 5, cls. 11, 12.

A corporation established to manage and apply a fund towards the support of a minister, either by paying the same directly, in whole or in part, to the minister or to the treasurer of the parish, or otherwise to the use of the parish and for their relief and benefit, is not, it seems, a "charitable" institution within the meaning of the third clause of this section. *Trustees of Greene Foundation v. City of Boston*, 12 Cush. 59.

A dwelling-house built by the corporation of Harvard College, one of the institutions included in the third clause of this section, on land of the corporation within the college yard and leased to one of the professors, to be occupied by him as a residence for himself and family at an annual rent, is not exempt from taxation. But it would be otherwise if the building had been built for one of the professors or officers of the college, and had been occupied by him with the permission of the college, and without having any estate therein, or paying any rent therefor. *Pierce v. Cambridge*, 2 Cush. 611.

Land taken for public uses is exempt from taxation; that is, where a public duty is imposed upon those taking it, or they are charged with a public trust. Under this exemption is included land taken by a railroad company under its location, and the buildings and structures erected thereon, if they

are reasonably necessary to its proper and convenient use as a railroad. *Worcester v. Western R. R. Co.*, 4 Met. 564; *Boston & Maine R. R. Co. v. Cambridge*, 8 Cush. 237.

Land purchased in fee or otherwise taken by a city by authority of the Legislature for the purpose of supplying the city with pure water, and used for that purpose only, is exempt. *Wayland v. County Commissioners*, 4 Gray, 500.

“Where a person accepts the position of trustee, and holds property merely in trust for purposes which of themselves do not entitle the property to exemption from taxation, he stands in respect to such property no better than an individual trustee would stand.” *Salem Marine Society v. Salem*, 155 Mass. 329, at p. 330.

§ 661. All plantations of chestnut, hickory, white ash, white oak, sugar maple, European larch, and pine timber trees, in number not less than two thousand trees to the acre, upon land (not at the time of said planting woodland or sproutland, and not having been such within five years previously), the actual value of which at the time of planting does not exceed fifteen dollars per acre, shall together with the land upon which the same are situated be exempt from taxation for a period of ten years from and after said trees have grown in height four feet on the average subsequently to such planting: *provided*, that said exemption shall not extend beyond the time during which said land is devoted exclusively to the growth of said trees, and that the owner or owners of such plantations appear and prove to the satisfaction of the board of assessors in the towns where the same are located the existence of said conditions.

§ 662. Ships and vessels engaged in the foreign carrying trade shall not for the purposes of taxation be included in the personal estate of persons to be taxed; but the net yearly income of such ships or vessels shall be taxed to the owner or owners thereof in their places of residence proportionally to their interest therein. No ship or vessel unless actually engaged in such trade, or in port undergoing repairs, shall be deemed to be engaged in said trade within the meaning of this section.

§ 663. The provisions of the preceding section shall not

apply to any ship or vessel, unless her agent or owner, on or before the first day of June in each year, returns in writing, under his oath, to the assessors of each city and town in the Commonwealth in which an owner of any share or interest in the ship or vessel resided on the first day of May in said year, the name of such owner, the name, class, and tonnage of the ship or vessel, the fact that she was on said first day of May engaged in the foreign carrying trade within the meaning of said section, the share or interest of such owner therein, and the dividends paid him upon his said share or interest during the year ending on said first day of May; and such dividends shall constitute the net yearly income to be taxed to such owner as provided in said section. Pub. Stats. ch. 11, §§ 7-9.

§ 664. The assessors of any city or town may, on or before the first day of September in any year before the year eighteen hundred and ninety three, make a return, under oath, to the tax commissioner, showing the amount of its taxable valuation on the preceding first day of May, the fair cash value of the ships and vessels returned to them in said year under the preceding section, the net income therefrom so returned, the rate of tax on each one thousand dollars in said year, and the increase in said rate arising under the provisions of the two preceding sections; and the commissioner shall thereupon credit to the city or town, as a set-off to any tax or other payment to be made by it to the treasurer of the Commonwealth, an amount equal to an assessment of said increase in the rate of tax upon the amount of said taxable valuation. Pub. Stats. ch. 11, § 10; Sts. 1891, ch. 116.

(c) *Where Polls and Property shall be Assessed.*

§ 665. The poll-tax shall be assessed upon each taxable person in the place where he is an inhabitant on the first day of May in each year, except in cases otherwise provided for by law. The poll-tax of minors liable to taxation shall be assessed to, and in the places of the residence of, the parents, masters, or guardians having control of the persons of such minors; but if a minor has no parent, master, or guardian within the Commonwealth, he shall be personally taxed for his poll, as if he were of full age. The poll-tax of every other

person under guardianship shall be assessed to his guardian in the place where the guardian is taxed for his own poll. In cities each inhabitant liable to assessment shall be assessed in the ward where he dwells ; but no tax shall be invalid by reason of a mistake of the assessors in ascertaining the ward in which a person should be assessed. Pub. Stats. ch. 11, § 11.

First, "every person has a domicil somewhere, and no person can have more than one domicil at the same time for one and the same purpose." Second, "a man retains his domicil of origin till he changes it by acquiring another, and so each successive domicil continues until changed by acquiring another." Opinion of the Judges of the Supreme Judicial Court of Massachusetts, 5 Met. 587 ; *Otis v. City of Boston*, 12 Cush. 50.

It is equally well settled, that in order to change the domicil the fact and intent must concur, — neither alone is sufficient ; by which it must be intended that there needs to be a change of residence, with an intention to remain in the new place of residence an indefinite time, and without the intention of returning to the former domicil at any particular period, or when any particular purpose is accomplished. *Bulkley v. Williamstown*, 3 Gray, 495 ; *Holmes v. Greene*, 7 Gray, 300.

§ 666. A taxable person who is in a city or town on the first day of May, and who, when inquired of by the assessors thereof, refuses to state where he considers his legal residence to be, shall for the purpose of taxation be deemed an inhabitant of such place. If, when so inquired of, he designates another place as his legal residence, said assessors shall notify the assessors of such place, who, upon receiving the notice, shall tax such person as an inhabitant of their city or town. But such person shall not be exempt from the payment of a tax legally assessed upon him in the city or town of his legal domicil. Pub. Stats. ch. 11, § 12.

§ 667. For the purpose of assessing and collecting taxes on real estate the persons appearing in the records of the county where the real estate lies as the owners thereof on the first day of May, even if deceased, shall be held to be the true owners thereof. Taxes on real estate shall be assessed, in the city or town where the estate lies, to the person who is either the owner or in possession thereof on the first day of May.

Mortgagors of real estate shall, for the purposes of taxation, except as provided in the three following sections, be deemed owners until the mortgagee takes possession, after which the mortgagee shall, except as provided in said sections, be deemed the owner. Sts. 1889, § 84.

The real estate of banks and manufacturing corporations is to be taxed to them in the place where it is situated. *Tremont Bank v. Boston*, 1 Cush. 142; *Dunnell Manufacturing Corporation v. Pawtucket*, 7 Gray, 277.

The obligation of a person to pay a tax depends upon his title on May first; and the fact that the tax is not actually assessed until after that day is immaterial. *Kearns v. Cunniff*, 138 Mass. 434.

If a person buys a parcel of land at a tax-collector's sale, and receives a deed thereof, which is recorded, before the first day of May, and no other transfer of the parcel is made until after that date, he is the "person appearing of record as the owner," and a tax upon the land is properly assessed to him, although the former had on the said first day of May a right to redeem the land. *Butler v. Stark*, 139 Mass. 19.

A widow who has only a right of dower in a parcel of land, which right of dower has not been assigned to her, is not the person "in possession," and so is not liable for the tax upon the land. *Lynde v. Brown*, 143 Mass. 337.

If a husband and wife with their children live together on the wife's real estate, the husband is presumed to be the one in possession, and the taxes on the property are properly assessed to him. *Southworth v. Edmands*, 152 Mass. 203.

§ 668. When any person has an interest in real estate (not exempt from taxation under the statements in § 660 *ante*) as holder of a duly recorded mortgage given to secure the payment of money, the amount of which is fixed and certain, the amount of his interest as mortgagee shall be assessed as real estate in the place where the land lies; and the mortgagor shall be assessed only for the value of said real estate after deducting the assessed value of all such mortgagee's interests therein. When such property is situated in two or more places, the amount of the mortgagee's interest to be assessed in each place shall be proportioned to the assessed value in

the respective places of the mortgaged real estate, deducting therefrom the taxable amount of prior mortgages, if any, thereon. Pub. Stats. ch. 11, § 14; Sts. 1882, ch. 175, § 3.

§ 669. If any holder of such a mortgage fails to file in the assessors' office a statement under oath of all his estate liable to taxation under the preceding section, including a statement of the full amount remaining unpaid upon such mortgage and of his interest therein, the amount stated in the mortgage shall be conclusive as to the extent of such interest; but the mortgagees' interests in such real estate shall not be assessed at a greater sum than the fair cash valuation of the land and the structures thereon or affixed thereto; and the amount of a mortgage interest in an estate that has been divided after the creation of such mortgage shall not be required to be apportioned upon the several parts of such estate, except as stated in §§ 643 and 644 *ante*. Pub. Stats. ch. 11, § 15.

§ 670. Mortgagors and mortgagees referred to in the two preceding sections shall, for the purposes of taxation, be deemed joint owners until the mortgagee takes possession; and until such possession is taken by a first mortgagee, the assessors or the collector of taxes, upon application to any one of them, shall give to any such mortgagee or mortgagor a tax-bill showing the whole tax on the mortgaged estate, and the amount included in the valuation thereof as the interest of each mortgagee and of the mortgagor respectively. If the first mortgagee is in possession, he shall be deemed sole owner; and any other mortgagee in possession shall be deemed joint owner with prior mortgagees. Pub. Stats. ch. 11, § 16.

“These provisions apply to corporations who are mortgagees, as well as to natural persons. Thus in determining the basis on which to levy the tax on the franchise of a corporation, the value of the mortgages held by the corporation and subject to local taxation, must be deducted from the aggregate value of the shares of the company.” MORTON, C. J., in *Firemen's Insurance Co. v. Com.*, 137 Mass. 80.

§ 671. The undivided real estate of a deceased person may be assessed to his heirs or devisees without designating any of them by name, until they have given notice to the assessors of the division of the estate and of the names of the several

heirs or devisees ; and each heir or devisee shall be liable for the whole of such tax, and when paid by him he may recover of the other heirs or devisees their respective portions thereof. Pub. Stats. ch. 11, § 18.

When it appeared of record that the real estate of a deceased person had become vested in devisees, who were not his heirs, the tax could not properly be assessed to the heirs of the deceased, and the tax sales of the land are void. *Tobin v. Gillespie*, 152 Mass. 219.

§ 672. The real estate of a person deceased, the right or title to which is doubtful or unascertained by reason of litigation concerning the will of the deceased, or the validity thereof, may be assessed in general terms to the estate of the deceased ; and said tax shall constitute a lien upon the land so assessed, and may be enforced by the sale of the same or a part thereof, as provided for enforcing other liens for taxes on real estate. Pub. Stats. ch. 11, § 19.

§ 673. All personal estate, within or without the Commonwealth, shall be assessed to the owner in the city or town where he is an inhabitant on the first day of May, except as is stated in §§ 680-689 *post* and in the following clauses of this section : —

First, All goods, wares, merchandise, and other stock in trade (except ships or vessels owned by a copartnership), including stock employed in the business of manufacturing or of the mechanic arts, in cities or towns within the Commonwealth other than where the owners reside, whether such owners reside within or without the Commonwealth, shall be taxed in those places where the owners hire or occupy manufactories, stores, shops, or wharves, whether such property is within said places or elsewhere on the first day of May of the year when the tax is made. Pub. Stats. ch. 11, § 20, cl. 1.

It makes no difference that the property belongs to a firm one of whose partners resides in the town where the property is situated. To constitute an occupation, there must be an actual possession, use, and efficient control of the premises ; such an occupation as one who owns or hires would ordinarily have. *Lee v. Templeton*, 6 Gray, 579.

The interest of an inhabitant of this Commonwealth, as a partner, in the property of a firm established and carrying on

business in another state is taxable here. *Bemis v. Aldermen of Boston*, 14 Allen, 366.

This clause and the third below do not apply to corporations chartered by this state, as the stockholders are liable to taxation upon their shares in the towns where they dwell, but it is applicable to property owned by a foreign corporation. *Middlesex R. R. Co. v. Charlestown*, 8 Allen, 333; *Blackstone Manuf. Co. v. Blackstone*, 13 Gray, 488.

A dealer in ice had a storehouse in which his ice was kept, in a town other than that in which he resided. Held, that the building in which the ice was kept was not a "store" and that the ice was not taxable to him in that town. *Hittinger v. Westford*, 135 Mass. 258.

The office furniture, etc., of a foreign corporation at its place of business in this Commonwealth, is taxable as "stock in trade," and such place of business is a "shop." *Boston Loan Co. v. Boston*, 137 Mass. 332.

"Stock in trade" must be domiciled in the place where the owner has his "store" or "shop" in order to be taxable to him there. *Hittinger v. Boston*, 139 Mass. 17.

Plaintiff had a store in L., where he did not reside. From this store he leased sewing machines to people in L. Held, The sewing machines were "stock in trade" within the meaning of the preceding clause. For by the contract under which possession of the machines was delivered the general and taxable property in them remained in the plaintiff and was held for the purpose of the business carried on at his store, as fully as if the machines had remained in the store. *Singer Manuf. Co. v. County Commissioners*, 139 Mass. 266.

A keeper of cattle for a railroad company, who was a resident of another town and who owned and employed certain property in performing his duties, storing the necessary hay and grain in a barn on the premises, and who was also a member of a firm of cattle dealers which was permitted to use an office for transacting its business at the yard, is not liable to pay a tax on such property as "stock in trade;" nor did he or the firm occupy a "store" or "shop" at the yard within the exception of this section. *Farwell v. Hathaway*, 151 Mass. 243.

Second, All machinery employed in any branch of manufactures shall be assessed where such machinery is situated or employed; and in assessing the stockholders for their shares in any manufacturing corporation, there shall first be deducted from the value thereof the value of the machinery and real estate belonging to such corporation. Pub. Stats. ch. 11, § 20, cl. 2.

This clause does not apply to foreign corporations. *Dwight v. Mayor, etc. of Boston*, 12 Allen, 316.

The cutting of ice and storing it in a building is not a "manufacture" so that the machinery employed therein is taxable to the owner. *Hittinger v. Westford*, 135 Mass. 258.

A portable steam saw-mill temporarily located in a town on the first day of May is not taxable there as "machinery employed in any branch of manufactures" and "situated or employed" there, within the meaning of this section; nor can its product in timber and sawed lumber be taxed there if the owner's temporary occupancy of land with the saw-mill is the only evidence that he there occupied a "manufactory," "store," or "shop," or "wharf." *Ingram v. Cowles*, 150 Mass. 155.

Movable copper rolls, mills, and dies used in a calico printing factory for printing cloth are not necessarily parts of the machinery in the factory for purposes of taxation. *Lowell v. County Commissioners*, 152 Mass. 372.

Third, Horses, mules, neat cattle, sheep, and swine, kept throughout the year in places other than those where the owners reside, whether such owners reside within or without the Commonwealth, and horses employed in stages or other vehicles for the transportation of passengers for hire, shall be assessed to the owners in the places where they are kept. Pub. Stats. ch. 11, § 20, cl. 3.

The owner of a farm situated in two towns, his house being in one and his barn in another, is taxable in the latter for his horses which are habitually kept, fed and watered in the barn, although used on the entire farm. *Pierce v. Eddy*, 152 Mass. 594.

Fourth, Personal property belonging to persons under guardianship shall be assessed to the guardian in the place

where the ward is an inhabitant, unless the ward resides and has his home without the Commonwealth, in which case it shall be taxed to the guardian in the place where he is an inhabitant. Pub. Stats. ch. 11, § 20, cl. 4.

The same rules would seem to be applicable in determining the place where a ward is an inhabitant, as in the case of any other citizen. *Kirkland v. Whateley*, 4 Allen, 462.

Fifth, Personal property held in trust by an executor, administrator or trustee, the income of which is payable to another person, shall be assessed to the executor, administrator, or trustee in the place where such other person resides, if within the Commonwealth, and if he resides out of the Commonwealth it shall be assessed in the place where the executor, administrator, or trustee resides, and if there are two or more executors, administrators, or trustees residing in different places, the property shall be assessed to them in equal portions in such places, and the tax thereon shall be paid out of said income. If the executor, administrator, or trustee is not an inhabitant of the Commonwealth, it shall be assessed to the person to whom the income is payable, in the place where he resides. Pub. Stats. ch. 11, § 20, cl. 5.

Personal property held in trust is taxable to the trustee, if within the Commonwealth. *Williston Seminary v. County Commissioners*, 147 Mass. 427.

For the purpose of taxation under this clause, when the *cestui que trust* is a partnership, the place where the partnership resides is the place where its business is carried on. *Ricker v. American Loan and Trust Co.*, 140 Mass. 346.

Sixth, Personal property placed in the hands of a corporation or individual as an accumulating fund for the future benefit of heirs or other persons shall be assessed to such heirs or persons, if within the Commonwealth, otherwise to the person so placing it, or his executors or administrators, until a trustee is appointed to take charge of such property or the income thereof. Pub. Stats. ch. 11, § 20, cl. 6.

Seventh, The personal estate of deceased persons shall be assessed in the place where the deceased last dwelt. Before the appointment of an executor or administrator it shall be assessed in general terms to the estate of the deceased, and

the executor or administrator subsequently appointed shall be liable for the tax so assessed in like manner as though assessed to him. After such appointment it shall be assessed to such executor or administrator for the space of three years, unless the same has been distributed and notice of such distribution has been given to the assessors, stating the name, residence, and amount paid to the several parties interested in the estate who are inhabitants of the Commonwealth. After three years from the date of such appointment it shall be assessed according to the provisions of the fifth clause of this section. Pub. Stats. ch. 11, § 20, cl. 7.

A tax is not lawfully assessed to the "estate of" a deceased person after the date of the appointment of the administrator. *Wood v. Torrey*, 97 Mass. 321.

Eighth, Personal property taxable as such, held in trust by an assignee or assignees under the insolvent law or any bankrupt law or under any voluntary assignment for the benefit of creditors, shall be assessed to such assignee or assignees in the place where the insolvent bankrupt or assignor had his principal place of business; and if he had no such place of business, then in the place of his residence.

Ninth, Personal property of joint owners or tenants in common other than partners shall be assessed to such owners, according to their respective interests, in the place where they respectively reside. Sts. 1882, ch. 165.

Tenth, All machines employed in any branch of manufactures and used or operated under a stipulation providing for the payment of a royalty or compensation in the nature of a royalty for the privilege of using or operating the same, shall be assessed where such machines are situated or employed to the owner or any person, firm, or corporation in possession of the same on the first day of May. Sts. 1887, ch. 125.

§ 674. When personal property belonging to two or more persons under guardianship, or personal property held in trust by an executor, administrator, or trustee, the income of which is payable to two or more persons, or personal property placed in the hands of a corporation or individual as an accumulating fund for the future benefit of two or more heirs or other persons, is assessed under the preceding section by the assessors

of any city or town, in whole or in part, they shall, upon being requested in writing within the time specified by them for the bringing in of lists as stated in § 601 *ante*, and being therein informed of the names, domicils, and proportionate shares of such wards, *cestuis que trust*, heirs, or other persons, make separate assessments in such manner as to distinguish how much of such personal property is assessed in respect to each. If any such assessment is illegally made, an action at law shall lie to recover back the taxes paid thereon, in the same manner as in other cases of illegal assessment.

§ 675. Property held by a religious society as a ministerial fund shall be assessed to the treasurer of the society. If such property consists of real estate, it shall be taxed in the town where it lies; if it consists of personal property, it shall be taxed in the town where such society usually holds its meetings. Pub. Stats. ch. 11, §§ 21, 22.

§ 676. Personal property mortgaged or pledged shall, for the purposes of taxation, be deemed the property of the party who has the possession. Pub. Stats. ch. 11, § 23.

This section applies only to corporeal, visible, and tangible property, of which either party may take open possession; and not to incorporeal hereditaments or rights, which are incapable of such possession,—and therefore not to public stocks or securities. *Waltham Bank v. Waltham*, 10 Met. 340; *Hall v. Commissioners*, 10 Allen, 100.

§ 677. Partners in mercantile or other business, whether residing in the same or in different places, may be jointly taxed under their partnership name, in the place where their business is carried on, for all the personal property employed in such business, except ships or vessels, and except bank shares taxed as is stated in §§ 680–689 *post*. If partners have places of business in two or more towns, they shall be taxed in each of such places for the proportion of property employed therein. When so jointly taxed, each partner shall be liable for the whole tax. Pub. Stats. ch. 11, § 24.

It seems that the term “place of business” must be understood as a place where business is carried on by the tax-payer under his own control and on his own account. *Little v. Cambridge*, 9 Cush. 301.

A firm, one member of which resided in B. and the other in N., had an office in B. where its office business was transacted, and a very limited amount of retail business. One of its factories was in W. and the goods made at W. were stored there and sold on orders from B. Held: The plaintiffs had a "place of business" in W., within the meaning of the statute, namely, a factory where they made the starch which was stored there until sold. The property was employed in the plaintiff's business in W. and was properly taxable there under the provisions of the above section. *Barker v. Watertown*, 137 Mass. 227.

§ 678. Ships or vessels owned by a partnership shall be assessed to the several partners in their places of residence, proportionally to their interests therein, if they reside within the Commonwealth; but the interests of the several partners who reside without the Commonwealth shall be assessed to the partnership in the place where its business is carried on.

§ 679. Keepers of taverns and boarding-houses, and masters and mistresses of dwelling-houses, shall, upon application of an assessor in the place where their house is situated, give information of the names of all persons residing therein and liable to be assessed for taxes. Pub. Stats. ch. 11, §§ 25, 30.

(d) *Taxation of Bank Shares.*

§ 680. All the shares of stock in banks, whether of issue or not, existing by authority of the United States or of the Commonwealth, and located within the Commonwealth, shall be assessed to the owners thereof in the cities or towns where such banks are located, and not elsewhere, in the assessment of all state, county, and town taxes imposed and levied in such place, whether such owner is a resident of said city or town or not; all such shares shall be assessed at their fair cash value on the first day of May, first deducting therefrom the proportionate part of the value of the real estate belonging to the bank, at the same rate, and no greater, than that at which other moneyed capital in the hands of citizens and subject to taxation is by law assessed. And the persons or corporations who appear from the records of the banks to be owners of shares at the close of the business day next preceding the first

day of May in each year shall be taken and deemed to be the owners thereof for the purposes of this section.

§ 681. Every such bank or other corporation shall pay to the collector, or other person authorized to collect the taxes of the city or town in which the same is located, at the time in each year when other taxes assessed in the said city or town become due, the amount of the tax so assessed in such year upon the shares in such bank or other corporation. If such tax is not so paid, the said bank or other corporation shall be liable for the same; and the said tax, with interest thereon at the rate of twelve per cent per annum from the day when the tax became due, may be recovered in an action of contract brought by the treasurer of such city or town.

§ 682. The shares of such banks or other corporations shall be subject to the tax paid thereon by the corporation or by the officers thereof, and the corporation and the officers thereof shall have a lien on all the shares in such bank or other corporation, and on all the rights and property of the shareholders in the corporate property for the payment of said taxes.

§ 683. The cashier of every such bank shall make and deliver to the assessors of the city or town in which such bank is located, on or before the tenth day of May in each year, a statement verified by the oath of such cashier showing the name of each shareholder, with his residence and the number of shares belonging to him at the close of the business day next preceding the first day of May, as the same then appeared on the books of said bank. If the cashier fails to make such statement, said assessors shall forthwith, upon such failure, obtain a list of shareholders, with the residence of, and number of shares belonging to each.

In either case the assessors shall, immediately upon obtaining such list or statement, transmit to the tax commissioner a true copy of the same; and shall, by notice in writing, inform said commissioner of the rate per cent upon the valuation of the city or town of the total tax in such city or town for the year, immediately upon the ascertainment thereof, and also of the amount assessed by them upon the shares of each bank located therein.

§ 684. Said commissioner shall thereupon, as soon as may be, determine from the returns and otherwise the proportionate amount of the tax so assessed upon the shares in each of said banks, which has been assessed upon shares which, according to the provisions stated in §§ 591-679 *ante* would not be taxable in said city or town; and such amounts, as finally determined under the provisions of this chapter, shall be a charge to said city or town as an offset against any payments to be made from the treasury of the Commonwealth to said city or town.

§ 685. Said commissioner shall, in like manner, determine the proportionate amount of tax so assessed upon shares in each of said banks, which, according to the provisions stated in §§ 591-679 *ante* would be taxable in each city or town in this Commonwealth other than that in which the bank is located; and such amounts, as finally determined under the provisions of this chapter, shall become a credit to such city or town.

§ 686. Said commissioner shall, by written or printed notice delivered at the assessors' office or sent by mail, inform the assessors of each city or town affected thereby of the aggregate amount of charges and credits against and in favor of such city or town, under the two preceding sections, as determined by him, forthwith, upon the determination thereof. From this determination an appeal may be made by said assessors, within the time hereinafter provided, to the board of appeal constituted under the provisions of section sixty-two chapter thirteen of the Public Statutes.

§ 687. Said commissioner shall, at the expiration of ten days after notice given as provided in the preceding section, or upon being informed of the decision of the board of appeal, if an appeal is made, certify to the treasurer and receiver-general the aggregate amount of charges mentioned in § 684 *ante* against each city and town, and also the aggregate of credits mentioned in § 685 *ante* in favor of each city or town, as finally determined under the three preceding sections; and the treasurer shall thereupon withhold out of any sums of money which are or may become payable out of the state treasury to any city or town against which a charge is certi-

fied the amount so certified, and shall allow or pay over to each city or town in favor of which a credit is certified the amount so certified.

§ 688. In the adjustment and determination of amounts due under the provisions of this chapter in relation to the taxation of bank shares, an allowance of one per cent upon the amount so assessed and collected shall be made for the expenses of assessing and collecting the same; and no city or town shall be entitled in any year to an allowance of credits or payments under any of the provisions of this chapter until the assessors thereof have complied with the requirements of this chapter and those of § 596 *ante* in relation to the taxation of bank shares. No bank, the shares in which are taxable as stated in § 680 *ante*, shall be subject to taxation under the provisions of section forty, chapter thirteen Public Statutes, nor shall the shareholders be taxable in respect to their shares therein for state, county, or town purposes, except under the provisions of this chapter. Pub. Stats. ch. 13, §§ 8-16.

§ 689. The assessors of each city or town, upon request of any person resident in such city or town, who is the owner of any shares in such banks or other corporations which, under the provisions as stated in the tenth and twelfth divisions of § 660 *ante*, would be entitled to exemption from taxation, shall give such owner a certificate setting forth such fact; and the treasurer of such city or town, upon request therefor and the deposit with him of such certificate, shall pay over to such owner the amount so collected in respect of such shares, immediately upon the allowance made to such city or town under the provisions of this chapter in relation to the taxation of bank shares. Pub. Stats. ch. 13, § 19.

The shares in a national bank, of stockholders who reside in a regularly organized fire district in the town in which the bank is located, cannot be subjected to a tax for fire district purposes.

“In view of the fact that the statute makes provision only for the taxation of bank shares for state, county, and town purposes, and of the apparent intention that all the shares shall bear the same burden, the plaintiff cannot maintain his action.” DEVENS, J., in *Rich v. Packard National Bank*, 138 Mass. 527.

CHAPTER VII.

OVERSEERS OF THE POOR.

THE CARE AND SUPPORT OF PAUPERS.

(a) *Town Paupers.*

§ 690. Every city and town shall relieve and support all poor and indigent persons lawfully settled therein, whenever they stand in need thereof. Pub. Stats. ch. 84, § 1.

But they may be supported in another place. *Smith v. Peabody*, 106 Mass. 262.

“It has been too often decided to be now questioned, that the liability of towns to support poor persons is founded upon and limited by statute, and is not to be enlarged or modified by any supposed moral obligation. By this we understand, not that there is no moral obligation on all men in society to contribute to the support of the poor, but that towns are corporations, for limited and well-defined purposes, and that the duty of supporting the poor is not more binding upon them than upon parishes, counties, the state, or other organized bodies, further than such duty is created by law.” “The first great object of the law, founded on the principle of simple humanity, is, that the party standing in need shall have relief immediately, and at the place where it is required; that is, from the overseers of the town where he is residing, or is found, without regard to their ultimate liability. The person in distress shall not be compelled to wait till notice can be given to a distant town, and whilst, perhaps, a controversy is subsisting as to its liability. And to insure such relief, if the overseers neglect or refuse, on notice, to afford it, any person, not himself liable for such relief, may afford it at the expense of the town.” SHAW, C. J., in *Smith v. Colerain*, 9 Met. 492.

Municipal corporations are only authorized to furnish relief to those who, when the relief is furnished, may properly be

denominated paupers, either from general poverty or present temporary necessity requiring such aid; and when the town has, in such cases, furnished necessary supplies, through the action of the overseers of the poor, an action will lie at common law against the husband, to recover the amount thus expended for his wife and minor children. *New Bedford v. Chace*, 5 Gray, 28.

§ 691. The overseers of the poor shall have the care and oversight of all such poor and indigent persons so long as they remain at the charge of their respective cities or towns, and shall see that they are suitably relieved, supported, and employed, either in the workhouse or almshouse, or in such other manner as the city or town directs, or otherwise at the discretion of said overseers. They may remove to the almshouse such children as are suffering destitution from extreme neglect of dissolute or intemperate parents or guardians, except as hereinafter provided. Pub. Stats. ch. 84, § 2.

“Overseers of the poor are public officers who commonly act under the authority of the law, and not as agents of the town. But in some matters they represent the town as its agents. They have the care and the custody of the paupers in their respective cities and towns, and are to see that they are suitably relieved, supported, and employed; but the city or town is to direct the manner and provide the means of supporting its paupers. Thus if a town sees fit to buy a farm, and cultivate it in connection with an almshouse, there is nothing in the statute which gives the overseers of the poor a right to manage it without authority from the town.” KNOWLTON, J., in *Neff v. Wellesley*, 148 Mass. 487, at p. 494.

The overseers of the poor of a town, whose board is annually reconstituted, by the retirement of one member and the election of another, have no authority while acting as almshouse directors to bind the town respecting the management of the almshouse for the next municipal year. *Reed v. Lancaster*, 152 Mass. 500.

Overseers of the poor, highway surveyors, and selectmen of a town, being the same persons, in using an almshouse farm with its authority partly for the support of its poor, partly for the maintenance of its highway department, and incidentally

for the production of income, act as agents of the town, and the town is responsible for an injury caused by the negligence of a person employed by them on such farm. *Neff v. Wellesley*, 148 Mass., 487.

If the municipal authorities of a town have provided supplies for distribution among those out of the almshouse who need relief, upon orders of the overseers of the poor, and have given notice thereof to the overseers, the latter have no authority to contract debts in behalf of the town for the support of the poor; and one who, having knowledge of the facts, furnishes supplies to persons settled in such town, upon order of the overseers, cannot maintain an action against the town to recover the same. But, if he furnishes supplies upon such orders to persons settled elsewhere, he may recover from the town the amount actually received by it on account of such supplies, from the towns which were liable to support the persons who were relieved thereby. *Ireland, Jr., v. Newburyport*, 8 Allen, 73.

§ 692. The overseers of the poor shall not commit to nor detain in any almshouse, private dwelling, or other place, without remedial treatment, any insane person whose insanity has continued for a period less than twelve months; and within seven days from the admission or discharge of any insane person in their care, to or from any almshouse, private dwelling or other place, said overseers shall report in writing such admission or discharge to the state board of lunacy and charity. All persons suffering from recent insanity shall have the opportunity of medical treatment in some hospital or asylum, under the direction of a physician qualified according to the provisions of section thirteen of chapter eighty-seven of the Public Statutes, if they or their friends so desire. Sts. 1890, ch. 414, § 2.

§ 693. The overseers of the poor shall have the same power and authority over persons placed under their care which directors or masters of workhouses have over persons committed thereto. Pub. Stats. ch. 84, § 5.

§ 694. The kindred of such poor persons, in the line or degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, living in this

state, and of sufficient ability, shall be bound to support such paupers in proportion to their respective ability. Pub. Stats. ch. 84, § 6.

The words "poor and indigent persons in need of relief," "persons in distress and in need of immediate relief," "poor person," and "pauper," are used synonymously, except in those instances in which the person termed "pauper" is also described as having been relieved and supported by a town; and in those instances a technical pauper would have been designated if the words "poor person" had been used, instead of the word "pauper." The technical meaning is not evinced by the use of any special word, but by referring to the person, or by describing him as one who has received support from a town; which fact constitutes him a technical pauper. *Hutchings v. Thompson*, 10 Cush. 238.

§ 695. Any city or town which incurs expense for the support of a pauper having a settlement therein may recover the same against such person, his executors or administrators, in an action of contract for money paid, laid out, and expended for his use. Sts. 1882, ch. 113.

Under this statute the plaintiff town can recover for the amount expended for the support of the pauper, but it must prove that it was required by law to expend the money for the pauper's support. *Newburyport v. Creedon*, 148 Mass. 158.

§ 696. The overseers of the poor, in their respective places, shall provide for the immediate comfort and relief of all persons residing or found therein, having lawful settlements in other places, when they fall into distress and stand in need of immediate relief, and until they are removed to the places of their lawful settlements; the expenses whereof, incurred within three months next before notice given to the place to be charged, as also of their removal or burial in case of their decease, may be recovered by the place incurring the same against the place liable therefor, in an action at law, to be instituted within two years after the cause of action arises, but not otherwise. Pub. Stats. ch. 84, § 14.

This notice is an indispensable prerequisite to the support of any action for expenses incurred in the relief of paupers by a town in which they are not settled. And the right to

recover is expressly limited to a period commencing three months before, and continuing two years after notice given. *Attleborough v. Mansfield*, 15 Pick. 19; *Townsend v. Billerica*, 10 Mass. 411; *Hallowell v. Harwich*, 14 Mass. 186; *Uxbridge v. Seekonk*, 10 Pick. 150; *Reading v. Malden*, 141 Mass. 580.

A notice given by a town to a city stating that it had furnished relief to a mother and three children who had a settlement in the city, was held to be insufficient, the mother having five minor children at the time. The notice was not particular enough. *Carver v. Taunton*, 152 Mass. 484.

Under this statute it was held that an insane woman who had been supported by her brother and sister and whom the brother had reported to the overseers that he was unwilling to support longer, did not come within the statute. *Templeton v. Winchendon*, 138 Mass. 109.

A town which has furnished relief to a person found therein and standing in need of immediate relief may recover the expenses thereof from the town of his settlement, although sufficient provision may have been made for his general support by his father's will. *Groveland v. Medford*, 1 Allen, 23.

Notice by one town to another of a claim made by the treasurer of a state lunatic hospital for the past and future support of a pauper is sufficient to support an action for the past expenses (though not actually paid until more than three months after), but not for expenses of the support of the pauper after such notice. *Amherst v. Shelburne*, 11 Gray, 107.

§ 697. When a person is supported in a place other than that in which he has his settlement, the place liable for his support shall not be required to pay therefor more than at the rate of two dollars a week, if it causes the pauper to be removed within thirty days from the time of receiving legal notice that such support has been furnished. Pub. Stats. ch. 84, § 16.

This section does not apply to the case of the removal of a pauper after his decease, though before burial. *Webster v. Uxbridge*, 13 Met. 198.

In computing the thirty days, the day on which notice is received that the support has been furnished is to be excluded. *Seekonk v. Rehoboth*, 8 Cush. 371.

§ 698. The overseers of the poor of each place shall also relieve, support, and employ all poor persons residing or found therein, having no lawful settlements within this state, until their removal to the state almshouse, and in case of their decease shall decently bury them; they shall also decently bury all such persons who have died without means of support, but without applying for public relief while living, and all unknown persons found dead; the expense whereof may be recovered of their kindred, if they have any chargeable by law for their support, in the manner hereinbefore provided; and if in case of their burial the expense thereof is not paid by such kindred, there shall be paid from the treasury of the Commonwealth fifteen dollars for the funeral expenses of each pauper over twelve years of age, and ten dollars for the funeral expenses of each pauper under that age. Pub. Stats. ch. 84, § 17; Sts. 1887, ch. 310, § 3; Sts. 1890, ch. 71.

§ 699. A city or town may furnish temporary aid to poor persons found therein, having no lawful settlements within the state, if the overseers deem it for the public interest; but, except in cases of sickness, not for a longer period than four weeks at one time between May first and November first, or for a longer period than eight weeks at one time for cases notified between November first and May first, or to a greater amount than one dollar a week for each person, or five dollars a week for each family; and the overseers shall in every such case give immediate notice by mail to the state board of lunacy and charity, which board shall examine the case and direct as to the continuance of such aid, or removal to the state almshouse, or to some place out of the state, either before or after removal to the state almshouse, according to law. A detailed statement of expenses so incurred shall be rendered, and after approval by the state board such expenses shall be paid from the state treasury. Sts. 1891, ch. 90, § 1.

§ 700. A city or town may furnish transportation to destitute shipwrecked seamen from one place to another in this state, and the expense of such transportation shall be paid by the Commonwealth from the appropriation for the temporary support of state paupers, without reference to such seaman's legal settlement. Sts. 1886, ch. 179.

§ 701. The overseers of the poor or the keepers of almshouses acting under their directions may require any person, not a resident of the town or city, applying to them for and receiving either food or lodging in an almshouse or other place, to perform a reasonable amount of labor in return therefor, and may detain such person until such labor is performed, but not beyond the hour of eleven in the forenoon of the day succeeding his application; and if any such person refuses or neglects when so required to perform such labor suited to his age, strength, and capacity, or wilfully damages any property of such town or city in the charge of such overseers or other officers, he shall be deemed a vagrant, and be punishable as such.

§ 702. A city or town may erect, establish, and maintain a hospital for the reception of persons who by misfortune or poverty require relief during temporary sickness. City councils and selectmen may make such ordinances, rules, and regulations as they may deem expedient for the appointment of trustees and all other officers, agents, and servants necessary for managing such hospital. Pub. Stats. ch. 84, §§ 19, 20.

§ 703. A city or town not maintaining or managing a hospital is hereby authorized to make a contract with any hospital established therein, or in its vicinity, for the reception, care, and treatment of persons who by misfortune or poverty require relief during temporary sickness, and may make the necessary appropriations of money therefor. But nothing herein shall add to the compensation now required from the Commonwealth, or from any city or town, for the care and treatment of any person who shall be chargeable as a pauper to the Commonwealth, or to any city or town, or diminish the right of the Commonwealth to require the removal of a pauper dependent upon it for relief to the state almshouse. Sts. 1890, ch. 119.

§ 704. The overseers of the poor of a city or town, and the superintendent and board of trustees of the state almshouse, may place deserted and destitute infants in the care of the Massachusetts Infant Asylum or St. Mary's Infant Asylum, and such sum as may be agreed upon shall be paid for the tem-

porary support of such infants ; but such overseers and the state board of lunacy and charity shall use all reasonable care to collect the cost of such temporary support from parties justly chargeable with the same, when they can be ascertained, and to remove those infants not born or not having a settlement in this state. Pub. Stats. ch. 84, § 21 ; Sts. 1883, ch. 232 ; Sts. 1886, ch. 101, § 4.

§ 705. Overseers of the poor shall not remove a minor under their control beyond the limits of the Commonwealth, nor allow such removal, without the approval of the judge of the probate court, granted upon application and after due notice to all parties interested, and a hearing ; unless such minor has a settlement in another state. Nor shall they withhold information concerning the maintenance of such minor from any person entitled to receive the same. Pub. Stats. ch. 84, § 24.

§ 706. If a person, who has actually become chargeable as a pauper to a city or town in which he has a settlement, subsequently acquires a settlement in a place out of this Commonwealth, the overseers of the poor of such city or town may cause him to be removed to said place of subsequent settlement, by a written order directed to any person therein designated. Pub. Stats. ch. 84, § 26.

§ 707. Every city and town shall be held to pay any expense necessarily incurred for the relief of a pauper therein by any person who is not liable by law for his support, after notice and request made to the overseers thereof, and until provision is made by them. Pub. Stats. ch. 84, § 27.

Notice and request made to one member of the board of overseers of the poor, intended for them all collectively and for him to communicate to them, is a sufficient notice and request. *Rogers v. Newbury*, 105 Mass. 533.

The words "necessarily incurred" have been held to mean that "the claim must be proved to have been founded on the absolute necessity of a pauper ; that is, it must be for such needful relief or support as the pauper could not otherwise procure or obtain." BIGELOW, C. J., in *Samson v. Newburyport*, 14 Allen, 30.

"The town is rendered liable for the support of a poor

person only after notice and request; not only notice, but request, importing a distinct call on the town. This provision for notice to the town is of great importance, deeply affecting the interests of towns, and is one to which every person claiming upon the town should be required to give full and complete effect. The terms used in the statute, *notice* and *request*, clearly import that a party, to hold a town responsible for support furnished to any person, should be required to give express and formal and particular notice to, and make a distinct request of, the town." *Walker v. Southbridge*, 4 Cush. 199.

§ 708. The overseers of any place may send a written notification, stating the facts relating to any person actually become chargeable thereto to one or more of the overseers of the place where his settlement is supposed to be, and requesting them to remove him, which they may do by a written order directed to any person therein designated, who may execute the same. Pub. Stats. ch. 84, § 28.

"The notice contemplated by the statute is an express and formal notice, and the request intended is a distinct request that the town provide for the pauper." KNOWLTON, J., in *O'Keefe v. Northampton*, 145 Mass. 115.

§ 709. If such removal is not effected by the last mentioned overseers within one month after receiving the notice, they shall within said one month send to one or more of the overseers requesting such removal a written answer, signed by one or more of them, stating therein their objections to the removal; and if they fail so to do, the overseers who requested the removal may cause the pauper to be removed to the place of his supposed settlement, by a written order directed to any person therein designated, who may execute the same; and the overseers of the place to which the pauper is so sent shall receive and provide for him; and such place shall be liable for the expenses of his support and removal, to be recovered in an action by the place incurring the same, and shall be barred from contesting the question of settlement with the plaintiffs in such action. Sts. 1891, ch. 90, § 2.

But all other questions, such as need of relief, are open to the defendant. *New Bedford v. Hingham*, 117 Mass. 445.

If a notification is sent, by the overseers of the poor of a town which has incurred expense for the relief of a pauper found therein, to the overseers of the poor of the town where his settlement is supposed to be, requesting his removal, the answer must be signed by some one of the overseers; and if it is not so signed, their town will be barred from contesting the question of his settlement, although the pauper is not actually removed there; and the answer will not be sufficient if signed merely by another person with whom the town has contracted for the support of its paupers for that year. Overseers to whom such an answer is sent do not waive the defect by sending a reply to the overseers of the other town, under the belief that the answer came from one of them, or by subsequently sending a new notification to them, for the removal of the same pauper. *Petersham v. Colerain*, 9 Allen, 91.

§ 710. The notification and answer mentioned in the two preceding sections may be sent by mail; and such notification or answer, directed to the overseers of the poor of the place intended to be notified or answered, postage prepaid, shall be deemed a sufficient notice or answer, and shall be considered as delivered to the overseers to whom it is directed at the time when it is received in the post-office of the place to which it is directed, and in which the overseers reside. Pub. Stats. ch. 84, § 30.

§ 711. Upon the death of a pauper who at the time of his decease is actually chargeable to a place within this state, the overseers of the poor of such place may take possession of all his real and personal property; and if administration is not taken upon his estate within thirty days after his decease, the overseers may in their own names sell and convey so much thereof as may be necessary to repay the expenses incurred for the pauper. If any part of such property is withheld from said overseers, they may in their own names sue for and recover possession of the real estate, and shall have the same remedy for the recovery of the personal estate or its value that an administrator might have in like case.

§ 712. In all actions and prosecutions founded on the provisions of the preceding section, the overseers of the poor of any place, or any person by writing under their hands appointed,

shall appear, prosecute, or defend the same to final judgment and execution, in behalf of such place.

§ 713. Overseers of the poor shall keep full and accurate records of the paupers fully supported, the persons relieved and partially supported, and the travellers and vagrants lodged at the expense of their cities and towns, together with the amount paid for such support and relief. Pub. Stats. ch. 84, §§ 32-34.

§ 714. They shall make an annual return of the numbers of such persons supported and relieved, with the cost of such support and relief, and a record of those fully supported, to the state board of lunacy and charity, in April in each year, for the year ending on the thirty-first day of March preceding. Pub. Stats. ch. 84, § 35; Sts. 1886, ch. 101, § 4.

§ 715. In the year eighteen hundred and eighty-five and in every tenth year thereafter the return of the overseers of the poor shall contain true and correct answers to the following inquiries:—

What number of persons have been relieved or supported by your town during the year ending September 30? Of those, how many have a legal settlement in your town? How many are foreign born? How many of the foreign born are from England and Ireland? How many state paupers have you sent to the state almshouse? How many of the poor assisted in your town or sent to state almshouse were foreigners? How many of your insane do you support in state lunatic hospitals? How many of your idiotic poor are in the Massachusetts School for Idiotic and Feeble-minded Youth? Have you an almshouse? What number of acres of land is attached to your almshouse? What is the estimated present value of your almshouse establishment? Real estate? Personal? What number of persons have been supported in your almshouse during the whole or any part of the year? What is the average number supported in the almshouse? What is the average weekly cost of supporting each pauper in the almshouse? What number of persons have been inmates of your almshouse who are unable to perform any kind or amount of labor? What is the estimated value of all the labor performed by the poor in your almshouse? How many persons, including their families, have you supported out of the almshouse during the whole or a portion of the year? What is the average weekly cost of supporting each pauper out of

the almshouse? How many have you aided out of the almshouse? How many have you supported or relieved who were insane? How many who were idiots? What number of persons, relieved or supported during the year in your town, have become dependent by reason of insanity or idiocy? What number of your poor, supported at the public charge, have been made dependent by their own intemperance? What number by the intemperance of those who ought to have been their supporters? What is the total net amount of expense of supporting or relieving the poor in your town during the year, including interest on your almshouse establishment? How many are supported in your almshouse at the present time? How many are supported out of the almshouse at the present time? How many are assisted out of the almshouse at the present time?

They shall, at the same time, make correct returns of all children in such city or town under fourteen years of age who are supported at the public charge, specifying therein the name, age, and sex of each.

§ 716. If the overseers of a town or city refuse or neglect to comply with the requirements of the three preceding sections, such town or city shall forfeit one dollar for each day's neglect, and the amount of such forfeiture shall be deducted from any sum to which said town or city may be entitled in reimbursement for relief of state paupers, and in case no such reimbursements shall be due to said town or city, the forfeiture shall be deducted from any money which may be due to it from the state.

§ 717. Overseers of the poor shall make and forward returns on or before the tenth days of January and July in each year, to the state board, concerning all minor children above the age of four years who are supported at the expense of such city or town, in an almshouse or elsewhere, on the first day of said months. Said returns shall be made in such form and shall contain such information respecting said minor children as may be prescribed by the state board. Pub. Stats. ch. 84, §§ 36-38.

§ 718. When a woman who has been delivered of a bastard child, or is pregnant with a child which if born alive may be a bastard, refuses or neglects to make a complaint and insti-

tute a prosecution against the person whom she accuses of being the father of the child, when requested so to do by an overseer of the poor of the place where she resides or has her settlement, such overseer may make the complaint; and when already made, if she refuses or neglects to prosecute the same, such overseer may prosecute the case to final judgment for the benefit of the town. In such case no complaint shall be withdrawn, dismissed, or settled by agreement of the mother and the putative father without the consent of the overseers of the poor of the town in which she has her settlement or residence, unless provision is made to the satisfaction of the court to relieve and indemnify such town from all charges that have accrued or may accrue for the maintenance of the child, and for the costs of complaint and prosecution thereof. Pub. Stats. ch. 85, §§ 2, 17.

If a child who has been legally adopted becomes pregnant before a new settlement is acquired, an overseer of the poor of the town in which the adoptive father has his settlement may maintain a complaint under the above section. *Washburn v. White*, 140 Mass. 568.

§ 719. No minor child supported at the expense of a town shall be removed therefrom without the consent of the overseers of the poor thereof. Pub. Stats. ch. 89, § 54.

§ 720. The overseers of the poor of a city or town, the trustees and superintendent of the state almshouse and the state workhouse, and the commissioners of public institutions in the city of Boston, may to any physician or surgeon, upon his request, give permission to take the bodies of such persons dying in such town, city, almshouse, workhouse, or public institution of the city of Boston, as are required to be buried at the public expense, to be by him used within the state for the advancement of anatomical science; preference being given to medical schools established by law, for their use in the instruction of students.

§ 721. If the deceased person, during his last sickness, of his own accord requested to be buried, or if, within three days after his death, any person claiming to be and satisfying the proper authorities that he is a friend or of kindred to the deceased asks to have the body buried, or if such deceased

person was a stranger or traveller who suddenly died, the body shall not be so surrendered, but shall be buried. Sts. 1891, ch. 185, §§ 1, 2.

(b) *State Paupers.*

§ 722. The superintendent of the state almshouse at Tewksbury, shall receive all paupers sent with a proper certificate from one of the overseers of the poor of any city or town or from one of the commissioners of public institutions in the city of Boston, or from some one duly authorized by vote of the board of overseers of the poor of any city or town or of the board of commissioners of public institutions in Boston, and provide for them under the rules and regulations herein provided. Sts. 1891, ch. 84.

§ 723. The several cities and towns may, at their own expense, send to the almshouse, to be maintained at the public charge, all paupers who may fall into distress therein, not having a settlement within the Commonwealth; but when the distance between such city or town and the almshouse, by the usual route, exceeds thirty miles, the city or town shall be reimbursed by the Commonwealth, upon bills approved by the state board, for the expense of transportation in excess of thirty miles, at a rate not exceeding three cents a mile by the usual route, for each state pauper thus sent.

§ 724. The state board of trustees of the state almshouse at Tewksbury, upon the application of the overseers of the poor of any town, shall make provision, in the almshouse or elsewhere, for the support of Indians who may be unable to support themselves, and who have not acquired a settlement in any town. Pub. Stats. ch. 86, §§ 22, 23.

§ 725. No city or town officer or agent having the care and oversight of a sick pauper shall remove or cause to be removed or attempt to remove, either by himself or by an agent, such pauper to the state almshouse unless there shall be reasonable cause to believe that such removal will not injure or endanger the health of such pauper.

§ 726. No city or town officer or agent having the care and oversight of a sick pauper shall remove or cause to be removed or attempt to remove such pauper to the state alms-

house, unless so ordered by the state board of lunacy and charity, until he shall have first procured a certificate of some competent physician setting forth that he has at the request of such officer examined such pauper, and that in his opinion such pauper can be removed to the state almshouse without injury or danger to his health. Sts. 1887, ch. 440, §§ 1, 2.

§ 727. No city or town officer shall be allowed to send to the almshouse any person infected with small-pox or other disease dangerous to the public health, or any other sick person whose health would be endangered by removal; but all such persons liable to be maintained by the Commonwealth shall be supported during their sickness by the city or town in which they are taken sick, and notice of such sickness shall be given to the state board, which may examine the case and order the removal of the patient if it deems it expedient: *provided*, that the notice herein required, in cases of sick persons whose health would be endangered by removal shall be signed by the overseers of the poor, or by such officer as they may see fit by special vote to appoint, and they or he shall certify, after a personal examination, that in their or his opinion such removal of the person named in such notice, at the time of his application for aid, would endanger his health. Sts. 1885, ch. 211.

§ 728. When the operation of any provisions of law in relation to poor and indigent persons might cause a separation of husband and wife by reason of her having a legal settlement in some place in the Commonwealth, he being a state pauper, both parties shall be supported by the place where she has a legal settlement. Pub. Stats. ch. 86, § 30.

§ 729. When, by reason of the almshouse being full, a city or town is unable to obtain admission for a state pauper, such place shall take charge of the pauper until notified by the superintendent that the pauper can be received. The superintendent shall give notice by mail when the pauper can be received, having regard in so doing to the priority of applications; and until notice is given, the city or town shall receive payment for the support of the pauper from the treasury of the Commonwealth.

§ 730. If a pauper having a legal settlement in any place

becomes an inmate of the almshouse, such place shall be liable to the Commonwealth for the expense incurred for him, in like manner as one town is liable to another in like cases; and the trustees and the state board shall adopt the same measures in regard to notifying towns so liable, the removal of the pauper, and the recovery from towns of expenses incurred for him, as are prescribed for towns in like cases. Pub. Stats. ch. 86, §§ 32, 35.

§ 731. Upon complaint of the trustees of a state lunatic hospital, the county commissioners of a county, the trustees of a state pauper establishment, or the overseers of the poor of a place, a judge of the probate court shall have the power to cause the removal of state lunatic paupers under their charge to any other state, or beyond sea, where they belong. Pub. Stats. ch. 86, § 39.

§ 732. Nothing shall be allowed from the treasury of the Commonwealth to any county, city, or town, for expenses incurred on account of any state pauper, except in cases expressly provided by law.

§ 733. All accounts against the Commonwealth for allowance to counties, cities, and towns, on account of state paupers, shall be rendered to the state board on or before the third Wednesday of January annually; and shall be so made as to include all claims for such charges up to the first day of said January, and, if approved by the board and certified by the auditor of accounts, shall be paid from the treasury of the Commonwealth. The state board may require such accounts to be accompanied with such statement of particulars and facts, and substantiated by such affidavits, as may seem to it proper. Pub. Stats. ch. 86, §§ 42, 43.

(c) *Lunatics.*

§ 734. The price for the support, in state lunatic hospitals, of state, city, and town paupers, shall be three dollars and twenty-five cents a week for each person. Pub. Stats. ch. 87, § 31.

§ 735. The charges for the support of lunatics having known settlements in this state shall be paid quarterly, either by the persons bound to pay, or by the place in which such

lunatics had their residence at the time of their commitment, unless other sufficient security is taken, to the satisfaction of the trustees, for such support. Pub. Stats. ch. 87, § 33.

The town or city in which a female convict transferred to a state lunatic hospital from the reformatory prison for women has her settlement is liable for her support under this section. *Beard v. Boston*, 151 Mass. 96.

§ 736. Every city or town paying expenses for the support or removal of a lunatic committed to either hospital shall have like rights and remedies to recover the full amount thereof, with interest and costs, of the place of his settlement, as if such expenses had been incurred in the ordinary support of the lunatic; and the lunatic, if of sufficient ability to pay the same, and any kindred bound by law to maintain him, shall be liable for all such expenses paid by a city or town in either case. Pub. Stats. ch. 87, § 34.

A town, in order to recover the expenses paid by it for the support of a pauper committed to a state lunatic hospital from the town of the pauper's settlement, must first give the town notice thereof; and the amount recoverable in such case is limited to the expenses incurred by the town within three months next before such notice is given. *Taunton v. Wareham*, 153 Mass. 192.

§ 737. No city or town shall send to the almshouse any person who by reason of insanity would be dangerous if at large. Pub. Stats. ch. 86, § 24.

(d) *Masters, Apprentices, and Servants.*

§ 738. A minor child who is, or either of whose parents is, chargeable to a town as having a lawful settlement therein, or supported there at the expense of the state, may, whether under or above the age of fourteen years, be so bound by the overseers of the poor, a female to the age of eighteen years or to the time of her marriage within that age, and a male to the age of twenty-one years; and provision shall be made in the contract for teaching them to read, write, and cipher, and for such other instruction, benefit, and allowance, either within or at the end of the term, as the overseers may deem reasonable. Pub. Stats. ch. 149, § 4.

In this case the overseers are public officers, and not agents of the town, so that their admissions or acts cannot be regarded as the acts of the town. *New Bedford v. Taunton*, 9 Allen, 207.

They cannot be bound for a less time, and if the provision for teaching is omitted the contract is void. It is better to insert the provision literally. *Butler v. Hubbard*, 5 Pick. 250; *Reidell v. Congdon*, 16 Pick. 44.

§ 739. No minor shall be so bound unless by an indenture of two parts sealed and delivered by both parties; and when made with the approbation of the selectmen, they shall certify such approbation in writing upon each part of the indenture.

§ 740. One part of the indenture shall be kept by the parent or guardian executing it, for the use of the minor; and when made with the approbation of the selectmen, or by the overseers of the poor, shall be deposited with the town clerk, and safely kept in his office for the use of the minor. When minors are bound by state, town, or municipal authorities, or authorized agents, the bond required to be given to the master may be waived by the parties. The bond given by the master shall be kept for the use of the minor, by the parent or guardian, and when there is no parent or guardian, it shall be deposited with the town clerk where the master resides, and safely kept in his office for the use of the minor. Pub. Stats. ch. 149, §§ 5, 6, 8, 9.

§ 741. Parents, guardians, selectmen, and overseers shall inquire into the treatment of all children bound by them respectively, or with their approbation, and of all bound by or with the approbation of the predecessors in office of any of them, and defend them from all cruelty, neglect, and breach of contract on the part of masters.

§ 742. Complaints by parents, guardians, selectmen, or overseers, for misconduct or neglect of the master, and by the master, for gross misbehavior, or refusal to do his duty, or wilful neglect thereof, on the part of the apprentice or servant, may be filed in the superior court in the county where the master resides, setting forth the facts and circumstances of the case. Pub. Stats. ch. 149, §§ 10, 11.

THE SETTLEMENT OF PAUPERS.

§ 743. Legal settlements may be acquired in any city or town, so as to oblige such place to relieve and support the persons acquiring the same, in case they are poor and stand in need of relief, in the manner following, and not otherwise, namely : —

First, A married woman shall follow and have the settlement of her husband, if he has any within the state; otherwise, her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage. Pub. Stats. ch. 83, § 1, cl. 1.

A woman acquiring a settlement by her marriage under this section, does not lose her settlement by a divorce except for a cause which would show the marriage to have been void. Therefore a New York decree annulling the marriage for a cause not valid in Massachusetts, does not affect the settlement of the woman. *Cumington v. Belchertown*, 149 Mass. 223, at p. 224.

Second, Legitimate children shall follow and have the settlement of their father, if he has any within the state, until they gain a settlement of their own; but if he has none, they shall in like manner follow and have the settlement of their mother, if she has any. Pub. Stats. ch. 83, § 1, cl. 2.

But a minor child, having the settlement of its deceased father, does not lose it, and acquire the settlement of its mother, on her gaining a new settlement by a second marriage. *Walpole v. Marblehead*, 8 Cush. 528.

Third, Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then has any within the state; but neither legitimate nor illegitimate children shall gain a settlement by birth in the place where they are born, if neither of their parents then has a settlement therein. Pub. Stats. ch. 83, § 1, cl. 3.

If the parents of illegitimate children intermarry, and the father acknowledges them as his, the children are made legitimate, and thereupon take the settlement of the father. *Monson v. Palmer*, 8 Allen, 551; Pub. Stats. ch. 125, § 5.

Fourth, Any person of the age of twenty-one years, having an estate of inheritance or freehold in any place within the state, and living on the same three years successively, shall thereby gain a settlement in such place. Pub. Stats. ch. 83, § 1, cl. 4.

But such person does not acquire a settlement in a town, if he receives support as a pauper, during those three years, from the town in which he had his settlement.

And such support granted to such person, as a pauper, by the overseers of the poor of the town in which he has a settlement, will prevent his acquiring a settlement in another town in which he resides, although the act of the overseers, in granting such support, be not ratified by the town of whose poor they are overseers. *Oakham v. Sutton*, 13 Met. 192.

And one living three years in any town within this state, on land conveyed to him by a warranty deed, gains a settlement in such town, although his grantor had in fact no title to the land. *Boylston v. Clinton*, 1 Gray, 619.

A person does not obtain a settlement in a town where he owns a freehold, if before he has lived thereon for three years successively he is committed to the state lunatic hospital, and there supported as a pauper; although his family continue to reside on his land for the residue of the three years. *Choate v. Rochester*, 13 Gray, 92.

This clause does not apply to a married woman. *Spencer v. Leicester*, 140 Mass. 224.

Fifth, Any person of the age of twenty-one years, who resides in any place within this state for five years together, and pays all state, county, city, or town taxes, duly assessed on his poll or estate, for any three years within that time, shall thereby gain a settlement in such place. Pub. Stats. ch. 83, § 1, cl. 5.

A person does not acquire a settlement in a town by residing therein ten years together, and paying taxes for five of those years, if he receives aid as a pauper, from such town, before the expiration of the ten years; *West Newbury v. Bradford*, 3 Met. 428; nor if a town has paid for his support while confined in its workhouse, on conviction of a criminal offence; *Worcester v. Auburn*, 4 Allen, 574; nor if, during his residence, the assessors omit to tax him, although possessed of real and personal estate; such omission being not

on account of his infirmity or poverty, or by mistake, but in order to prevent his acquiring a settlement. *Berlin v. Bolton*, 10 Met. 115.

Insanity occurring after the person has become an inhabitant of a town will not prevent his acquiring a settlement by the requisite residence therein. *Chicopee v. Whately*, 6 Allen, 508.

The assessment of a tax on real estate to the occupant, and the payment of the same by him, not as of his own estate, but in right of another, are a sufficient assessment and payment of a tax within the provisions of this clause, for acquiring a settlement as a pauper in the town where such party resides. *Randolph v. Easton*, 4 Cush. 557.

A domicile once acquired is presumed to continue until a subsequent change is shown; this is a rule applicable to cases of settlement. *Chicopee v. Whately*, 6 Allen, 508.

Absence from a town, without a definite purpose at all events to return to it as a home, will not interrupt the residence requisite to a settlement under this clause, until a new domicile is acquired elsewhere. *Worcester v. Wilbraham*, 13 Gray, 586; *Lee v. Lenox*, 15 Gray, 496.

An adult person in order to gain a settlement in a town or city under this section by a five-years residence and the payment of all taxes assessed to him "for any three years within that time," must have resided in the town or city during the whole of the three years for which the taxes were assessed. *Taunton v. Wareham*, 153 Mass. 192.

Sixth, Any woman of the age of twenty-one years, who resides in any place within this state for five years together, shall thereby gain a settlement in such place. Pub. Stats. ch. 83, § 1, cl. 6.

Seventh, The provisions of the preceding clause shall apply to married women who have not a settlement derived by marriage under the provisions of the first clause, and to widows; and a settlement thereunder shall be deemed to have been gained by an unsettled woman upon the completion of the term of residence therein mentioned, although the whole or a part of such term has already elapsed. Pub. Stats. ch. 83, § 1, cl. 7.

A married woman whose husband is living is under no legal obligation to support their children, even if the husband is imprisoned for crime; and her right to acquire a settlement, under clauses 6 and 7, by a residence of five years, is not taken away under clause 2, by her receiving money during the five years, to be used for the board of her pauper child. *Gleason v. Boston*, 144 Mass. 25.

Widows who have a settlement derived from their former husbands are included within the provisions of clauses 6 and 7 of this section. *Marden v. Boston*, 155 Mass. 359.

Eighth, Any person being chosen and actually serving one whole year in the office of clerk, treasurer, selectman, overseer of the poor, assessor, constable, or collector of taxes, in any place, shall thereby gain a settlement therein. For this purpose, a year shall be considered as including the time between the choice of such officers at one annual meeting and the choice at the next annual meeting, whether more or less than a calendar year. Pub. Stats. ch. 83, § 1, cl. 8.

Ninth, Every settled ordained minister of the gospel shall be deemed to have acquired a legal settlement in the place wherein he is or may be settled as a minister. Pub. Stats. ch. 83, § 1, cl. 9.

Where a minister who has been regularly ordained in one town is afterwards settled in another, as a pastor, with the full character, rights, and duties of a pastor, but without any new ordination or ceremony of induction, or for a limited time, as for a year, he will by such settlement as a minister acquire a settlement as a pauper in the latter town. *Bellingham v. West Boylston*, 4 Cush. 553.

Tenth, A minor who serves an apprenticeship to a lawful trade for the space of four years in any place, and actually sets up such trade therein within one year after the expiration of said term, being then twenty-one years old, and continues there to carry on the same for five years, shall thereby gain a settlement in such place; but being hired as a journeyman shall not be considered as setting up a trade. Pub. Stats. ch. 83, § 1, cl. 10.

Eleventh, Any person who was duly enlisted and mustered into the military or naval service of the United States, as a

part of the quota of any city or town in this Commonwealth, under any call of the President of the United States during the late civil war, or duly assigned as a part of the quota thereof, after having been enlisted and mustered into said service, and who duly served for not less than one year, or died, or became disabled from wounds or disease received or contracted while engaged in such service, or while a prisoner in the hands of the enemy, and his wife or widow and minor children, shall be deemed thereby to have acquired a settlement in such place; and any person who would otherwise be entitled to a settlement under this clause, but who was not a part of the quota of any city or town, shall, if he served as a part of the quota of the Commonwealth, be deemed to have acquired a settlement in the place where he actually resided at the time of his enlistment. But these provisions shall not apply to any person who was enlisted and received a bounty for such enlistment in more than one place, unless the second enlistment was made after an honorable discharge from the first term of service, nor to any person who has been proved guilty of wilful desertion, or who left the service otherwise than by reason of disability or an honorable discharge. Pub. Stats. ch. 83, § 1, cl. 11.

The words "duly assigned" must be taken to mean assigned in such form that the town had the benefit of the assignment. *Brockton v. Uxbridge*, 138 Mass. 292; *Sheffield v. Otis*, 107 Mass. 282, 285; *Bridgewater v. Plymouth*, 97 Mass. 382; *Boston v. Mount Washington*, 139 Mass. 15.

A soldier, who was a minor at the time he enlisted into the military service of the United States during the late civil war as a part of the quota of a city or town, acquired together with his wife or widow and minor children, the same settlement therein as if he had been of full age at the time of his enlistment. *Fall River v. Taunton*, 150 Mass. 106.

A settlement may be acquired by reason of service in the navy of the United States as part of the quota of a town in this Commonwealth, although the person performing such service was, at the time of his enlistment, a resident of another town, notwithstanding the provision of the United States Statute of July 4, 1864, § 8, that naval recruits are to be

credited to the quota of the town "in which they respectively reside." *Brockton v. Uxbridge*, 138 Mass. 292.

Twelfth, Upon the division of a city or town, every person having a legal settlement therein, but being absent at the time of such division, and not having acquired a legal settlement elsewhere, shall have his legal settlement in that place wherein his last dwelling-place or home happens to fall upon such division; and when a new city or town is incorporated, composed of a part of one or more incorporated places, every person legally settled in the places of which such new city or town is so composed, and who actually dwells and has his home within the bounds of such new city or town at the time of its incorporation, and any person duly qualified as provided in the eleventh clause of this section, who, at the time of his enlistment, dwelt and had his home within such bounds, shall thereby acquire a legal settlement in such new place; but no person residing in that part of a place which upon such division is incorporated into a new city or town, and having then no legal settlement therein, shall acquire any by force of such incorporation only; nor shall such incorporation prevent his acquiring a settlement therein within the time and by the means by which he would have gained it there if no such division had been made. Pub. Stats. ch. 83, § 1, cl. 12.

Votes of a town as follows: "to hire out F and take his wages for support of his family," and "to vendue the poor" followed by the record of the bidding off of F's children; and to pay various bills for the support of him and them; also votes at a town meeting "to see what the town will do with the town poor," that "the children of F be sold to the lowest bidder," etc., contain admissions that F had a settlement in the town, and warranted a finding of such settlement. *Bridge-water v. Wareham*, 138 Mass. 305.

§ 744. Nothing in the preceding section shall be construed to give to any person the right to acquire a settlement, or to be in process of acquiring a settlement, while receiving relief as a pauper, unless within five years from the time of receiving such relief he reimburses the cost thereof to the city or town furnishing the same.

§ 745. No person who actually supports himself and his

family shall be deemed to be a pauper by reason of the commitment of his wife, child, or other relative, to a lunatic hospital or other institution of charity, reform, or correction, by order of a court or magistrate, and of his inability to maintain such wife, child, or relative therein; but nothing herein contained shall be construed to release him from liability for such maintenance.

§ 746. No person who has begun to acquire a settlement by the laws in force at and before the time when this chapter takes effect, in any of the ways in which any time is prescribed for a residence, or for the continuance or succession of any other act, shall be prevented or delayed by the provisions hereof; but he shall acquire a settlement by a continuance or succession of the same residence or other act, in the same time and manner as if the former laws had continued in force.

§ 747. Except as hereinafter provided, every legal settlement shall continue till it is lost or defeated by acquiring a new one within this state; and upon acquiring such new settlement, all former settlements shall be defeated and lost. Pub. Stats. ch. 83, §§ 2-5.

§ 748. When a convict at the expiration of his sentence is in such condition from bodily infirmity or disease as to render his removal impracticable, he shall be suitably cared for in the prison, or other place where he has been confined, until he is in a condition to be removed. The expense of his support, not exceeding three dollars and fifty cents a week, shall be paid by the place where he has a legal settlement, after notice to the overseers of such place, or to the state board of health, lunacy, and charity, if he is a state pauper, of the expiration of his sentence, and of his condition. Pub. Stats. ch. 222, § 25.

§ 749. When at the expiration of the sentence of any person who is confined in, or is an inmate of, any state penal or charitable institution, a common jail, house of correction or municipal or town almshouse, such person shall then have the disease known as syphilis in its contagious or infectious symptoms, or in the opinion of the attending physician of such institution, or of such physician as the authorities thereof may consult, would cause the discharge of such person to be

dangerous to public health and safety, such person shall be placed under proper medical treatment and kept and suitably cared for, in the institution where he has been confined, until such time as in the opinion of the attending physician such contagious and infectious symptoms shall have disappeared, and the discharge of the patient shall not endanger the public health. The expense of his support, not exceeding three dollars and fifty cents a week, shall be paid by the city or town where he has a legal settlement, after notice to the overseers of the poor of such city or town, or, if he is a state pauper, after notice to the state board of lunacy and charity, of the expiration of his sentence, and of his condition. Sts. 1891, ch. 420, § 2.

FORMS.

Notice to another Town that Pauper whose Settlement is in such Town is Expense chargeable to that Town, etc.

B—, 189 .

To the Overseers of the Poor of the town of T—,

Gentlemen,— A. B., whose legal settlement is in your town, but now residing in this town, being in needy circumstances, has applied to this board for relief, which we have granted, and charged to your town, and shall continue so to do until you remove or otherwise provide for his support.

For and in behalf of the overseers of the poor of the town of B—.

With respect, gentlemen, your obedient servant,

One of said Overseers.

Reply to foregoing.

T—, 189 .

To the Overseers of the Poor of the of B—.

Gentlemen,— Your notice dated informing us that on expense as a pauper in your and alleging that the legal settlement is in this town, is received.

Upon due inquiry we can find no evidence that this town is the place of lawful settlement of said pauper, We therefore decline removing said pauper or paying any expense that has arisen, or may arise, for support.

By order and in behalf of the overseers of the poor of the town of T—.

Your obedient servant,

One of said Overseers.

WORKHOUSES AND ALMSHOUSES.

§ 750. A city or town may erect or provide a workhouse or almshouse for the employment and support of poor and indigent persons who are maintained by or receive alms from the city or town; of persons who, being able of body to work and not having estate or means otherwise to maintain themselves, refuse or neglect to work; of persons who live a dissolute, vagrant life, and exercise no ordinary calling or lawful business; of persons who spend their time and property in public houses to the neglect of their proper business, or who, by otherwise misspending their earnings to the impoverishment of themselves and their families, are likely to become chargeable to the city or town; and of other persons sent thereto under any provisions of law.

§ 751. No city or town shall erect or maintain an almshouse or house of correction within the limits of any other place, without the consent of such other place.

§ 752. Every city or town having a workhouse or almshouse may annually choose three, five, seven, or more directors, who shall have the inspection and government thereof, and who may appoint a master and necessary assistants for the more immediate care and superintendence of the persons received or employed therein. Where such directors are not specially chosen, the overseers of the poor shall be the directors.

§ 753. Once in every month, and at other times as occasion may require, the directors shall hold meetings for the purpose of determining the best mode of discharging their duties. At such monthly meetings they may make needful orders and regulations for the house, which shall be binding until the next meeting of the town or of the city council, when the same shall be submitted to such meeting; and if approved shall remain in force until revoked by the town or the city council.

§ 754. Any number of cities or towns may at their joint charge and for their common use erect or provide a workhouse or almshouse, and purchase land for the use thereof.

§ 755. The ordering, governing, and repairing of such house, the appointment of a master and necessary assistants, and the power of removing them for misconduct, incapacity, or other sufficient cause, shall be vested in a joint board of directors, who shall be chosen annually by the several places interested.

§ 756. Unless all the places interested in such house agree to choose a different number, each of them shall choose three members of the board; and in case of the death of a director, or of his removal from the place for which he was chosen, the vacancy may be supplied by such place. If a place neglects to choose directors, those chosen by the other places shall have the whole charge of the house.

§ 757. Stated quarterly meetings of the board shall be holden on the first Tuesdays of January, April, July, and October, at the workhouse or almshouse under their charge, for the purpose of inspecting the management and directing the business thereof. Meetings of the board may be called at other times by the directors chosen by any place interested, they giving notice of the time and purpose thereof to the other members of the board in such manner as has been agreed upon at a stated meeting.

§ 758. The board of directors may choose a moderator, and at their first general meeting they shall appoint a clerk, who shall be sworn and shall record all votes and orders of the board.

§ 759. At a general quarterly meeting, if one half of the members are present, they may make reasonable orders and by-laws, not repugnant to the laws of the Commonwealth, for ordering and regulating the house under their charge, and may agree with the master and assistants, and order a suitable compensation for their services.

§ 760. Other matters may be acted upon at any other meeting duly notified, if one third of the members are present; but the doings of such meetings may be altered or revised at any general stated meeting.

§ 761. The yearly compensation of the master and assistants (in addition to the allowance hereafter provided in these sections for their services), and also the expense of keeping

the house in repair, shall be paid by the several places interested, in proportion to their state tax at the time when the expense was incurred, or in such proportion as the places interested shall agree. Pub. Stats. ch. 33, §§ 1-12.

§ 762. No greater number of persons belonging to a city or town shall be received into such workhouse or almshouse than such city's or town's proportion of such house, when the receiving of them would exclude or be inconvenient to such as belong to the other places interested. Pub. Stats. ch. 33, § 14.

§ 763. Each place may furnish, for the employment of any person committed to such house, such additional materials, implements, and means of work as the overseers of the poor thereof may choose; and the master of the house shall receive the same, and keep them separate from those of the other places, and shall be accountable to each place interested as well for the cost as for all profits and earnings made by the labor of the persons committed to said house from such place.

§ 764. Each master shall keep a register of the names of the persons committed or received, the places to which they belong, the dates of their reception and discharge, and of their respective earnings, to be submitted to the overseers of the poor upon their request.

§ 765. Controversies between a master and the overseers of the poor of any place respecting the accounts or other official doings of the master shall be determined by the directors of the house at their general or quarterly meeting.

§ 766. The profits and earnings arising from the work of persons committed to a workhouse or almshouse shall, with the stock remaining on hand, be disposed of as the overseers of the poor of the several places shall think proper, either to the use of their cities or towns, of the persons committed, or of the families of such persons.

§ 767. No person committed to a workhouse shall be discharged within the time for which he was committed, except under the provisions of section sixty-eight of chapter two hundred and twenty, of the Public Statutes or by the court or justice who made the commitment, by the directors of the house at their general or quarterly meeting, or by the superior

court at a term held in the county where such house is situated, and for good cause shown upon application for that purpose.

§ 768. Every person committed to a workhouse shall, if able to work, be kept diligently employed in labor during the term of his commitment. If he is idle and does not perform such reasonable task as is assigned, or if he is stubborn and disorderly, he shall be punished according to the orders and regulations established by the directors.

§ 769. When a person not having a legal settlement in this Commonwealth becomes idle or indigent, he may be committed to the workhouse, to be there employed, if able to labor, in the same manner and under the same rules as other persons there committed.

§ 770. A workhouse or almshouse may be discontinued, or appropriated to any other use, when the place or places interested so determine.

§ 771. Nothing contained in these sections shall affect any powers or privileges heretofore granted to cities or towns, or to the overseers of the poor thereof, by acts specially relating to workhouses or almshouses therein. Pub. Stats. ch. 33, §§ 16-24.

CHAPTER VIII.

SURVEYORS OF HIGHWAYS.

HIGHWAYS AND TOWN WAYS.

(a) *Surveyors and Repairs.*

§ 772. Highways, town ways, streets, causeways, and bridges shall be kept in repair at the expense of the town, city, or place in which they are situated, when other provision is not made therefor, so that the same may be reasonably safe and convenient for travellers, with their horses, teams, and carriages, at all seasons of the year. Pub. Stats. ch. 52, § 1.

Towns may bestow labor upon all parts of the located way, and may make such changes in the natural surface of the soil as will add to the convenience or safety of the traveller. *Flagg v. Worcester*, 13 Gray, 601.

It is the settled rule of law in this Commonwealth that, in all cases where a highway, turnpike, bridge, town way, or other way is laid across a natural stream of water, it is the duty of those who use such privilege to make provision by open bridges, culverts, or other means for the free current of the water, so that it shall not be obstructed and pent up to flow back on lands belonging to the riparian proprietors. And it is their duty not only to make such bridge, culvert, or passage for water, but to keep it in such condition that it shall not obstruct the stream. *Parker v. Lowell*, 11 Gray, 353.

§ 773. If a person chosen surveyor of highways, unless exempt by law from holding such office, refuses, after being duly summoned, to take the oath of office, he shall forfeit a sum not exceeding ten dollars. Sts. 1893, ch. 423, § 39.

Selectmen may also be surveyors of highways. *Benjamin v. Wheeler*, 15 Gray, 490; *Bay State Brick Co. v. Foster*, 115 Mass. 431; *Com. v. Wentworth*, 145 Mass. 50.

Selectmen, unless specially authorized, cannot make contracts for the repair of highways. *Clark v. Russell*, 116 Mass. 455; *Hawks v. Charlemont*, 107 Mass. 414.

§ 774. A surveyor of highways who neglects the duties of his office shall forfeit ten dollars for each neglect; and he may be prosecuted by indictment for any deficiency in the highways within his limits occasioned by his fault or neglect.

§ 775. If a town is sentenced to pay a fine for a deficiency in the highways or town ways therein, any surveyor through whose fault or neglect such deficiency existed shall be liable for the amount of such fine and all costs, to be recovered by the town in an action of tort. Sts. 1893, ch. 423, §§ 21, 22.

A surveyor is not liable otherwise to the town than as herein provided, and consequently is not liable for damages recovered of the town on account of defects in its highway owing to his neglect. *White v. Phillipston*, 10 Met. 108.

To "repair" a way is to refit, make good, or restore an existing one, not to make a new one or widen the old one by including additional land. The surveyor has no lawful authority to use the money placed in his hands for ordinary repairs on existing roads, in making new structures and additions thereto. *Todd v. Rowley*, 8 Allen, 58.

A bridge would seem to include to some extent the approaches to it as appendages to it. The particular extent must be determined by what is reasonable under the circumstances of each case. This matter becomes important when the bridge is to be kept in repair by a toll company, railroad company, or some party other than the town in which it is situated, which has the care of the roads approaching it also. *Commonwealth v. Deerfield*, 6 Allen, 455.

§ 776. Towns shall grant and vote such sums of money as are necessary for making and repairing highways and town ways, and such money shall be carefully and judiciously expended in making and repairing said ways by the road commissioners, or by the surveyors of highways, each in his own district, when the town is divided into highway districts, and in such cases under the direction of the selectmen. Pub. Stats. ch. 52, § 3.

Officers like surveyors of highways and road commissioners, although they are elected and paid by the town, are public officers, and not agents or servants of the town, and the town is not responsible for their acts in the performance of their public duties. *Clark v. Easton*, 146 Mass. 43; *Pratt v. Weymouth*, 147 Mass. 245, at p. 254. "The responsibility of doing the work, directing the laborers, and taking charge of the repairs, is that of the highway surveyor." DEVENS, J., in *Pratt v. Weymouth*, 147 Mass. 245, at p. 255; *Prince v. Lynn*, 149 Mass. 193, at p. 195; *Nealley v. Bradford*, 145 Mass. 561, at p. 564.

The town cannot be made liable for the cost of the repairs, but it may pay for them if it chooses to do so. And so far as they cause damages to the estates of individuals by repairs upon the highways, they are treated as done under competent authority. *Allen v. Gardner*, 147 Mass. 452.

§ 777. The selectmen of every town having more than one surveyor of highways shall annually, before the first day of May, assign in writing to each surveyor the limits and divisions of the highways and town ways to be kept in repair by him.

§ 778. When there is a deficiency in the amount appropriated for the repair of highways or town ways within the limits of any surveyor, or when said amount is not furnished or paid to him, so that he is unable to make such repairs, he may, to an amount not exceeding ten dollars, employ persons to make such repairs; and the persons so employed shall be paid therefor by the town. Pub. Stats. ch. 52, §§ 4, 5.

§ 779. If a town neglects to vote a sufficient sum of money for the purpose of repairing the highways and town ways, or does not otherwise effectually provide therefor, each of its surveyors, in their respective districts, or the road commissioners (first having obtained the consent of the selectmen for that purpose in writing), may employ persons to repair the highways and town ways so that the same shall be reasonably safe and convenient for travellers at all seasons of the year, and the persons so employed shall be paid therefor by the town. Pub. Stats. ch. 52, § 6.

Highway surveyors have no power to bind a town by con-

tracts, not within the two preceding sections, for the ordinary repairs on highways, without authority from the town, conferred by express vote, or by a practice and custom adopted by it. *Blanchard v. Ayer*, 148 Mass. 174.

Plaintiff, a surveyor of highways, expended money without direction of selectmen for repairs of the highways. The town had not neglected to vote a sufficient supply of money. Thus it did not come within the two preceding sections, and plaintiff could not recover. *Goddard v. Petersham*, 136 Mass. 235.

§ 780. Two thirds at least of the money granted by each town for repairing highways and town ways shall be laid out and expended for that purpose before the first day of July next after the same is granted, or at such other time or times as the town at a legal meeting called for that purpose shall determine.

§ 781. Every surveyor shall annually on the first Monday of July, and also at the expiration of the term for which he is appointed, render to the selectmen an account of all moneys expended by him on the highways and town ways. For each neglect he shall forfeit a sum not exceeding fifty dollars.

§ 782. If any money remains unexpended in the hands of a surveyor at the expiration of his office, he shall pay the same to the town treasurer, who, after demand, may recover the same in an action of contract for money had and received, with twenty per cent in addition thereto, to the use of the town. Pub. Stats. ch. 52, §§ 7-9.

§ 783. The officer appointed to have the care of the trees belonging to a city or town and his assistants, but no other person, except as is provided in the following section, may, and when required by the surveyors of highways or road commissioners shall, trim or lop off trees and bushes standing in highways, townways, streets, or lanes, and, when ordered by a vote of the mayor and aldermen, selectmen, or road commissioners, passed after public notice and hearing, shall cut down and remove such trees; and the surveyors of highways and road commissioners shall forthwith cause to be dug up and removed whatever obstructs such ways, or endangers, hinders, or incommodes persons travelling thereon; and shall forth-

with cause snow to be removed from such ways or to be so trodden down as to make the ways reasonably safe and convenient. Sts. 1885, ch. 123, § 2.

If a highway surveyor, upon being notified that a shade tree standing in the highway is unsound and dangerous, does not proceed to obtain authority to cut down and remove it, as provided in this section, nor take due precaution against the danger, the town will be liable to a traveller who is injured by its fall. *Chase v. Lowell*, 151 Mass. 422.

“Although the surveyors of highways may remove ‘whatever obstructs or encumbers a highway or town way, or hinders, incommodes or endangers persons travelling thereon’ (Pub. Stats, 52, § 10), they have no rights of property in the public ways, and cannot as surveyors, maintain suits against persons who obstruct the ways.” FIELD, J., in *Needham v. N. Y. & N. E. R. R.*, 152 Mass. 61.

The decision of the surveyor acting within the scope of his authority, that a structure in a highway is an obstruction to public travel, is conclusive, and evidence is not admissible to show that it is not an obstruction in fact, or that the removal will seriously incommode and damage the person who placed it there, or that the surveyor did not act in good faith in deciding that it was an obstruction to public travel. *Bay State Brick Co. v. Foster*, 115 Mass. 431.

§ 784. No surveyor, road commissioner, or other person shall remove or take down fences, gates, or bars placed on a highway or town way for the purpose of preventing the spreading of a disease which may be dangerous to the public health.

§ 785. No surveyor of highways or road commissioner shall, without the approbation of the selectmen first had in writing, cause a water-course occasioned by the wash of a highway or town way to be so conveyed by the side of such way as to incommode a house, store, shop, or other building, or to obstruct a person in the prosecution of his business. Persons aggrieved by a violation of this section may complain to the selectmen or mayor and aldermen, who shall thereupon view the water-course and may direct the surveyor or road commissioners to alter the same in such manner as they shall determine.

§ 786. Towns may authorize their surveyors or road commissioners, or any other person, to enter into contracts for making or repairing the highways or town ways within the same.

§ 787. The selectmen or road commissioners may enter upon, use, or take any land for the purpose of securing or protecting a public way or bridge whenever in their opinion it is necessary so to do; and all damages sustained thereby shall be recovered in the manner provided for the assessment of damages occasioned by the laying out, alteration, or discontinuance of town ways. Pub. Stats. ch. 52, §§ 11-14.

§ 788. When an owner of land adjoining a highway or town way sustains damage in his property by reason of any raising, lowering, or other act done for the purpose of repairing such way, he shall have compensation therefor, to be determined by the selectmen, road commissioners, or mayor and aldermen, with whom he shall file his petition therefor after the commencement and within one year from the completion of the work, and who shall finally adjudicate upon the question of damages within thirty days after the filing of the petition therefor, unless the parties agree in writing to extend the time. The benefit, if any, which the complainant receives by reason of such alteration or repair, shall be allowed by way of set-off. Pub. Stats. ch. 52, § 15.

“If a town by its agents, or if the highway surveyors of a town, in constructing or repairing highways, cause the surface water to flow upon the land of an adjoining proprietor, there is no remedy by action. The owner of the adjoining land can protect himself by such barriers as he may choose to build.” FIELD, J., in *Kennison v. Beverly*, 146 Mass. 467.

§ 789. If a town neglects to repair any of the ways or bridges which it is by law obliged to keep in repair, or neglects to make the same reasonably safe and convenient when encumbered with snow, such town shall pay such fine as the court in its discretion may order. Pub. Stats. ch. 52, § 23.

§ 790. Corporations organized for the purpose of making and selling gas for light, for supplying the inhabitants of a town with fresh water, or generating and furnishing steam or hot water for heating, cooking, and mechanical power, may, with

the consent in writing of the mayor and aldermen of a city or the selectmen of a town, dig up and open the grounds in any of the streets, lanes, and highways thereof, so far as is necessary to accomplish the objects of the corporation ; but such consent shall not affect the right or remedy to recover damages for an injury caused to persons or property by the doings of such corporations. They shall put all such streets, lanes, and highways, which are opened, into as good repair as they were in when opened ; and, upon failure so to do within a reasonable time, shall be deemed guilty of a nuisance. Pub. Stats. ch. 106, §§ 11, 75 ; ch. 110, § 10.

(b) *Boundaries of Highways.*

§ 791. Where buildings or fences have been erected and continued for more than twenty years, fronting upon or against a training-field, burying-place, common landing-place, highway, private way, street, lane, or alley, and from the length of time or otherwise the boundaries thereof are not known or cannot be made certain by the records or by monuments, such fences or buildings shall be deemed and taken to be the true boundaries thereof. When such boundaries can be made certain, no length of time, less than forty years, shall justify the continuance of a fence or building on a town way, private way, highway, training-field, burying-place, landing-place, or other land appropriated for the general use or convenience of the inhabitants of the Commonwealth, or of a county, town, or parish ; but the same may, upon the presentment of a grand jury, be removed as a nuisance. Pub. Stats. ch. 54, § 1.

It is sufficient if the fence has been *substantially* in the same place. Thus where the fence is a Virginia fence, a straight line drawn through its centre is to be taken as the true boundary. *Holbrook v. McBride*, 4 Gray, 215.

If the original boundary can be made certain by ancient monuments, although the same are not now in existence, it must be taken to be the true boundary ; but when it cannot be made certain, the fence is conclusive evidence, and not merely *prima facie*, of the true boundary. *Wood v. Quincy*, 11 Cush. 487 ; *Pettingill v. Porter*, 3 Allen, 349.

§ 792. If fences, gates, rails, or bars are upon or across a town way, or private way, they may be removed by the order of a justice of the peace, unless they are there placed for the purpose of preventing the spreading of a disease dangerous to the public health, or unless they are erected or continued by license of the town, or of the person for whose use such private way was laid out; and a person aggrieved by such removal may apply to the county commissioners; and if upon examination it appears that such fences, gates, rails, or bars were erected or continued by license as aforesaid, the commissioners shall order them to be replaced. Pub. Stats. ch. 54, § 5.

A bill in equity brought by a town and its surveyors of highways for the obstruction of a town way cannot be maintained if it alleges no special damage to the inhabitants of the town distinct from that suffered by the public generally. *Needham v. N. Y. & N. E. R. R.*, 152 Mass. 61.

§ 793. The mayor and aldermen, selectmen, road commissioners, or any municipal officer of a city or town to whom the care of the streets or roads may be intrusted, may authorize the planting of shade trees therein, wherever it will not interfere with the public travel or with private rights; and shade trees standing and trees planted pursuant to such license shall be deemed and taken to be the private property of the person so planting them, or upon whose premises they stand or are planted, and shall not be deemed a nuisance; but upon complaint made to the mayor and aldermen, selectmen, or road commissioners, they may cause such trees to be removed at the expense of the owner thereof, if the public necessity seems to them so to require. Pub. Stats. ch. 54, § 6.

“Standing,” in this section, means standing June 1, 1860, the date when the statute took effect. *White v. Godfrey*, 97 Mass. 475.

(c) *Guide-posts.*

§ 794. Every town shall erect and maintain guide-posts on the highways and other ways within the town, at such places as are necessary or convenient for the direction of travellers,

and shall erect and maintain such guide-posts at such forks or intersections of such highways and other ways as lead to adjoining towns or cities. Sts. 1887, ch. 162.

§ 795. The selectmen or road commissioners of each town shall submit to the inhabitants at every annual meeting a report of all the places in which guide-posts are erected and maintained within the town, and of all places at which in their opinion they ought to be erected and maintained. For each neglect or refusal to make such report they shall severally forfeit ten dollars.

§ 796. Upon the report of the selectmen or road commissioners the town shall determine the several places at which guide-posts shall be erected and maintained, which shall be recorded in the town records. A town which neglects or refuses to determine such places, and to cause a record thereof to be made, shall forfeit five dollars for every month during which it neglects or refuses so to do; and in such case, upon any trial for not erecting or maintaining guide-posts reported to be necessary or convenient by the selectmen or road commissioners, the town shall be estopped from alleging that such guide-posts were not necessary or convenient.

§ 797. At each of the places determined by the town there shall be erected a substantial post of not less than eight feet in height, near the upper end of which shall be placed a board or boards, and upon each board shall be plainly and legibly painted or otherwise marked the name of the next town or place to which each of such roads leads, and of such other town or place of note as the selectmen or road commissioners may think proper, together with the distance or number of miles to the same; and also the figure of a hand, with the forefinger thereof pointing towards the towns or places to which said roads lead; but the inhabitants of a town may at their annual meeting agree upon some suitable substitute for such guide-posts. Pub. Stats. ch. 53, §§ 2-4.

LAYING OUT AND DISCONTINUANCE OF WAYS.

(a) *Town and Private Ways.*

§ 798. The selectmen or road commissioners of the several towns may lay out or alter town ways for the use of their

respective towns, and private ways for the use of one or more of the inhabitants thereof; or may order specific repairs to be made upon such ways. Pub. Stats. ch. 49, § 65.

“The tribunals which lay out and discontinue highways are required by the statutes to adjudicate upon the question what is for the public necessity and convenience.” KNOWLTON, J., in *Hammond v. County Commissioners*, 154 Mass. 509, at p. 510.

The distinctive character of a road, as a town way or a public highway, must to some extent be indicated by the manner of its creation, or the power which gives it a legal existence. The county commissioners have not only authority to lay out highways from town to town, that is, passing through various towns, but also highways the termini of which are exclusively within the same town. The only criterion, therefore, for distinguishing between these different species of roads, is to ascertain whether the proceedings for their location originated with the selectmen, or with the county commissioners. If with the former, they must be town ways, as the jurisdiction of the selectmen is confined to such ways. *Monterey v. County Commissioners of Berkshire*, 7 Cush. 394; *Blackstone v. County Commissioners*, 108 Mass. 68.

A majority of the board of selectmen is sufficient to lay out a town way. *Jones v. Andover*, 9 Pick. 146. *Dartmouth v. County Commissioners*, 153 Mass. 12.

They have authority to lay out a town way wholly upon land of citizens, against their consent, entering their land from a highway and returning to it at about the same place where it enters, and leading to no other way or landing-place, and capable of being used for no purposes of business or duty, or of access to the land of any other person; and which is laid out with the design to provide access, not for the town merely, but for the public, to points or places in the lands of those citizens esteemed as pleasing natural scenery. *Higginson v. Nahant*, 11 Allen, 530.

They have no authority to lay out a town way to be used only during a portion of the year. *Holcomb v. Moore*, 4 Allen, 529.

Nor can they lay out a landing-place on a town way between high-water mark and the channel of a navigable river. *Kean v. Stetson*, 5 Pick. 492.

A public way may be established by prescription over a private way opened by individuals. *Weld v. Brooks*, 152 Mass. 297.

§ 799. A town, at a meeting regularly called for the purpose, may discontinue any town way or private way. Pub. Stats. ch. 49, § 66.

“This section is intended to permit action on the part of a town similar in kind to that taken upon a report of selectmen laying out a way. It presents a single issue, namely, whether a certain existing way shall be discontinued or not. It does not authorize the voters to consider whether a way shall be altered. Such action can properly be taken only by a tribunal proceeding judicially.” KNOWLTON, J., in *Lincoln v. Warren*, 150 Mass. 309.

An alteration of a way by the construction of it in a different place, where it will serve all the purposes for which it was designed or used, works a discontinuance of that part of it not included in the new location, without express words to that effect. *Com. v. Westborough*, 3 Mass. 406; *Com. v. Cambridge*, 7 Mass. 158; *Bowley v. Walker*, 8 Allen, 21; *Bliss v. Deerfield*, 13 Pick. 102; *Johnson v. Wyman*, 9 Gray, 186; *Hobart v. Plymouth*, 100 Mass. 159; *Com. v. Boston and Albany R. R. Co.*, 150 Mass. 174, at p. 176.

§ 800. No town way or private way shall be laid out or altered unless, seven days at least previously thereto, a written notice of the intention of the selectmen or road commissioners of the town to lay out or alter the same is left by them, or by their order, at the usual place of abode of the owners of the land over which such way is proposed to be laid out or altered, or unless such notice is delivered to such owner in person, or to his tenant or authorized agent. If the owner has no such place of abode in the town, and no tenant or authorized agent therein known to the selectmen, or if, being a resident in the town, he is not known as such to the selectmen or road commissioners, such notice shall be posted up in some public place in the town seven days at least before the laying out of such way. Pub. Stats. ch. 49, § 67.

§ 801. If damage is sustained by a person in his property by the laying out, alteration, or discontinuance of a town or

private way, or by specific repairs ordered thereon, he shall receive such compensation as the selectmen or road commissioners shall determine, to be assessed and awarded in the manner provided for the assessment and award of damages by county commissioners in laying out highways (see Pub. Stats. ch. 49, §§ 14-16); which damages shall be paid by the town if it is a town way, but if a private way, then by the person for whose use it is laid out or altered, or for whose benefit specific repairs are ordered, or on whose application it is discontinued, unless the selectmen or road commissioners deem it reasonable that part of the damage shall be paid by the town and the residue by said persons, in which case they shall make an order specifying the sums to be paid by each. Pub. Stats. ch. 49, § 68.

The provision in the foregoing section, that the damages shall be assessed and awarded in the manner provided for the assessment and award of damages by county commissioners in laying out highways, has reference to the nature of the damages, the deductions to be made for benefits, and the distribution of damages among different parties in interest. *Higginson v. Nahant*, 11 Allen, 530.

§ 802. The damages so awarded shall not be paid until the land is entered upon and possession taken for the purpose of constructing such way or alteration, or until such specific repairs are commenced. And if possession is not taken, or if the specific repairs are not made, the party, instead of the damages awarded to him, shall be entitled to indemnity, to be assessed by the selectmen or road commissioners in the same manner that indemnity is awarded by county commissioners in like cases. Pub. Stats. ch. 49, § 69.

The right to compensation under the two preceding sections is not confined in terms to owners of land adjoining the highway. *Collins v. Waltham*, 151 Mass. 196, at p. 198.

§ 803. Except as is hereinafter provided, no town way or private way laid out or altered by the selectmen or road commissioners shall be established until such laying out or alteration, with the boundaries and admeasurements of the way, is reported to the town, and accepted and allowed at some public meeting of the inhabitants regularly warned and

notified therefor; nor unless such laying out or alteration, with the boundaries and admeasurements, is filed in the office of the town clerk seven days at least before such meeting. Pub. Stats. ch. 49, § 71.

Reference to a plan containing the admeasurements and boundaries is not sufficient unless the plan be filed; and neglect on the part of the selectmen to file their report seven days before the meeting renders the alteration invalid, though no person applied to the town clerk during the seven days to inspect the report. *Jeffries v. Swampscott*, 105 Mass. 535.

A vote of a town that the selectmen shall lay out a particular town way is unauthorized and improper, it being the intention of the statute that the selectmen shall exercise their own discretion upon the subject. *Kean v. Stetson*, 5 Pick. 492.

A report by the selectmen of a town of the laying out of a town way under this section duly filed in the town clerk's office, which recites that after having given proper notice to the parties they went upon the "road" referred to, describing it by courses, distances, and monuments, is valid, and a sufficient report to the town of the laying out, and such report need not state that no damages were sustained by any one. *Dartmouth v. County Commissioners*, 153 Mass. 12.

The laying out of a town way is not invalidated because the application therefor requests the selectmen to lay out a "public highway." *Dartmouth v. County Commissioners*, *ibid*.

Under this section, it is sufficient if the laying out of a town way is filed in the office of the town clerk seven days at least before the town meeting at which the laying out is reported by the selectmen and accepted; and the report to the town announcing the laying out, is not required to be filed seven days before such meeting. *Carr v. Berkeley*, 145 Mass. 539.

§ 804. If the selectmen or road commissioners unreasonably refuse or neglect to lay out or alter a town way or private way, when requested in writing by one or more of the inhabitants of a town, the county commissioners, on the petition in writing of a person aggrieved, presented at a regular meeting within one year, may cause such way to be laid out or altered, and may ascertain the place and course of the way, and esti-

mate the damages sustained by any person by reason thereof. Such damages, with all costs of the proceedings, shall be paid by the town, if it is a town way. If it is a private way, the damages and costs, or such part thereof as the county commissioners judge reasonable, shall be paid by the persons for whose use it is laid out or altered, and the residue, if any, by the town. Pub. Stats. ch. 49, § 73.

The omission of selectmen to make a written report to the town of their alteration of a town way, on a written petition for an alteration, is such a refusal or neglect to alter it as gives jurisdiction of the matter to the county commissioners. *New Marlboro v. County Commissioners*, 9 Met. 423.

It is a question exclusively within the discretion of the county commissioners to decide whether a town way, for the laying out of which application is made to them on the refusal of the selectmen to lay it out, is for the use of the town within which it is situated. *Monterey v. County Commissioners*, 7 Cush. 394.

§ 805. If a town unreasonably refuses or delays to approve and allow a town way or private way laid out or altered by the selectmen or road commissioners, and to put the same on record, any person aggrieved thereby may, within one year thereafter, apply by petition in writing to the county commissioners; and the county commissioners, unless sufficient cause is shown against such application, may approve and allow of the way as laid out or altered by the selectmen or road commissioners, and may direct the laying out or alteration and acceptance to be recorded by the clerk of such town, which shall have the like effect as if accepted by the town and recorded.

§ 806. If a town in which a town way or private way is laid out, altered, or approved, in pursuance of the three preceding sections, does not make and complete the same in the manner prescribed by the county commissioners, and to their acceptance, within six months from the time when the same is laid out or approved, or within the time directed by them, they shall, as soon as may be thereafter, cause such way to be completed, and at the next meeting shall direct the expenses and charges of completing the same to be paid out of the

county treasury, and shall order notice thereof to be given to the delinquent town, stating the amount of such expenses and charges. If the town does not before the next regular meeting of the county commissioners pay the same, with interest thereon at the rate of ten per cent from the time when the same was paid by the county treasurer, they shall cause the same with all further costs to be collected. Pub. Stats. ch. 49, §§ 74, 75.

§ 807. When a town way has been laid out or altered by the county commissioners, it shall not within two years thereafter be discontinued or altered by the town; and when such way has been discontinued by the county commissioners, the town shall not within two years thereafter lay out the same again. Pub. Stats. ch. 49, § 77.

§ 808. A highway or town way may be laid out across a railroad previously constructed, when the county commissioners adjudge that the public convenience and necessity so require; and in such case, after due notice to the railroad corporation and hearing all parties interested, they may thus lay out, or may authorize a city or town on petition of the mayor and aldermen or selectmen thereof to lay out, a way across a railroad, in such manner as not to injure or obstruct the railroad, and otherwise in conformity with the provisions of sections one hundred and nineteen and one hundred and twenty of chapter forty-nine of the Public Statutes, but not permitting it to cross at a level with the railroad unless public necessity so requires, and unless the board also consents thereto in writing, in which case the county commissioners may give special authority for such crossing, as provided in section one hundred and twenty-three of said chapter. Pub. Stats. ch. 112, § 125.

“The intention of the Legislature has been to impose upon the city or town authorized to maintain a way crossing a railroad at grade, the expense and the duty of maintaining the way up to the outer line of the railroad tracks, and upon the railroad between these outer lines.” DEVENS, J., in *Old Colony Railroad v. Fall River*, 147 Mass. 455.

“When a railroad is to cross a highway, it must be so constructed as not to obstruct the same. The highway is recog-

nized as an existing thing, and if a railroad company finds it necessary to cross it, the railroad must be so built that the highway will not be obstructed thereby,— [that is] that no obstruction of the highway will result from the building of the railroad.” ALLEN, J., in *Dickenson v. N. H. & N. R. R.*, 155 Mass. 16, at p. 19.

Under this section authorizing a highway or town way to be laid out across a railroad previously constructed, a footway may be laid out. *B. & A. R. R. v. Boston*, 140 Mass. 87.

§ 809. When a town way or private way is laid out or altered by the selectmen or road commissioners, or by the county commissioners, they shall in their report or return thereof specify the manner in which such way, location, or alteration shall be completed, and shall transmit to the clerk a description of the location and bounds thereof, which shall, within ten days, be recorded by him in a book of records kept for that purpose; and they shall allow the owner of the land through which the way passes a reasonable time to take off his trees, fences, and other property which may obstruct a building of such way. If he neglects to remove the same within the time allowed, he shall be deemed to have relinquished his right thereto for the benefit of the town, if the way be a town way; and if it be a private way, for the benefit of such person as the selectmen, road commissioners, or county commissioners may determine: *provided* that any buildings or materials upon the land shall be disposed of in the manner required by section seventeen of chapter forty-nine of the Public Statutes. Pub. Stats. ch. 49, § 80.

It is contemplated by this section that the adjudication as to the “reasonable time” to be allowed to the owner will form a portion of the report of the selectmen, so that when accepted by the vote of the town, the order will be complete. So that where the report contains no provision as to reasonable time, the notice is insufficient, and the owner upon his neglect to remove such property within the limit, could not be deemed to have relinquished it for the benefit of the town, within the meaning of this section. *White v. Foxborough*, 151 Mass. 28, at p. 37.

The surveyor of highways by order of the selectmen began

work on a way within the two years in the statute, but there was no formal vote of the town until eight years after this, when they confirmed the order of the selectmen, and the act of the surveyor. Held, that there was a sufficient entry for the purpose of construction to comply with the provisions of the statute, and to prevent the location over the plaintiff's land from being avoided. *Gilkey v. Watertown*, 141 Mass. 317.

The discontinuance of a part of a way as duly laid out over several persons' land, all of which has been taken possession of by an entry upon part of it for the purpose of construction, as provided in the statute, will not deprive such an owner of his right to damages for the taking of land in the portion so discontinued. *Wheeler v. Fitchburg*, 150 Mass. 350.

§ 810. Ways may be laid out, constructed, altered, widened, graded, or discontinued, under the provisions of these sections notwithstanding the acceptance by any town of any statute authorizing the assessment upon estates benefited of a portion of the cost of such ways, and every highway or town way shall be deemed to be laid out under the provisions of these sections unless the order laying out the same expressly declares the same to be laid out under the provisions of law authorizing the assessment of betterments. Pub. Stats. ch. 49, §§ 92, 93.

§ 811. No highway, town way, street, turnpike, canal, railroad, or street railway shall be laid out or constructed over a common or park dedicated to the use of the public or appropriated to such use without interruption for the period of twenty years; nor shall any part of such common or park be taken for widening or altering a highway, town way, or street, unless the consent of the inhabitants of the city or town, after public notice given in the manner provided in cases of the location and alteration of highways setting forth the extent and limits of the portion thereof proposed to be taken, in which the same is situated, is first obtained. Such consent shall be expressed by vote of the inhabitants, if ten or more legal voters file a request in writing to that effect with the selectmen or the mayor and aldermen, within thirty days after the publication of the notice; in the absence of such request, consent shall be presumed.

§ 812. No land of a public institution belonging to the Commonwealth shall be taken for a highway, town way, street, turnpike, canal, railroad, or street railway, without leave of the General Court. Pub. Stats. ch. 54, §§ 13, 15.

§ 813. No town shall contest the legality of a way laid out by it, and accepted and recorded as provided in these sections. Pub. Stats. ch. 49, § 82.

(b) *Footways.*

§ 814. Cities and towns may lay out footways for the use of the public, in the manner provided for the laying out of town ways.

(c) *Rights of Land-Owner When Possession is not Taken or Actual Notice Given.*

§ 815. The laying out or alteration of any way under the provisions of these sections (chapter forty-nine of the Public Statutes) shall be void as against the owner of any land over which the same is located, unless possession is taken of such land, for the purpose of constructing such way, within two years from the time when the right to take such possession first accrues; but an entry for the purpose of constructing any part of the laying out or alterations shall be deemed a taking of possession of all the lands included in the laying out or alterations made upon the same petition. Pub. Stats. ch. 49, §§ 83, 88.

(d) *Dedication of Ways.*

§ 816. No way opened and dedicated to the public use, which has not become a public way, shall be chargeable upon a city or town as a highway or town way, unless the same is laid out and established by such city or town in the manner prescribed by the statutes of the Commonwealth.

§ 817. The mayor and aldermen and selectmen or road commissioners shall, when the public safety demands it, direct and cause the entrances of such ways entering on and uniting with an existing public highway to be closed up, or may by other sufficient means caution the public against entering upon such ways; and if any such way is not closed, or if sufficient

notice is not given that the same is dangerous, the city or town shall be liable for damages arising from defects therein, in the same manner as if it had been duly laid out and established. Pub. Stats. ch. 49, §§ 94, 95.

(e) *Ascertaining Location.*

§ 818. When ten or more freeholders represent to the mayor and aldermen of a city or selectmen or road commissioners of a town that the exact location of a street, road, or way, over which they have jurisdiction, cannot be readily ascertained, they shall make investigation thereof; and, if it appears that the representation is correct, shall, after giving the notice required in laying out a similar road or way, proceed to ascertain the correct location, erect the necessary bounds, and file a certificate thereof, for record, in the manner stated in §§ 809 *ante* and 819 *post*.

(f) *Erection of Monuments.*

§ 819. The county commissioners, mayor and aldermen, selectmen, and road commissioners, shall cause permanent stone bounds, not less than three feet long, two feet of which at least shall be set in the ground, to be erected at the termini and angles of all roads laid out by them, when practicable; and when not so, a heap of stones, a living tree, a permanent rock, or the corner of an edifice, may be a substitute for such stones; or said bounds may be permanent stone bounds not less than three feet long, with holes drilled therein, and filled with lead, placed a few inches below the travelled part of the street or way, as the officer whose duty it is to cause the same to be erected may determine. And if they neglect to establish such monuments after being notified so to do by an owner of land through which there is any such way laid out, since the twenty-fifth day of April in the year eighteen hundred and forty-eight, the county if it is a county road, and the city or town if it is a city or town road, shall pay to the owner of the land fifty dollars for each month that such neglect continues, to be recovered in an action of tort.

(g) *Taking of Earth and Gravel.*

§ 820. The mayor and aldermen of cities, and the selectmen or road commissioners of towns, may select and lay out land within their respective limits, not appropriated to public uses or owned by any other city or town, as gravel and clay pits, from which may be taken earth and gravel necessary for the construction, repair, or improvement of streets or ways, and may lay out such ways as they deem necessary for convenient access thereto. All proceedings in relation to such land and ways shall be the same as are provided in the laying out of streets and town ways respectively; and the report of such laying out shall specify the extent and depth of excavation to be permitted, and the time, not exceeding ten years, during which such land or way shall be held and used. Pub. Stats. ch. 49, §§ 97-99.

SEWERS, DRAINS, AND SIDEWALKS.

(a) *Sewers and Drains.*

§ 821. The mayor and aldermen of a city, and the selectmen or road commissioners of a town, may lay, make, and maintain all such main drains or common sewers as they adjudge to be necessary for the public convenience or the public health, through the lands of any persons or corporations, and may repair the same whenever it is necessary; main drains and common sewers so laid shall be the property of the city or town. Cities and towns may with the approval of the state board of health, obtained after a public hearing by said board of all parties interested, purchase or take land within their respective limits for the purification and disposal of sewage. Said board shall give notice of such hearings by publication in such newspapers and at such times as it may deem proper. Sts. 1890, ch. 124.

While no particular form of words is made necessary by the statute to be used by the authorities in laying out a sewer, yet there must be such a laying out before any assessment therefor can be made; and this must be done with sufficient precision to show what the sewer is, or is to be, for which parties are liable to be assessed, or from the construction of

which their estates may to some extent receive damage. *Leominster v. Conant*, 139 Mass. 384.

Sewers and main drains belong to the cities and towns; and although the road commissioners who are given authority to maintain them are no more the agents of the town than highway surveyors when exercising highway surveyors' duties, still the interest of the towns in the sewers is so distinct from that of the public at large that they are held to the ordinary responsibilities of owners. *Bates v. Westborough*, 151 Mass. 174, at p. 184.

A town is liable to a landowner for damages resulting from neglect to keep its sewers free from obstructions. *Bates v. Westborough*, 151 Mass. 174.

§ 822. When land is taken by virtue of the preceding section, the proceedings in a city shall be the same as in the laying out of highways or streets therein; and in towns, the same as in the laying out of town ways. Pub. Stats. ch. 50, § 2.

If private land has been entered upon and possession taken by the selectmen of a town for the purpose of constructing a way which has been laid out by the selectmen and accepted by the town, a sewer may be constructed in the way by the selectmen without further notice or proceedings. *Lawrence v. Nahant*, 136 Mass. 477.

§ 823. Damages occasioned by the laying, making, or maintaining of main drains or common sewers shall be ascertained and recovered, in a city as in the laying out of highways or streets therein; and in towns, as in the laying out of town ways. Pub. Stats. ch. 50, § 3.

A town which under this section, lawfully takes land and constructs a common sewer therein, whereby a well upon land not taken, and not adjoining land taken, is made dry, the well being fed by water percolating through the soil, is liable under this section to pay damages therefor to the owner of the land in which the well is situated. *Trowbridge v. Brookline*, 144 Mass. 139.

§ 824. Every person who enters his particular drain into such main drain or common sewer, or who, by more remote means, receives benefit thereby for draining his cellar or land, shall pay to the city or town a proportional part of the charge

of making and repairing the same, and of the charge, not already assessed, of making and repairing other main drains and common sewers through which the same discharges, to be ascertained, assessed, and certified by the mayor and aldermen or selectmen; and notice thereof shall be given to the party to be charged, or to his tenant or lessee. Pub. Stats. ch. 50, § 4.

The statute fixes no time within which an assessment upon persons benefited by a common sewer may be made. The board whose duty it is to make the assessment must decide therefore, in its discretion, as to when it shall be made. *Fairbanks v. Fitchburg*, 132 Mass. 42.

Under a system of sewerage, the abutter is to pay his proportional cost, not merely of the abutting sewer, but of constructing the system of sewers of which it forms a part. DEVENS, J., in *Leominster v. Conant*, 139 Mass. 384.

A notice in writing of a sewer assessment, with a demand for payment, given to a person benefited by the treasurer of the city or town, under an order of the mayor and aldermen or of the selectmen, ordering him to collect it, is sufficient. *Collins v. Holyoke*, 146 Mass. 298.

§ 825. The city council of a city or the legal voters of a town may adopt a system of sewerage for a part or the whole of its territory, and may provide that assessments shall be made upon owners of estates within such territory by a fixed uniform rate, based upon the estimated average cost of all the sewers therein, according to the frontage of such estates on any street or way where a sewer is constructed, or according to the area of such estates within a fixed depth from such street or way, or according to both such frontage and area; but no assessment in respect to any such estate which by reason of its grade or level, or for any other cause, cannot be drained into such sewer, shall be made, certified, or notified until such incapacity is removed. Pub. Stats. ch. 50, § 7.

The assessment upon an estate for the construction of a sewer by a city (or town) is to be made according to the value of the land exclusive of the buildings; and in determining the amount of such assessment, the relative benefit which each estate on the line of the sewer may receive, is immaterial. *Snow v. Fitchburg*, 136 Mass. 183.

A sewer assessment cannot be laid upon a cemetery corporation's land, which by its charter is perpetually set apart as a burial-place for the dead, and can neither be sold, used for profit, nor appropriated to any other purpose. *Mount Auburn Cemetery v. Cambridge*, 150 Mass. 12.

§ 826. The mayor and aldermen of any city except Boston, or a town in which main drains or common sewers are laid, may by vote determine that, instead of paying an assessment under § 824 *ante*, every person who uses such main drains or common sewers in any manner shall pay for the permanent privilege to his estate such reasonable sum as the mayor and aldermen or the selectmen or road commissioners shall determine. Pub. Stats. ch. 50, § 8.

§ 827. All drains and common sewers in a street or highway shall be substantially made or repaired with brick or stone, or with such other materials and in such manner as the selectmen or road commissioners may direct.

§ 828. Plans and descriptions of all main drains and common sewers belonging to a city or town, with a true record of the charges of making and repairing the same, and of all assessments therefor, shall be kept in the office of the city or town clerk. Pub. Stats. ch. 50, §§ 13, 14.

§ 829. Whoever has occasion to open a common sewer or main drain in order to clear and repair the same shall, seven days at least before he begins to open the same, give notice to all parties interested, by advertising in such manner as the selectmen or road commissioners may direct that such parties may object thereto and state their objections in person or in writing to the selectmen or road commissioners; and if they judge the objections reasonable, the parties making the same shall not be held to pay any part of such expenses; but if they do not so make their objections within three days after such notice, or if the objections are not adjudged reasonable, the selectmen or road commissioners shall in writing permit the persons applying to open such common sewer or main drain, and to clear and repair the same; and all persons interested therein shall pay their proportions, to be determined by the selectmen or road commissioners of the town, and certified under their hands. Pub. Stats. ch. 50, § 18.

(b) *Sidewalks.*

§ 830. In cities in which the city council, and in towns in which the inhabitants, have adopted the provisions of this and the following section, or of the corresponding provisions of earlier statutes, the mayor and aldermen or selectmen or road commissioners may establish and grade sidewalks in such streets as in their judgment the public convenience may require, and may assess the abutters on such sidewalks one half the expense of the same, the residue being paid by such city or town. All assessments so made shall be a lien upon the abutting lands, and be collected in the same manner as taxes on real estate.

§ 831. No sidewalk constructed or graded in a city or town shall be dug up or obstructed in any part thereof without the consent of the mayor and aldermen of the city, or of the selectmen or road commissioners of the town.

§ 832. In cities in which the city council, and in towns in which the inhabitants at an annual meeting, have adopted the provisions of chapter three hundred and three of the statutes of the year eighteen hundred and seventy-two, and of chapter one hundred and seven of the statutes of the year eighteen hundred and seventy-four, or of this and the following section, the mayor and aldermen, or the selectmen or road commissioners, may grade and construct sidewalks and complete partially constructed sidewalks in any street, as the public convenience may require, with or without edgestones; and may cover the same with brick, flat stones, concrete, gravel, or other appropriate material; and may assess not exceeding one half of the expense proportionally upon the abutters on such sidewalks: but no abutter shall be assessed a sum exceeding one per cent of the valuation of his abutting estate as fixed by the last preceding annual assessment for taxes; and all assessments so made shall constitute a lien upon the abutting land, and be collected in the same manner as taxes on real estate. The mayor and aldermen, selectmen, or road commissioners, shall deduct from the assessment for sidewalks so constructed with edgestones and covered any sum previously assessed upon the abutting premises, and paid for the expense

of the construction of such sidewalk in any other manner; such deduction shall be made proportionally from the assessments upon abutters who are owners of estates in respect of which such former assessments were paid. Such sidewalks, when so constructed and covered, shall be maintained at the expense of such city or town.

§ 833. In estimating the damage sustained by the construction of sidewalks under the preceding section, there shall be allowed, by way of set-off, the benefit, if any, to the property of the party by reason thereof. Pub. Stats. ch. 50, §§ 20-23.

(c) *Apportionment of Sewer and Sidewalk Assessments.*

§ 834. In a city or town which has accepted the provisions of this section, or of chapter two hundred and forty-nine of the statutes of the year eighteen hundred and seventy-eight, if the owner of real estate within sixty days after notice of a sewer or sidewalk assessment thereon notifies in writing the board making such assessment to apportion the same, said board shall apportion it into three equal parts, and certify such apportionment to the assessors; and the assessors shall add one of said parts, with interest from the date of apportionment, to the annual tax of said real estate for each of the three years next ensuing. All liens for the collection of such assessments shall continue until the expiration of two years from the time when the last instalment is committed to the collector; and all sewer and sidewalk assessments remaining unpaid after the time of payment stated in the order making the same shall draw interest from such time until paid. Pub. Stats. ch. 50, § 25.

BETTERMENTS.

§ 835. At any time within two years after a street, highway, or other way is laid out, altered, widened, graded, or discontinued in a city or town by an order declaring the same to be done under the provisions of law authorizing the assessment of betterments, if in the opinion of the board of city or town officers authorized to lay out streets or ways respectively therein, any real estate, including that a part of which is

taken therefor, receives any benefit and advantage therefrom beyond the general advantages to all real estate in the city or town, such board may determine the value of such benefit and advantage to such estate, and may assess upon the same a proportional share of the expense of such laying out, alteration, widening, grading, or discontinuance; but no such assessment shall exceed one half of the amount of such adjudged benefit and advantage; nor shall the same be made until the work of laying out, altering, widening, and grading is completed, or the discontinuance made. Pub. Stats. ch. 51, § 1.

An assessment for betterments is not invalid because the adjudication is only that the estates "have been benefited" and does not declare that they receive any benefit beyond the general advantages to all real estate in the city. *Jones v. Boston*, 104 Mass. 461, 469; *Foley v. Haverhill*, 144 Mass. 352.

Damages for taking land for the widening and improvement of a way are to be based upon the value of the land regardless of the widening, and are not to include any enhanced value due to the contemplated improvement. *Benton v. Brookline*, 151 Mass. 250.

§ 836. Whenever the authorities empowered to locate, lay out, or construct streets, ways, or public parks, in a city or town, shall take by purchase or otherwise any land therefor, such authorities may make an agreement in writing with the owner of such land that the city or town shall assume any betterments assessed upon the remainder of such owner's lands, or any portion thereof, for such location, laying out, and construction, and such agreement shall be binding on such city or town: *provided*, such owner shall, on such terms as may be agreed upon with said authorities, release to the city or town all claims for damages on account of locating, laying out, and constructing such street, way, or park. Sts. 1884, ch. 226.

The assessment of damages and betterments cannot be submitted to arbitration, except so far as provided in this section. *Somerville v. Dickerman*, 127 Mass. 272.

The benefit to land caused by the widening of a street is to

be assessed according to its value at the date of the widening. *Treadwell v. Boston*, 123 Mass. 23.

§ 837. Any such assessment which is invalid, and which has not been paid or has been recovered back, may be reassessed by such board, to the amount for which the original assessment ought to have been made, and the same shall be a lien upon the estate, and shall be collected in the same manner as reassessed taxes. Pub. Stats. ch. 51, § 2.

§ 838. The expense so assessed shall include all damages for land and buildings taken; and in estimating such damages the value of all buildings on the land a part of which is taken shall be included, and there shall be deducted therefrom the value of the materials removed, and of all buildings or parts of buildings remaining thereon; and the damages for land taken shall be fixed at the value thereof before such laying out, alteration, or widening, and shall be paid in the same manner, and upon the same conditions, as in other cases of the laying out, alteration, widening, grading, or discontinuance of streets and ways. Pub. Stats. ch. 51, § 3.

On the assessment of damages under this section, for the taking land for widening a way, special benefits resulting from the widening are not to be set off against damages, but are to be separately assessed, and evidence of such benefits or advantages is inadmissible. *Benton v. Brookline*, 151 Mass. 250.

If buildings standing wholly or partially on land taken for widening a way may properly and reasonably be removed therefrom by the land owner, the expense of removal is a proper element of damage in assessing his damages, as bearing upon which evidence of the actual reasonable cost of removing them is competent. *Benton v. Brookline*, 151 Mass. 250.

§ 839. A person owning real estate abutting on any such street, highway, or other way, and liable to such assessment, may give notice in writing to such board, before the estimate of damages is made, that he objects to the same, and elects to surrender his estate; and if said board adjudges that the public convenience and necessity require the taking of such abutting estate for the improvements named, they may take the whole thereof, and shall thereupon estimate its value, excluding the

benefit or advantage accrued from the laying out, alteration, widening, grading, or discontinuance; and such owner shall convey the estate to such city or town, which shall pay him therefor the value so estimated, and the same may be recovered by an action of contract; and the city or town may sell any portion of said estate not needed for such improvements.

§ 840. Every such assessment shall constitute a lien upon the real estate assessed, to be enforced with like charges for costs and interest in the manner provided by law for the collection of taxes; and if the owner at any time before demand made gives notice to such board to apportion such an assessment, said board shall apportion the same into three equal parts, and shall certify such apportionment to the assessors; and the assessors shall add one of said parts, with interest from the date of apportionment, to the annual tax of said estate for each of the three years next ensuing; and all such assessments remaining unpaid after they become due shall draw interest until the payment thereof. Pub. Stats. ch. 51, §§ 4, 5.

§ 841. The preceding sections shall not take effect in any town which has not accepted the provisions of chapter one hundred and sixty-nine of the statutes of the year eighteen hundred and sixty-nine, or of chapter three hundred and eighty-two of the statutes of the year eighteen hundred and seventy-one, until accepted at a legal town meeting. Pub. Stats. ch. 51, § 10.

STREET RAILWAYS.

(a) *Construction and use of Tracks.*

§ 842. The board of aldermen of a city or the selectmen of a town, upon the petition of such directors or a majority thereof, for a location of the tracks of the railway therein, shall give notice to all parties interested, by publication in newspapers or otherwise as they may determine, at least fourteen days before their meeting, of the time and place at which they will consider such location; and after a hearing they shall pass an order refusing such location, or granting the same or any portion thereof under such restrictions as they deem the interests of the public may require; and the location

thus granted shall be deemed and taken to be the true location of the tracks of the railway, if an acceptance thereof by said directors in writing is filed with said mayor and aldermen or selectmen within thirty days after receiving notice thereof. Pub. Stats. ch. 113, § 7.

§ 843. The board of aldermen or the selectmen may, from time to time, under such restrictions as they deem the interests of the public may require, upon petition, authorize a street railway company whose charter has been duly accepted and whose tracks have been located and constructed, or its lessees and assigns, to extend the location of its tracks within their city or town, without entering upon or using the tracks of another street railway company; and such extended location shall be deemed to be the true location of the tracks of the company, if its acceptance thereof in writing is filed in the office of the clerk of the city or town within thirty days after receiving notice thereof. Before acting upon the petition, at least fourteen days' notice of the hearing shall be given to all parties interested, by publication in such newspapers as the board of aldermen or selectmen may determine, or otherwise.

§ 844. The location and position of the tracks of any street railway company may be altered upon application of a party interested, by the same authority and in the same manner as is provided in the preceding section for the location of an extension. Such alteration shall be made by the company within such time, and the expense thereof shall be borne by such party, as the board of aldermen or selectmen may determine.

§ 845. The board of aldermen or the selectmen, at any time after the expiration of one year from the opening for use of a street railway in their city or town, and after notice published in the manner stated in § 843 *ante*, and a hearing, if in their judgment the interests of the public so require, may order that the location of any track shall be revoked; and the company shall thereupon remove the same in conformity with such order, and shall put the street in as good condition as it was in immediately before being occupied by said track. Pub. Stats. ch. 113, §§ 21-23.

§ 846. If a street railway company voluntarily discontinues the use of any part of its tracks for a period of six months, the streets or highways occupied thereby shall, upon the order of the board of aldermen or selectmen, forthwith, at the expense of the company, be cleared of said tracks, and put in as good condition for public travel as they were in immediately before being so occupied.

§ 847. The board of aldermen or selectmen may order a street railway company to discontinue temporarily the use of any tracks within the limits of their city or town, whenever they adjudge that the safety or convenience of the inhabitants requires such discontinuance.

(b) *Operation of Road, Streets, etc.*

§ 848. The board of aldermen or selectmen may from time to time establish such regulations as to the rate of speed, mode of use of the tracks, and removal of snow and ice therefrom, within their city or town, as the interest and convenience of the public may require. Pub. Stats. ch. 113, §§ 25-27.

§ 849. The board of aldermen or selectmen may from time to time make such regulations as to the manner and extent of use of tracks, and the number and routes of cars of any and all companies running over the same, within their city or town, as the interest of public travel may require. Pub. Stats. ch. 113, § 29.

§ 850. Cities and towns may for any lawful purpose take up streets or highways traversed by street railways, or may alter or discontinue the same as authorized by law, without being liable in damages therefor to a street railway company.

§ 851. Every street railway company shall keep in repair, to the satisfaction of the superintendent of streets, street commissioner, road commissioners, or surveyors of highways, the paving, upper planking, or other surface material of the portions of streets, roads, and bridges occupied by its tracks; and if such tracks occupy unpaved streets or roads, shall, in addition, so keep in repair eighteen inches on each side of the portion occupied by its tracks, and shall be liable for any loss or injury that any person may sustain by reason of the carelessness, neglect, or misconduct of its agents and servants in

the construction, management, and use of its tracks. Pub. Stats. ch. 113, §§ 31, 32.

§ 852. Every street railway company shall erect and maintain upon every bridge or draw of a bridge crossed by its track suitable guards or railings, sufficient to prevent its cars from running off, and to the satisfaction of the board of aldermen of the city or the selectmen of the town in which such draw or bridge, or any portion thereof, is situated.

§ 853. The board of aldermen or selectmen may establish such regulations, requiring the driver or conductor to give notice or warning of the approach of street cars, as shall in their opinion best secure the unobstructed use of the tracks and the free passage of the cars. Pub. Stats. ch. 113, §§ 34, 36.

§ 854. A street railway company may use such motive-power on its tracks as the board of aldermen of cities, or the selectmen of towns, through which it is located, may from time to time permit.

§ 855. The board of aldermen of a city, the selectmen of a town, or fifty legal voters of a city or town in which a street railway is located, may apply to the board of railroad commissioners, who shall after due notice and hearing of the parties interested, revise and regulate the fares established by such company; but such fares shall not, without the consent of the company, be so reduced as to yield, with all other profits derived from operating its road, an income of less than ten per cent upon the actual cost of the construction of its road and the purchase of property for its necessary use, to be determined by said board. The report of the board shall be final and conclusive for one year. Pub. Stats. ch. 113, §§ 39, 44.

TELEGRAPH COMPANIES.

§ 856. Every company incorporated for the transmission of intelligence by electricity may under the provisions of the following section construct lines of electric telegraph upon and along the highways and public roads, and across any waters, within the state, by the erection of the posts, piers, abutments, and other fixtures (except bridges) necessary to

sustain the wires of its lines ; but shall not incommode the public use of highways or public roads, nor endanger or interrupt the navigation of any waters. Pub. Stats. ch. 109, §§ 1, 2.

§ 857. The mayor and aldermen or selectmen of any place through which the lines of a company are to pass, shall give the company a writing specifying where the posts may be located, the kind of posts, and the height at which and the places where the wires may run. After the erection of the lines, having first given the company or its agents opportunity to be heard, they may direct any alteration in the location or erection of the posts, piers, or abutments, and in the height of the wires. Such specifications and decisions shall be recorded in the records of the city or town. Pub. Stats. ch. 109, § 3.

The foregoing sections apply to companies incorporated under the laws of this state. The determination of the selectmen as to where the posts may stand is conclusive upon the rightfulness of their erection within the limits of a highway. *Commonwealth v. Boston*, 97 Mass. 555.

§ 858. The mayor and aldermen and selectmen shall each receive for services performed under the foregoing sections, two dollars a day. Pub. Stats. ch. 109, § 5.

§ 859. The selectmen may establish reasonable regulations for the erection and maintenance of all telegraph and telephone lines within their respective towns, including all lines owned or used by said towns, and may permit the same to be laid under any public way or square. Pub. Stats. ch. 27, § 47.

§ 860. The selectmen of a town may empower citizens of Massachusetts to establish and maintain, in such town, posts, wires, and other apparatus for telegraphic and telephonic communication, in conformity with the provisions of the preceding sections, and other laws now or hereafter applicable to telegraph or telephone companies. Pub. Stats. ch. 27, § 49.

§ 861. All provisions of law granting authority to erect, lay, and maintain, and to regulate telegraph and telephone lines, apply to all corporations and persons having authority to place posts, wires, etc., in the streets for any purpose, and to all telephone wires, electric and otherwise. Sts. 1889, chs. 398, 434.

CHAPTER IX.

SCHOOL COMMITTEES AND PUBLIC SCHOOLS.

(a) *In general.*

§ 862. Every town shall, at its annual meeting, or at a meeting appointed and notified by the selectmen for the purpose, and held in the same month in which the annual meeting occurs, choose by written ballots a school committee, which shall have the general charge and superintendence of all the public schools in the town. Said committee shall consist of any number of persons divisible by three which said town has decided to elect, one third thereof to be elected annually, and to continue in office three years. No person shall be deemed to be ineligible to serve upon a school committee by reason of sex. If a town fails or neglects to choose such committee, an election at a subsequent meeting shall be valid. Pub. Stats. ch. 44, § 21.

The charge and superintendence which they are to take of the schools is general; they can delegate subordinate matters. *Huse v. Lowell*, 10 Allen, 149.

But the power of fixing times of vacation and granting holidays for schools resides only in the committee. *Ninth School District in Weymouth v. Loud*, 12 Gray, 61.

The school committee is a board of public officers whose duties are prescribed by statute, and in the execution of its duties the members do not act as agents of the town, but as public officers in the performance of public duties. *McKenna v. Kimball*, 145 Mass. 555, at p. 556.

The decision of the committee on matters of good order and discipline, is final so far as it relates to the rights of pupils to enjoy school privileges. *Hodgkins v. Rockport*, 105 Mass. 475. *Watson v. Cambridge*, 32 N. E. Rep. 864 (Mass. Jan. 1893).

“The management of the schools involves many details, and it is important that a board of public officers dealing with

these details, and having jurisdiction to regulate the internal affairs of the schools should not be interfered with or have their conduct called in question before another tribunal, so long as they act in good faith within their jurisdiction." KNOWLTON, J., in *Watson v. Cambridge*, 32 N. E. Rep. 864 (Mass. Jan. 1893).

§ 863. If a person elected a member of the school committee, after being duly notified of his election in the manner in which town officers are required to be notified, refuses or neglects to accept said office, or if a member of the committee declines further service, or from change of residence or otherwise becomes unable to attend to the duties of the committee, the remaining members shall, in writing, give notice of the fact to the selectmen of the town, or to the mayor and aldermen of the city, and the two boards shall thereupon, after giving public notice of at least one week, proceed to fill such vacancy; and a majority of the ballots of persons entitled to vote shall be necessary to an election.

§ 864. If all the persons elected members of the school committee, after such notice of their election, refuse or neglect to accept the office, or, having accepted, afterwards decline further service, or become unable to attend to the duties of the committee, the selectmen or the mayor and aldermen shall, after giving like public notice, elect by ballot a new committee, and the votes of a majority of the entire board of selectmen, or of the mayor and aldermen, shall be necessary to an election.

§ 865. The term of service of every member elected in pursuance of the provisions of the two preceding sections shall end with the municipal or official year in which he is chosen; and if the vacancy which he was elected to fill was for a longer period, it shall, at the first annual election after the occurrence of the vacancy, be filled in the manner prescribed for original elections of the school committee.

§ 866. All the members of the school committee shall continue in office for the purpose of superintending the winter terms of the several schools, and of making and transmitting the certificate, returns, and report of the committee, notwithstanding the election of any successor at the annual meeting; but for all other duties, the term of office shall commence

immediately after election; except that, in cities where no different provision has been specifically made, the term of office of members of the school committee shall commence at the time provided in regard to members of the several city councils.

§ 867. A town may, at its annual meeting, vote to increase or diminish the number of its school committee. Such increase shall be made by adding one or more to each class, to hold office according to the tenure of the class to which they are severally chosen. Such diminution shall be made by choosing, annually, such number as will in three years effect it, and a vote to diminish shall remain in force until the diminution under it is accomplished.

§ 868. The school committee shall appoint a secretary and keep a permanent record book, in which all its votes, orders, and proceedings shall by him be recorded. Pub. Stats. ch. 44, §§ 22-27.

§ 869. In every town there shall be kept, for at least six months in each year, at the expense of said town, by a teacher or teachers of competent ability and good morals, a sufficient number of schools for the instruction of all the children who may legally attend public school therein, in orthography, reading, writing, English grammar, geography, arithmetic, drawing, the history of the United States, and good behavior. Algebra, vocal music, agriculture, sewing, physiology, hygiene, and the elementary use of hand tools shall be taught, by lectures, or otherwise, in all the public schools in which the school committee deem it expedient. Pub. Stats. ch. 44, § 1; Sts. 1884, ch. 69.

In any town where such tools shall be introduced, they shall be purchased by the school committee, at the expense of such town, and loaned to such pupils as may be allowed to use them, free of charge; subject to such rules and regulations, as to care and custody, as the school committee may prescribe. Sts. 1884, ch. 69.

§ 870. Physiology and hygiene, which, in both divisions of the subject, shall include special instruction as to the effects of alcoholic drinks, stimulants, and narcotics on the human system, shall be taught as a regular branch of study to all

pupils in all schools supported wholly or in part by public money, except special schools maintained solely for instruction in particular branches, such as drawing, mechanics, art, and like studies. All acts or parts of acts relating to the qualifications of teachers in the public schools shall apply to the branch of study prescribed in this act. Sts. 1885, ch. 332.

§ 871. Every town may, and every town containing five hundred families or householders, according to the latest public census taken by the authority either of the Commonwealth or of the United States, shall, besides the schools prescribed in the preceding section, maintain a high school, to be kept by a master of competent ability and good morals, who, in addition to the branches of learning before mentioned, shall give instruction in general history, book-keeping, surveying, geometry, natural philosophy, chemistry, botany, the civil polity of this Commonwealth and of the United States, and the Latin language. Such high school shall be kept for the benefit of all the inhabitants of the town, ten months at least, exclusive of vacations, in each year, and at such convenient place or alternately at such places in the town as the legal voters at their annual meeting determine. And in every town containing four thousand inhabitants, the teacher or teachers of the schools required by this section shall, in addition to the branches of instruction before required, be competent to give instruction in the Greek and French languages, astronomy, geology, rhetoric, logic, intellectual and moral science, and political economy. Pub. Stats. ch. 44, § 2.

§ 872. Any town not required by law to maintain a high school shall pay for the tuition of any child who with the parent or guardian resides in said town and who attends the high school of another town or city, provided the parent or guardian of such child before such attendance obtains the approval of the school committee of the town in which the child and parent or guardian reside. Sts. 1891, ch. 263, § 1.

§ 873. Two adjacent towns, having each less than five hundred families or householders, may form one high school district for establishing such a school as is contemplated in the preceding section, when a majority of the legal voters of each town, in meetings called for that purpose, so determine.

§ 874. The school committees of the two towns so united shall elect one person from each of their respective boards, and the two so elected shall form the committee for the management and control of such school, with all the powers conferred upon school committees and prudential committees.

§ 875. The committee thus formed shall determine the location of the schoolhouse authorized to be built by the towns forming the district, or, if the towns do not determine to erect a house, shall authorize the location of such school alternately in the two towns.

§ 876. In the erection of a schoolhouse for the permanent location of such school, in the support and maintenance of the school, and in all incidental expenses attending the same, the proportions to be paid by each town, unless otherwise agreed upon, shall be according to its proportion of the county tax. Pub. Stats. ch. 44, §§ 3-6.

§ 877. Every town and city having ten thousand or more inhabitants, shall establish and maintain, in addition to the schools required by law to be maintained therein, evening schools for the instruction of persons over twelve years of age in orthography, reading, writing, geography, arithmetic, drawing, the history of the United States, and good behavior. Such other branches of learning may be taught in such schools as the school committee of the town shall deem expedient.

§ 878. The school committee of such towns shall have the same superintendence over such evening schools as they have over other schools, and may determine the term or terms of time in each year, and the hours of the evening, during which such schools shall be kept, and may make such regulations as to attendance at such schools as they may deem expedient. Sts. 1883, ch. 174, §§ 1, 2.

§ 879. Two weeks next before the opening of each term of the evening schools, the school committee shall, by posters posted in three or more public places of said city or town, give notice of the location of said schools, the date of the commencement of the term, the evenings of the week during which said schools shall be kept, the provisions of section two of this act as to forfeiture for non-compliance with said section, and such regulations as to attendance as they shall deem proper. Sts. 1887, ch. 433, § 4.

§ 880. In all the public schools of the Commonwealth the last regular session prior to Memorial Day, or a portion thereof, shall be devoted to exercises of a patriotic nature. Sts. 1890, ch. 111.

§ 881. Any town may, and every city and town having more than ten thousand inhabitants shall, annually make provision for giving free instruction in industrial or mechanical drawing to persons over fifteen years of age, in either day or evening schools, under the direction of the school committee.

§ 882. A town may establish and maintain one or more industrial schools, which shall be under the superintendence of the school committee, who shall employ the teachers, prescribe the arts, trades, and occupations to be taught therein, and have the general control and management thereof; but they shall not expend for any such school an amount exceeding the appropriation specifically made therefor, and shall not compel any scholar to study any trade, art, or occupation without the consent of his parent or guardian; and attendance upon such school shall not take the place of the attendance upon public schools required by law.

§ 883. A town may establish and maintain, upon shore or upon ships or other vessels at the option of the school committee, one or more schools for training young men or boys in nautical duties; such schools shall be subject to the provisions of the preceding section, except that the school committee may excuse boys attending such nautical schools from attendance on other schools.

§ 884. Two or more towns may, by a vote of a majority of the legal voters in each town, unite in establishing union schools for the accommodation of such contiguous portions of each as shall be mutually agreed upon.

§ 885. The management and control of such schools, the location of the same or of the schoolhouses therefor, and the apportionment of the expenses of erecting such schoolhouses and of the support and maintenance of said schools, with all expenditures incident to the same, shall be governed by the statements in §§ 874, 875, and 876 *ante*.

§ 886. A town may establish and maintain, in addition to the schools required by law to be maintained therein, schools

for the education of persons over twelve years of age ; may determine the term or terms of time in each year, and the hours of the day or evening, during which said school shall be kept ; and may appropriate such sums of money as may be necessary for the support thereof.

§ 887. When a school is so established, the school committee shall have the same superintendence over it as they have over other schools, and shall determine what branches of learning may be taught therein.

§ 888. In every public school having an average of fifty scholars the school district or town to which such school belongs shall employ one or more female assistants, unless such district or town votes to dispense with such assistant.

§ 889. It shall be the duty of the president, professors, and tutors of the university at Cambridge and of the several colleges, of all preceptors and teachers of academies, and of all other instructors of youth, to exert their best endeavors to impress on the minds of children and youth committed to their care and instruction the principles of piety and justice and a sacred regard to truth ; love of their country, humanity, and universal benevolence ; sobriety, industry, and frugality ; chastity, moderation, and temperance ; and those other virtues which are the ornament of human society and the basis upon which a republican constitution is founded ; and it shall be the duty of such instructors to endeavor to lead their pupils, as their ages and capacities will admit, into a clear understanding of the tendency of the above-mentioned virtues to preserve and perfect a republican constitution and secure the blessings of liberty as well as to promote their future happiness, and also to point out to them the evil tendency of the opposite vices.

§ 890. The resident ministers of the gospel, the selectmen, and the school committees, shall exert their influence and use their best endeavors that the youth of their towns shall regularly attend the schools established for their instruction.

§ 891. The several towns shall at their annual meetings, or at a regular meeting called for the purpose, raise such sums of money for the support of schools as they judge necessary ; which sums shall be assessed and collected in like manner as other town taxes. Pub. Stats. ch. 44, §§ 7-17.

§ 892. A town which refuses or neglects to raise money for the support of schools as required by this chapter shall forfeit a sum equal to twice the highest sum ever before voted for the support of schools therein. A town which refuses or neglects to choose a school committee to superintend its schools, or to choose prudential committees in the several districts, when it is its duty to choose such prudential committees, shall forfeit not less than five hundred nor more than one thousand dollars, to be paid into the treasury of the county.

§ 893. Three fourths of any forfeiture so paid shall be paid by the county treasurer to the school committee, if any, otherwise to the selectmen of the town from which it is recovered, who shall apportion and appropriate the same to the support of the schools of such town in the same manner as if it had been regularly raised by the town for that purpose. Pub. Stats. ch. 44, §§ 19, 20.

§ 894. The school committee, unless the town at its annual meeting determines that the duty may be performed by the prudential committee, shall select and contract with the teachers of the public schools ; shall require full and satisfactory evidence of the good moral character of all teachers who may be employed ; and shall ascertain, by personal examination, their qualifications for teaching, and their capacity for the government of schools. Pub. Stats. ch. 44, § 28.

The power conferred on school committees "to select and contract with the teachers for the town and district schools," includes the power to fix the compensation to be paid them, and to bind the town to pay the same. *Batchelder v. Salem*, 4 Cush. 599.

The town authorities have no power to interfere with such duties of the committee ; they can only vote to limit the school to the time prescribed by statute, and resolve, if they choose, not to continue it beyond such time. *Charlestown v. Gardner*, 98 Mass. 587 ; *Batchelder v. Salem*, 4 Cush. 599.

The authority and duty of the school committee of a town are not confined to ascertaining by examination the literary qualifications of teachers selected by the prudential committee, and their capacity for the government of schools ; but they are the sole judges of their qualification in all respects to

teach and govern the school for which they are selected. *School Dist. No. 10 in Uxbridge v. Mowry et al.*, 9 Allen, 94.

§ 895. The diplomas granted by the state normal schools of this Commonwealth to the graduates of such schools may be accepted by the school committees of towns and cities in lieu of the personal examination required by the preceding section. Sts. 1891, ch. 159.

§ 896. The school committee of any city or town may elect any duly qualified person to serve as a teacher in the public schools of such city or town during the pleasure of such committee: *provided* such person has served as a teacher in the public schools of such city or town, for a period of not less than one year. Sts. 1886, ch. 313.

§ 897. Every teacher of a town or district school shall, before he opens such school, obtain from the school committee a certificate in duplicate of his qualifications, one of which shall be deposited with the selectmen before any payment is made to such teacher on account of his services; and upon so filing such certificate, the teacher of any public school shall be entitled to receive, on demand, his wages due at the expiration of any quarter, or term longer or shorter than a quarter, or upon the close of any single term of service, subject to the conditions which are specified in § 935 *post*. Pub. Stats. ch. 44, § 29.

§ 898. The school committee may, when they think proper, dismiss any teacher from employment, and such teacher shall receive no compensation for services rendered after such dismissal. Pub. Stats. ch. 44, § 30.

A teacher so dismissed can recover only that portion of the salary due at the time of such dismissal, even if under an annual salary payable at stated periods of time. *Knowles v. Boston*, 12 Gray, 339.

§ 899. The school committee, or some one or more of them, in each town where there is no superintendent of schools, shall for the purpose of organizing and making a careful examination of the schools, and of ascertaining that the scholars are properly supplied with books, visit all the public schools therein on some day during the first week after the opening of such schools, and on some day during the two weeks prece-

ding the close of the same, and also, without giving previous notice thereof to the instructors, once in each month; and they shall at such examinations inquire into the regulation and discipline of the schools and into the habits and proficiency of the scholars.

§ 900. The school committee shall require the daily reading in the public schools of some portion of the Bible, without written note or oral comment; but they shall not require a scholar, whose parent or guardian informs the teacher in writing that he has conscientious scruples against it, to read from any particular version, or to take any personal part in the reading; nor shall they direct to be purchased or used in the public schools school-books calculated to favor the tenets of any particular sect of Christians.

§ 901. The school committee shall direct what books shall be used in the public schools, and shall prescribe, as far as is practicable a course of studies and exercises to be pursued therein. These exercises may, at the discretion of the committee, include calisthenic, gymnastic, and military drill: *provided*, that no special instructors shall be employed to teach gymnastic, calisthenic, or military drill, except by a two-thirds vote of the committee present and voting thereon. But no pupil shall be required to take part in any military exercise in case he, his parent or guardian, notifies the school committee that he or such parent or guardian has conscientious scruples against such exercise, or believes it would be injurious to the health of said pupil.

§ 902. A change may be made in the school-books used in the public schools in a town by a vote of two thirds of the whole school committee thereof at a meeting of said committee, notice of such intended change having been given at a previous meeting. Pub. Stats. ch. 44, §§ 31-34.

§ 903. The school committee of every city and town shall purchase, at the expense of such city or town, text-books and other school supplies used in the public schools; and said text-books and supplies shall be loaned to the pupils of said public schools free of charge, subject to such rules and regulations as to care and custody as the school committee may prescribe. Sts. 1884, ch. 103.

§ 904. School committees may procure, at the expense of the city or town, in accordance with appropriations therefor previously made, such apparatus, books of reference, and other means of illustration as they deem necessary for the schools under their supervision. Sts. 1885, ch. 161, § 2.

§ 905. In any town containing five hundred families and in which a high school is kept as before provided, the school committee shall perform the duties in relation to such school, the house where it is kept, and the supply of all things necessary therefor, which the prudential committee may perform in a school district.

§ 906. Each member of the school committee in cities shall be paid one dollar a day, and in towns two dollars and a half a day, for the time actually employed in discharging the duties of the office, together with such additional compensation as the city or town may allow, except as provided in the following section.

(b) *Superintendents of Public Schools.*

§ 907. A city by ordinance, and a town by vote, may require the school committee annually to appoint a superintendent, who, under the direction and control of said committee, shall have the care and supervision of the public schools; or the school committee of any city without such ordinance may appoint a superintendent by a majority vote of the whole board; the compensation of the superintendent shall not be less than one dollar and fifty cents for each day of actual service, and shall be determined by the school committee, and, in cities without such ordinance, by a majority vote of the whole board; in every city in which such ordinance is in force or in which a superintendent is appointed, and in every town in which a superintendent is appointed and which does not provide otherwise by vote, the school committee shall receive no compensation.

§ 908. Two or more towns may, by a vote of each, form a district for the purpose of employing a superintendent of public schools therein, who shall perform in each town the duties prescribed by law.

§ 909. Such superintendent shall be annually appointed by a joint committee, composed of the chairman and secretary of the school committee of each of the towns in said district, who shall determine the relative amount of service to be performed by him in each town, and shall fix his salary and apportion the amount thereof to be paid by the several towns, and certify such amount to the treasurer of each town. Said joint committee shall, for said purposes, be held to be the agents of each town composing such district.

(c) *Schoolhouses.*

§ 910. Every town shall provide and maintain a sufficient number of schoolhouses, properly furnished and conveniently located for the accommodation of all the children therein entitled to attend the public schools; and the school committee, unless the town otherwise directs, shall keep such houses in good order, and shall procure a suitable place for the schools, where there is no schoolhouse, and provide fuel and all other things necessary for the comfort of the scholars therein, at the expense of the town. A town which for one year refuses or neglects to comply with the requirements of this section shall forfeit not less than five hundred nor more than one thousand dollars.

§ 911. A town, at a meeting legally called for the purpose, may determine the location of its schoolhouses, and adopt all necessary measures to purchase and procure land for the accommodation thereof. Pub. Stats. ch. 44, §§ 41-47.

§ 912. When land has been designated by a town, or has been determined upon by the selectmen of a town, as a suitable place for the erection of a schoolhouse and necessary buildings, or for enlarging a schoolhouse or schoolhouse lot, the selectmen may proceed to select, at their discretion, and to lay out a schoolhouse lot or an enlargement thereof, and to appraise the damages to the owner of such land in the manner provided for laying out town ways and appraising damages sustained thereby; and upon the approval and adoption by the town of such selection and laying out of such lot, or of any enlargement thereof, the land shall be taken, held, and used for such purpose. But no lot so taken or enlarged shall

exceed in the whole eighty square rods, exclusive of the land occupied by the school buildings. The land so taken shall be held and used for no other purpose than that contemplated by this chapter, and shall revert to the owner, his heirs or assigns, upon the discontinuance there, for one year, of such school as is required by law to be kept by the town. Pub. Stats. ch. 44, §§ 48, 49.

§ 913. The school committee of a town shall have the general charge and superintendence of the schoolhouses therein, so far as relates to the uses to which the same may be appropriated. Pub. Stats. ch. 44, § 50.

§ 914. Public buildings and schoolhouses must be kept clean, and free from effluvia, and they must be ventilated. School committees or persons having charge of these buildings are liable to a fine of one hundred dollars for neglecting this provision. Sts. 1888, ch. 149.

SCHOOL FUND.

§ 915. One-half of the annual income of the school fund of the Commonwealth shall be apportioned and distributed, without a specific appropriation, for the support of public schools, and in the manner following, to wit: Every town complying with all laws in force relating to the distribution of said income and whose valuation of real and personal estate, as shown by the last preceding assessors' valuation thereof, does not exceed one-half million dollars, shall annually receive two hundred and seventy-five dollars; every such town whose valuation is more than one-half million dollars, and does not exceed one million dollars, shall receive two hundred dollars; and every such town whose valuation is more than one million dollars, and does not exceed two million dollars, shall receive one hundred dollars; and every such town whose valuation is more than two million dollars, and does not exceed three million dollars, shall receive fifty dollars. The remainder of said half shall be distributed to all towns whose valuation does not exceed three million dollars and whose annual tax rate for the support of public schools is not less than one sixth of their whole tax rate for the year, as follows: Every town whose public school tax is not less than one third of its whole tax shall receive a propor-

tion of said remainder expressed by one third ; every such town whose school tax is not less than one fourth of its whole tax shall receive a proportion expressed by one fourth ; every such town whose school tax is not less than one fifth of its whole tax shall receive a proportion expressed by one fifth ; and every such town whose school tax is not less than one sixth of its whole tax shall receive a proportion expressed by one sixth. All money appropriated for other educational purposes, unless otherwise specially provided, shall be paid from the other half of said income. If the income in any year exceeds such appropriations the surplus shall be added to the principal of said fund. Sts. 1891, ch. 177.

§ 916. The income of said fund, appropriated to the support of public schools, which has accrued on the thirty-first day of December in each year, shall be apportioned by the secretary and treasurer in the manner provided in the preceding section, and paid over by the treasurer to the treasurers of the several cities and towns on the twenty-fifth day of January thereafter.

§ 917. No such apportionment and distribution shall be made to a city or town which has not maintained a school as is stated in § 869 *ante*, or which, if containing the number of families or householders which are stated in § 871 *ante*, has not maintained, for at least thirty-six weeks during the year, exclusive of vacations, a high school such as is mentioned therein ; or which has not made the returns which are stated in §§ 926 and 928 *post* and complied with the laws relating to truancy ; or which has not raised by taxation for the wages and board of teachers, fuel for the schools, and care of fires and schoolrooms during the school year embraced in the last annual returns, a sum not less than three dollars for each person between the ages of five and fifteen years belonging to such city or town on the first day of May of said school year.

§ 918. The income of said fund received by the several cities and towns shall be applied by the school committees thereof to the support of the public schools therein ; but said committees may, if they see fit, appropriate therefrom any sum, not exceeding twenty-five per cent of the same, to the purchase of books of reference, maps, and apparatus for the use of said schools.

§ 919. Each of the towns of Mashpee, Gay Head, Edgartown, Tisbury, Sandwich, and Plymouth shall, at its discretion, apply, for the benefit of that portion of its inhabitants formerly called Indians, the money heretofore received by it from the distribution of the school fund for Indians, derived from the surplus revenue of the United States.

§ 920. The schoolhouses heretofore erected by the Commonwealth upon Indian lands shall continue to be the property of the towns within which they are severally situated. Pub. Stats. ch. 43, §§ 4-8.

SCHOOL REGISTERS AND RETURNS.

§ 921. The clerks of the several cities and towns, upon receiving from the secretary of the board of education the school registers and blank forms of inquiry for school returns, shall deliver them to the school committee of such cities and towns.

§ 922. If a school committee fails to receive such blank forms of return on or before the last day of March, they shall forthwith notify the secretary of the board of education, who shall transmit such forms as soon as may be.

§ 923. The school committees shall annually, in the month of May, ascertain, or cause to be ascertained, the names and ages of all persons, between the ages of five and fifteen years, belonging to their respective cities and towns on the first day of May, and shall make a record thereof. Pub. Stats. ch. 46, §§ 1-3.

§ 924. No child who has been continuously a resident of a city or town since reaching the age of thirteen years shall be entitled to receive a certificate that he has reached the age of fourteen unless or until he has attended school according to law in such city or town for at least twenty weeks since reaching the age of thirteen, unless such child can read at sight and write legibly simple sentences in the English language or is exempted by law from such attendance. Sts. 1889, ch. 291.

§ 925. The school committee shall annually, on or before the last day of the following April, certify under oath the numbers so ascertained and recorded, and the sum raised by

their city or town for the support of schools during the preceding school year, including only wages and board of teachers, fuel for the schools, and care of the fires and schoolrooms; and they shall transmit such certificate to the secretary of the board of education. The form of such certificate shall be as follows, to wit: —

We, the school committee of _____, do certify that on the first day of May, in the year _____, there were belonging to said town (or city) the number of _____ persons between the ages of five and fifteen; and we further certify that said town (or city) raised the sum of _____ dollars for the support of public schools for the preceding school year, including only the wages and board of teachers, fuel for the schools, and care of fires and schoolrooms, and that said town (or city) maintained, during said year, each of the schools required to be kept by section one of chapter forty-four of the Public Statutes for a period not less than six months; and we further certify that said town (or city) maintained during said year _____ school for the benefit of all the inhabitants of the town (or city), as required by section two of chapter forty-four of the Public Statutes for _____ months and _____ days.

} *School Committee.*

ss. On this _____ day of _____ personally appeared the above-named school committee of _____ and made oath that the above certificate by them subscribed is true.

Before me,

Justice of the Peace.

§ 926. The school committee shall cause the school registers to be faithfully kept in all the public schools, and shall annually, on or before the last day of April, return the blank forms of inquiry, duly filled up, to the secretary of the board of education; and shall also specify in said returns the purposes to which the money received by their town or city from the income of the school fund has been appropriated.

§ 927. In such returns, twenty days or forty half-days of actual session shall be counted as one month. Pub. Stats. ch. 46, §§ 5-7.

§ 928. The school committee shall annually make a detailed report of the condition of the several public schools, which report shall contain such statements and suggestions

in relation to the schools as the committee deem necessary or proper to promote the interests thereof. The committee shall cause said report to be printed, for the use of the inhabitants, in octavo, pamphlet form, of the size of the annual reports of the board of education, and transmit two copies thereof to the secretary of said board on or before the last day of April, and deposit one copy in the office of the clerk of the city or town. Pub. Stats. ch. 46, § 8.

A town may appropriate money to indemnify its school committee for expenses incurred in defending an action for an alleged libel contained in a report made by them in good faith, and in which judgment has been rendered in their favor. *Fuller v. Groton*, 11 Gray, 340.

A school committee of a city caused to be printed an address by them to the people of the city regarding an occurrence in the public schools, and referred to such address in their subsequently printed annual report as a part thereof. *Held*, that they were authorized to charge the expense of printing the address upon the city, under this section. *Wilson v. Cambridge*, 101 Mass. 142.

§ 929. When a school committee fails to make, within the prescribed time, either the returns or the report required of them by law, the secretary of the board of education shall forthwith notify such committee, or the clerk of the city or town, of such failure; and the committee or clerk shall immediately cause the same to be transmitted to the secretary.

§ 930. If a report or return is found to be informal or incorrect, the secretary shall forthwith return the same, with a statement of all deficiencies therein, to the committee for its further action.

§ 931. The returns or reports of a city or town so returned by the secretary for correction, or which have not reached his office within the time prescribed by law, shall be received by him if returned during the month of May; but in all such cases ten per cent shall be deducted from the income of the school fund which such city or town would have been otherwise entitled to. If such returns or reports fail to reach his office before the first day of June, then the whole of such city or town's share of the income shall be retained by the treas-

urer of the Commonwealth ; and the amount so retained, as well as the ten per cent when deducted, shall be added to the principal of the school fund. And such city or town shall in addition thereto forfeit not less than one hundred nor more than two hundred dollars ; but if said returns and reports were duly mailed in season to reach said office within the time required by law, then the city or town from which they were due shall be exempt from the forfeiture otherwise incurred.

§ 932. The clerk of each city and town shall deliver one copy of the reports of the board of education and of its secretary to the secretary of the school committee of the city or town, to be by him preserved for the use of the committee, and transmitted to his successor in office ; and two additional copies of said reports, for the use of said committee ; and shall deliver one copy of said reports to the clerk of each school district, to be by him deposited in the school-district library, or, if there is no such library, carefully kept for the use of the prudential committee, teachers, and inhabitants of the district during his continuance in office, and then transmitted to his successor ; and in case the city or town is not districted, said reports shall be delivered to the school committee, and so deposited by them as to be accessible to the several teachers and to the citizens ; and such reports shall be deemed to be the property of the city or town, and not of any officer, teacher, or citizen thereof.

§ 933. When the school committee of a city or town is not less than thirteen in number, the chairman and secretary thereof may, in behalf of the committee, sign the annual school returns and the certificate stated in §§ 925 and 926.

§ 934. A city or town which has forfeited any part of its portion of the income of the school fund through the failure of the school committee to perform their duties in regard to the school report and school returns, may withhold the compensation of the committee. Pub. Stats. ch. 46, §§ 9-14.

§ 935. The several school teachers shall faithfully keep the registers furnished to them and make due return thereof to the school committee or to such person as they may designate, and no teacher shall be entitled to receive payment for

services for the two weeks preceding the close of any single term until the register properly filled up and completed is so returned. Sts. 1891, ch. 99, § 1.

The school committee have no authority to waive this keeping of the register. *Jewell v. Abington*, 2 Allen, 592.

ATTENDANCE OF CHILDREN IN THE SCHOOLS.

§ 936. Every person having under his control a child between the ages of eight and fourteen years, shall annually cause such child to attend some public day school in the city or town in which he resides, and such attendance shall continue for at least thirty weeks of the school year if the schools are kept open that length of time, with an allowance of two weeks' time for absences not excused by the superintendent of schools or the school committee, and for every neglect of such duty the person offending shall, upon the complaint of the school committee or any truant officer, forfeit to the use of the public schools of such city or town a sum not exceeding twenty dollars; but if such child has attended for a like period of time a private day school approved by the school committee of such city or town, or if such child has been otherwise instructed for a like period of time in the branches of learning required by law to be taught in the public schools, or has already acquired the branches of learning required by law to be taught in the public schools, or if his physical or mental condition is such as to render such attendance inexpedient or impracticable, such penalties shall not be incurred. Sts. 1890, ch. 334.

§ 937. For the purposes of the preceding section, school committees shall approve a private school only when the teaching in all the studies required by law is in the English language, and when they are satisfied that such teaching equals in thoroughness and efficiency the teaching in the public schools in the same locality, and that equal progress is made by the pupils therein, in the studies required by law, with that made during the same time in the public schools; but they shall not refuse to approve a private school on account of the religious teaching therein. Sts. 1889, ch. 464, § 2.

§ 938. In every city and town where opportunity is furnished, in connection with the regular work of the public schools, for gratuitous instruction in the use of tools or in manual training, or for industrial education in any form, every person having under his control a child between the ages of eight and fifteen years shall cause such child to attend the public schools during the same number of weeks in each school year during which attendance is now by law required in the case of children between the ages of eight and fourteen years, and subject to the same exceptions; and for neglect of such duty the person offending shall be liable to the same forfeiture, to be enforced in the same manner and subject to the same exceptions as now provided by law in case of neglect to require the attendance of a child between the ages of eight and fourteen years. Sts. 1891, ch. 361.

§ 939. The truant officers and the school committee of the several cities and towns shall vigilantly inquire into all cases of neglect of the duty prescribed in § 936 *ante*, and ascertain the reasons, if any, therefor; and such truant officers, or any of them, shall, when so directed by the school committee, prosecute, in the name of the city or town, any person liable to the penalty provided for in said section. Police, district, and municipal courts, trial justices, and judges of the probate court, shall have jurisdiction within their respective counties of the offences described in said section.

§ 940. All children within the Commonwealth may attend the public schools in the place in which they have their legal residence, subject to the regulations prescribed by law.

§ 941. The school committee shall determine the number and qualifications of the scholars to be admitted into the high school.

§ 942. Children living remote from any public school in the town in which they reside may be allowed to attend the public schools in an adjoining town, under such regulations and on such terms as the school committees of the said towns agree upon and prescribe; and the school committee of the town in which such children reside shall pay the sum agreed upon out of the appropriations of money raised in said town for the support of schools.

§ 943. Any minor under guardianship, whose father has died, may attend the public schools of the city or town of which his guardian is an inhabitant.

§ 944. Children may, with the consent of the school committee first obtained, attend schools in cities and towns other than those in which their parents or guardians reside; but when a child resides in a city or town different from that of the residence of the parent or guardian for the sole purpose of attending school there, the parent or guardian of such child shall be liable to pay such city or town, for tuition, a sum equal to the average expense per scholar for such school for the period during which the child so attends.

§ 945. The school committee shall not allow a child who has not been duly vaccinated to be admitted to or connected with the public schools. Pub. Stats. ch. 47, §§ 3-9.

§ 946. The school committees shall not allow any pupil to attend the public schools while any member of the household to which such pupil belongs is sick of smallpox, diphtheria, or scarlet fever, or during a period of two weeks after the death, recovery, or removal of such sick person; and any pupil coming from such household shall be required to present, to the teacher of the school the pupil desires to attend, a certificate, from the attending physician or board of health, of the facts necessary to entitle him to admission in accordance with the above regulation. Sts. 1885, ch. 198.

§ 947. No person shall be excluded from a public school on account of the race, color, or religious opinions of the applicant or scholar. Pub. Stats. ch. 47, § 10.

The school committee of a town may lawfully pass an order that the schools thereof shall be opened each morning with reading from the Bible, and prayer, and that during the prayer each scholar shall bow the head, unless his parents request that he should be excused from doing so, and may lawfully exclude from the school a scholar who refuses to comply with such order, and whose parents refuse to request that he shall be excused from doing so. *Spiller v. Woburn*, 12 Allen, 127.

§ 948. Every member of the school committee under whose directions a child is excluded from a public school, and every teacher of such school from which a child is excluded, shall,

on application by the parent or guardian of such child, state in writing the grounds and reason of the exclusion. Pub. Stats. ch. 47, § 11.

TRUANT CHILDREN AND ABSENTEES FROM SCHOOL.

§ 949. Each town shall make all needful provisions and arrangements concerning habitual truants and children between seven and fifteen years of age who may be found wandering about in the streets or public places therein, having no lawful occupation or business, not attending school, and growing up in ignorance, and such children as persistently violate the reasonable rules and regulations of the common schools; and shall make such by-laws as shall be most conducive to the welfare of such children, and to the good order of such town; and shall provide suitable places for the confinement, discipline, and instruction of such children. Sts. 1889, ch. 249, § 1.

§ 950. The school committee of each town shall appoint and fix the compensation of two or more suitable persons, to be designated truant officers, who shall, under the direction of said committee, inquire into all cases arising under such by-laws, and shall alone be authorized, in case of violation thereof, to make complaint and carry into execution the judgment thereon; and who may serve all legal processes issued by the courts in pursuance of such by-laws, but who shall not be entitled to receive any fees for such service. Pub. Stats. ch. 48, § 11.

§ 951. Truant officers may, when so authorized and required by vote of the school committee, visit the factories, workshops, and mercantile establishments in their several cities and towns, and ascertain whether any children under the age of fourteen are employed therein, contrary to the provisions of chapter 348 of the Acts of 1888, and they shall report any cases of such illegal employment to the school committee. Sts. 1888, ch. 348, § 8.

§ 952. Any minor convicted under a by-law made under § 949 *ante* of being an habitual truant, or of wandering about in the streets and public places of a city or town, having no lawful employment or business, not attending school, and

growing up in ignorance, or of persistently violating the rules and regulations of the common schools, shall be committed to any institution of instruction or suitable situation provided for the purpose, under the authority of said section or by-law, for a term not exceeding two years. Sts. 1889, ch. 249, § 2.

§ 953. Whenever a truant school has been established for any county under the provisions of this chapter, it shall be the place of confinement, discipline, and instruction for all truants within the cities or towns of said county, unless said cities or towns have made other provisions therefor.

§ 954. If three or more towns in any county so require, the county commissioners shall establish at the expense of the county, at a convenient place therein, other than the jail or house of correction, a truant school for the confinement, discipline, and instruction of minor children convicted under the provisions stated in §§ 949 and 952 and all Acts in amendment thereof and in addition thereto; and shall make suitable provisions for the government and control, and for the appointment of proper teachers and officers thereof. Sts. 1890, ch. 309, §§ 1, 2.

§ 955. A town may assign any such truant school, or, with the assent of the state board of lunacy and charity, the state primary school, as the place of confinement, discipline, and instruction of children so convicted; and shall pay for their support therein such sum, not exceeding two dollars a week for each child, as the county commissioners or the trustees of the state primary and reform schools respectively shall determine. Pub. Stats. ch. 48, § 15; Sts. 1886, ch. 101, § 4.

§ 956. The school committees of the several towns shall annually report to the secretary of the board of education whether their towns have made the provisions required by law relating to truants and absentees from school. Pub. Stats. ch. 48, § 17.

CHAPTER X.

COLLECTORS OF TAXES.

§ 957. Towns may choose suitable persons to be collectors of taxes therein. If the persons chosen refuse to serve, or if no person is elected or appointed, the constables of the town shall be the collectors of taxes. Sts. 1893, ch. 423, § 17.

A selectman and assessor of a town may legally be chosen collector of taxes also. *Howard v. Proctor*, 7 Gray, 128.

The refusal to accept the office need not appear of record. And no further oath is required of a constable, acting as collector, if he has been duly sworn as constable. *Hays v. Drake*, 6 Gray, 387.

§ 958. Every collector shall give bond to the town, in such sum as the selectmen require, and with sureties to their satisfaction, for the faithful discharge of the duties of his office. Sts. 1893, ch. 423, § 18.

The foregoing provisions of the statute are directory as to the manner of giving bonds by one appointed collector. And the collector may properly refuse to give a bond in any greater sum than the selectmen require. But if a collector voluntarily gives a bond to the town to secure his faithful discharge of the duties of the office of collector, and the same is accepted, it is a good and valid bond without any further evidence of the approval by the selectmen of the sum or the sureties. *Wendell v. Fleming*, 8 Gray, 613.

The removal of the collector from office does not discharge him from liabilities that have already attached for defaults in the duties of his office. In all cases where, by reason of his remissness in enforcing the collections, the tax has been uncollected, and from a change of circumstances is unavailable in the hands of his successor, he will be chargeable therewith. *Colerain v. Bell*, 9 Met. 499.

Defects in a warrant or tax-list will not excuse a collector from paying over money to the town which he has collected

without objection on the part of the tax-payers. He can only avail himself of such defects as have prevented him from performing his duty ; and the defects in the warrant or tax-list might be a good excuse for not executing the warrant. *Sandwich v. Fish*, 2 Gray, 298.

Nor is a collector excused from paying over money to the town by reason of its being stolen from him without any default on his part. *Hancock v. Hazard*, 12 Cush. 112.

§ 959. A town may, at a meeting notified for that purpose, authorize its collector to use all means of collecting the taxes which a town treasurer when appointed collector may use. Sts. 1893, ch. 423, § 19.

§ 960. Every collector of taxes, constable, sheriff, or deputy sheriff, receiving a tax-list and warrant from the assessors, shall proceed to collect the taxes therein mentioned, according to the warrant. Sts. 1888, ch. 390, § 1.

If the warrant is good upon its face, it will protect the collector acting under it, notwithstanding irregularity in the meetings or votes by which the taxes were authorized. *Howard v. Proctor*, 7 Gray, 128.

§ 961. The collector shall, as soon as possible after receiving any tax list and warrant, send a notice to each person assessed, resident and non-resident, of the amount of his tax ; and such notice, if sent through the mail, shall be postpaid and directed to the city or town which was the place of residence of such person on the first day of May of the year in which the tax was assessed, and if sent to a resident of the city in which the tax is assessed, shall be directed to the street and number of his residence, if possible. If the person is assessed for a poll tax only, the notice shall be sent on or before the second day of September of the year in which the tax is assessed. An omission to send the notice herein required shall not invalidate a tax or proceedings for the collection or enforcement of the same.

§ 962. Every collector shall make and keep, in the book committed to him by the assessors containing the tax list, against the name of every person or corporation assessed for a tax, entries showing the disposition thereof, whether reassessed, abated, or paid, and the date of such disposition. Sts. 1889, ch. 334, §§ 1, 2.

§ 963. Every collector of taxes shall also keep a cash book, in which he shall enter as they are received all sums paid to such collector, specifying in relation to such receipts the total amount of tax; abatements allowed; discount allowed; interest charged; total amount received; and time when received. Said collector shall also keep a record of the date and amount of every payment and disbursement made by him, and to whom paid, together with such other matters as any city or town may require.

§ 964. All books kept by any collector of taxes by virtue of any provision of law shall be furnished at the expense and be the property of the city or town in which such collector holds office, and shall at all reasonable times be open to examination by the auditor or auditors of such city or town, or any other officers or agents authorized by such city or town to make examination thereof. Sts. 1888, ch. 390, §§ 4, 5.

§ 965. Every collector of taxes who resigns his office, or is removed or retired from office, shall within three months after such resignation, removal, or retirement, deposit all his accounts, records, and papers relating to the assessment and collection of taxes in the city or town in which he held such office, excepting his warrant, with the clerk of such city or town.

§ 966. Every ex-collector of taxes shall, within three months after the passage of this act, deposit all the accounts, records, and papers which are now in his possession relating to the assessment and collection of taxes in the city or town in which he held such office, excepting his warrant, with the clerk of said city or town.

§ 967. The executor or administrator of a deceased person who at the time of his death or previously thereto was a collector of taxes, shall, within three months after his acceptance of the office of administrator, deposit all the accounts, records and papers which came into his hands relating to the assessment and collection of taxes with the clerk of such city or town.

§ 968. When all the taxes committed to the collector of taxes in any city or town have been paid or abated, or in any event at the end of three years from the date of the commit-

ment to him of said taxes, he shall deposit all the accounts, records, and papers relating to such taxes, with the clerk of the city or town in which he holds office.

§ 969. If the collector of taxes in any city or town has an office for the deposit of records and the transaction of the business of collector, the accounts, records, and papers required to be deposited with the city or town clerk shall be deposited with the collector in said office. Sts. 1892, ch. 370, §§ 1-5.

§ 970. Every collector of taxes shall make return of his warrant with his tax-list and of his doings thereon, at such time or times as the assessors shall require the same, in writing. Sts. 1888, ch. 390, § 6.

§ 971. When a tax is due from any person the collector of taxes may, before making a demand for the payment thereof as required by law, mail post paid or cause to be delivered a summons to such person, stating therein the amount due and that unless the same is paid within ten days, with twenty cents for the summons, the collector will proceed to collect the same according to law.

§ 972. The collector shall, unless removed from office, as hereinafter provided, or unless his tax list has been transferred to his successor, as provided by law, complete the collection of taxes committed to him, although his term of office expires before such completion. He shall be allowed the following charges and fees, and no other, which shall be severally added to the amount of the tax after they have accrued, to wit: For a summons, twenty cents. For arrest by collector or other officer, one dollar. For a warrant to distrain or arrest, fifty cents. For a copy of warrant and certificate (see § 980 *post*), one dollar. For preparing advertisement of sale, fifty cents. For advertisement of sale in newspapers, the cost thereof. For posting notices of sale (for each piece of real estate or lot of goods distrained), fifty cents. For distraining goods, one dollar and the cost thereof. For selling goods distrained, the cost thereof. For obtaining affidavit of disinterested person one dollar. For recording affidavit, the register's fees. For preparing deed, two dollars. Sts. 1890, ch. 331, §§ 1, 2.

§ 973. Collectors shall, before selling the real estate of a resident owner, or distraining the goods of any person assessed, or arresting him for his tax, make a demand for the payment thereof, either by causing to be given, or to be sent postpaid through the mail, directed as provided for the direction of notices in § 961 *ante*, to the person assessed for a tax, or if the heirs of a deceased person, or a firm, or more than one person are assessed, then to one of such heirs, or members of a firm, or owners only, a statement of the amount thereof, with a demand for its payment. Such demand for the tax on real estate shall be given, or be sent directed as hereinbefore provided, to the person or one of the persons as aforesaid, if a resident of the city or town, or to the person occupying the real estate on the first day of May of the year in which the tax is assessed; if a mortgagee of real estate has given a notice as is stated in § 995 *post* such demand shall be given, or be sent directed as hereinbefore provided, to the mortgagee instead of to the owner or occupant; if a mortgagee or owner of real estate has given an authority to a resident attorney to pay the tax with notice thereof, as is stated in § 996 *post*, the demand shall be given, or be sent directed as hereinbefore provided, to such attorney instead of to a mortgagee, owner, or occupant. No demand need be made of a non-resident owner of real estate, nor, except as herein provided, need any demand be made of a mortgagee or of an attorney. Sts. 1889, ch. 334, § 4.

§ 974. When the assessors consider that the credit of a person taxed is doubtful, or believe that he is about to leave the state, they may, by a special warrant, direct the collector forthwith, without demand or notice, to compel payment by distress or imprisonment, whether the tax is made payable immediately, at a future day, by instalments, or otherwise.

§ 975. If a person claims the benefit of an abatement he shall exhibit to the collector demanding his taxes a certificate of such abatement from the assessors or other proper officer, as provided in chapter six of this book, and he shall be liable to pay all costs and officers' fees incurred before exhibiting such certificate. Sts. 1888, ch. 390, §§ 9, 10.

§ 976. If, in the assessors' lists, or in their warrant and

list committed to the collector, there is an error in the name of a person taxed, the tax assessed to him may be collected of the person intended to be taxed, if he is taxable and can be identified by the assessors. Sts. 1888, ch. 390, § 11.

This section applies to those cases where the error in the name exists as well in the valuation list as in the assessors' warrant to the collector; and it covers all cases of error in the name, and seems intended to apply to a case where the name is mistaken by omitting, as well as by adding or by misnaming. SHAW, C. J., in *Tyler v. Hardwick*, 6 Met. 474.

(a) *Collection by Distress.*

§ 977. If a person refuses or neglects for fourteen days after demand to pay his tax, the collector shall without unnecessary delay levy the same by distress or seizure and sale of his goods, including any share or interest he may have as a stockholder in a corporation incorporated under authority of this Commonwealth, and excepting the following goods: —

The tools or implements necessary for his trade or occupation; beasts of the plough necessary for the cultivation of his improved land; military arms; utensils for housekeeping necessary for upholding life; and bedding and apparel necessary for himself and family. Sts. 1888, ch. 390, § 12.

But the distress cannot be made after the death of the person upon whom the tax is assessed. *Wilson v. Shearer*, 9 Met. 504.

§ 978. The collector shall keep the goods distrained, at the expense of the owner, for four days at least, and shall, within seven days after the seizure, sell the same by public auction, for payment of the tax and charges of keeping and sale, having given notice of the sale by posting up a notification thereof, in some public place in the city or town, forty-eight hours at least before the sale. Sts. 1888, ch. 390, § 13.

A sale made after seven days is illegal. *Noyes, Jr., v. Haverhill*, 11 Cush. 338.

The notice may be given before the expiration of four days, a proper time for sale being fixed upon. The notice need not state the name of the person whose property is seized, nor the amount of the tax, nor describe the property. *Barnard v. Graves*, 13 Met. 94.

§ 979. The collector may once adjourn such sale for a time not exceeding three days: he shall forthwith give notice of such adjournment by posting a notification at the place of sale.

§ 980. The seizure of a share or other interest in a corporation may be made by leaving with any officer of the corporation, with whom a copy of a writ may by law be left when the share of a stockholder is attached on mesne process, an attested copy of the warrant, with a certificate thereon, under the hand of the collector, setting forth the tax which the stockholder is to pay, and that, upon his neglect or refusal to pay, the collector has seized such share or interest.

§ 981. The sale of such share or interest shall be made in the manner prescribed by law for the sale of goods by collectors of taxes in like cases, and also subject to the provisions of sections forty-eight and forty-nine of chapter one hundred and seventy-one of the Public Statutes respecting sales on executions. Sts. 1888, ch. 390, §§ 14-16.

§ 982. If the distress or seizure is sold for more than the tax and charges of keeping and sale, the collector shall return the surplus to the owner, upon demand, with an account in writing of the sale and charges. Sts. 1888, ch. 390, § 17.

A collector is justified in adding to these charges a commission or percentage on the amount of the tax for his own compensation. *Howard v. Proctor*, 7 Gray, 132.

(b) *By Imprisonment.*

§ 983. If a person refuses or neglects for fourteen days after demand to pay his tax, and the collector cannot find sufficient goods upon which it may be levied, he may take the body of such person and commit him to prison, there to remain until he pays the tax and charges of commitment and imprisonment, or is discharged by order of law. Sts. 1888, ch. 390, § 18.

This applies to non-residents as well as to residents. *Snow v. Clark*, 9 Gray, 192.

But the collector has no right to take the body for non-payment of taxes, if sufficient property is shown to him upon which to levy, although fourteen days have elapsed since a demand of payment. *Lothrop v. Ide*, 13 Gray, 93.

§ 984. When the collector commits a person to prison he shall give the keeper thereof a certificate signed by him, setting forth that he has committed the person for non-payment of his tax for fourteen days after demand therefor, and for want of goods and chattels whereof to make distress, and also setting forth the amount said person is to pay for said tax and interest, and charges and fees. Sts. 1889, ch. 334, § 5.

§ 985. When a person committed to prison for the non-payment of taxes desires to take the oath for relief of poor debtors, he may represent the same to the jailer; and the jailer shall make the same known to some magistrate named in section twenty-seven of chapter one hundred and sixty-two of the Public Statutes; and the magistrate shall thereupon appoint a time and place for the examination of the debtor, and shall direct the jailer to cause the debtor to be present at the same. The notice required in such case to be given to the creditor may be given to either of the assessors, or to the collector by whom the party was committed. And the assessors and collector, or any of them, may appear and do all things which a creditor might do in case of arrest on execution. And if the person so committed to prison for the non-payment of taxes is unable to pay the same, he shall be entitled to his discharge in like manner as persons committed on execution. Sts. 1888, ch. 390, § 20.

§ 986. If such person is discharged, the collector shall be liable to pay the tax with the charges of imprisonment, unless he arrested and committed the party within one year after the tax was committed to him to collect, or unless he is exonerated therefrom by the city, town, or parish to which the tax is due. Sts. 1888, ch. 390, § 21.

But this does not render the collector liable to pay for the support of the person committed while in jail, although the town may have paid it. *Townsend v. Walcutt*, 3 Met. 152.

§ 987. A collector, when resisted or impeded in the exercise of his office, may require any suitable person to aid him therein; and if such person refuses to render such aid, he shall forfeit a sum not exceeding ten dollars. Sts. 1888, ch. 390, § 22.

§ 988. When a tax assessed upon a person remains unpaid

for fourteen days after demand therefor, the collector may issue his warrant to the sheriffs of the several counties, or their deputies, or to any constable of, or deputy collector of taxes for, the city or town for which he is the collector, directing them and each of them to distrain the property or take the body of the person assessed for the tax, and to proceed therein in like manner as required of collectors in like cases. The warrant shall run throughout the state, and any officer to whom it is directed may serve it, and apprehend the person in any county. Sts. 1889, ch. 334, § 6.

It would be well that the warrant of the collector authorized by this section should recite the facts which are necessary to authorize the collector to issue it, because it would then furnish the constable with conclusive evidence for his protection in acting under it. But the recital is not necessary to the validity of the warrant. *Cheever v. Merritt*, 5 Allen, 565.

(c) *By Suit or Distress.*

§ 989. When a tax assessed, or reassessed, upon a person either for real or personal estate, or both, remains unpaid for three months after it is committed to the collector, the collector may, in his own name, sue or otherwise proceed in court against the person assessed, to collect the tax, in like manner as to collect a debt due him from such person. Sts. 1889, ch. 334, § 7.

An action is maintainable by a collector of taxes to recover a tax, only part of which is legal, the taxpayer's remedy being by an application for an abatement. *Pierce v. Eddy*, 152 Mass. 594.

A collector of taxes cannot maintain a bill in equity in his own name under this section to collect a tax, without averring that the tax had remained uncollected for three months after its committal to him. *Ricker v. Brooks*, 155 Mass. 400.

§ 990. When a person assessed for a tax dies or becomes insolvent before the payment thereof, or when a tax is assessed upon the estate of a deceased person, the executor or administrator or assignee shall, if a demand has been made upon him therefor, forthwith upon his acquiring any moneys applicable to the payment of the tax, pay the same, and in default shall be liable personally therefor. Sts. 1888, ch. 390, § 25.

A tax assessed upon the personalty of a deceased person to his executor is the debt of the latter; and the collector of taxes may, under this section, bring an action against him to recover it more than two years from the time of giving his bond. *Dallinger v. Davis*, 149 Mass. 62.

§ 991. Whenever personal property placed in the hands of a corporation or an individual as an accumulating fund for the future benefit of heirs or other persons has been duly assessed to such heirs or persons according to the provisions stated in clause six, § 673 *ante*, and the persons so taxed neglect to pay the tax for one year after it has been committed to the collector, the collector may, in his own name, maintain an action of contract therefor against said trustee, in like manner as for his own debt; and the amount thereof paid by said trustee may be allowed in his account as such trustee.

§ 992. When a person is taxed for real estate in his occupation, but of which he is not the owner, the collector, after demand of payment, may levy the tax by distress and sale of the cattle, sheep, horses, swine, or other stock or produce of such estate, belonging to the owner thereof, which within nine months after such assessment is committed to him shall be found upon the premises, in the same manner as if such stock or produce were the property of the person so taxed; but such demand need not be made if the person on whom the tax is assessed resided within the precinct of the collector at the time of the assessment, and subsequently removes therefrom and remains absent three months. Sts. 1888, ch. 390, §§ 26, 27.

(d) *By Sale or Taking of Real Estate.*

§ 993. Taxes assessed on real estate, including taxes assessed according to §§ 668, 669, and 670 *ante*, shall constitute a lien thereon from the first day of May until the expiration of two years from the first day of October of the year in which said taxes are assessed. If such tax remains unpaid for fourteen days after demand therefor, it may, with all incidental charges and fees, be levied by sale of the real estate within said two years, or after the expiration of said two years, if the estate has not been alienated prior to the giving of the notice of such sale. Sts. 1889, ch. 334, § 9.

A deed of a collector of taxes which does not state that fourteen days elapsed after the demand before advertising the premises for sale, or that the tax was not paid within fourteen days after the demand, is void under this section. *Harrington v. Worcester*, 6 Allen, 576; *Reed v. Crapo*, 127 Mass. 39; *Adams v. Mills*, 126 Mass. 278; *Langdon v. Stewart*, 142 Mass. 576.

A sale after the first of May for taxes of a previous year, does not prevent a subsequent sale for the taxes due as of the first of May. *O'Day v. Bowker*, 143 Mass. 59; *Keen v. Sheehan*, 154 Mass. 208.

A collector's sale of several distinct and separate lots of land for one integral price is void. *Hayden v. Foster*, 13 Pick, 492; *Barnes v. Boardman*, 149 Mass. 106.

§ 994. Taxes reassessed on real estate shall constitute a lien thereon for the time specified in the preceding section, unless the estate has been alienated between the first and second assessments; and may be levied as provided in the preceding section. Sts. 1888, ch. 390, § 31.

An entry upon land by a mortgagee for the purpose of foreclosing his mortgage between the date of an assessment of a tax upon the land and the date of a reassessment of the same tax, the original tax having been assessed to the wrong person, is not an alienation of the land between the first and second assessments within the meaning of this section. *Market National Bank v. Belmont*, 137 Mass. 407.

§ 995. If a mortgagee of real estate, situated in the place of his residence, previously to the first day of September of the year in which the tax is assessed, gives written notice to the collector of such place that he holds a mortgage on real estate, with a description of the estate, the demand of payment for the tax shall be made of the mortgagee instead of the owner.

§ 996. If a mortgagee or owner of real estate gives a written authority to some inhabitant of the place, as his attorney, to pay the taxes imposed on such estate, and likewise gives to the collector previously to the first day of September of the year in which a tax is assessed, written notice that such authority has been given, the demand of payment for the tax shall be

made of such attorney, instead of the owner, and instead of the mortgagee, as provided in the preceding section. Sts. 1889, ch. 334, §§ 10, 11.

§ 997. When a demand is made upon the attorney under the preceding section, the collector shall not advertise the sale of the lands until two months from the time of such demand.

§ 998. The collector shall give notice of the time and place of sale of real estate for payment of taxes, by an advertisement thereof three weeks successively in some newspaper published in the city or town where the premises to be sold for taxes are situated, if there is such newspaper, and, if not, then in a newspaper printed in the county where the real estate lies; the last publication to be at least one week before the time of sale. Sts. 1888, ch. 390, §§ 34, 35.

§ 999. The advertisement shall contain a substantially accurate description of the several rights, lots, or divisions of the estate to be sold, the amount of the tax assessed on each, the names of all owners known to the collector, and the taxes assessed on their respective lands. Sts. 1888, ch. 390, § 36.

The description should be full and satisfactory, so that the owner may know what property is to be sold, and especially if the owner's name does not appear in the notice. *Farnum v. Buffum*, 4 Cush. 266.

And the amount of the tax must be stated exactly. *Alexander v. Pitts*, 7 Cush. 503.

§ 1000. The collector shall, three weeks before the sale, post a notice, similar to that required by the two preceding sections, on the premises by him advertised to be sold, if any part thereof is bounded by a street, lane, court, or highway. Sts. 1889, ch. 334, § 12.

§ 1001. When real estate to be sold under the provisions of this chapter is situated in a place the name of which has been changed by law within three years next preceding the sale, the collector shall in his advertisement and notices of the sale designate such place by its former and present name.

§ 1002. The affidavit of a disinterested person, or any deputy collector, or of the collector who makes the sale of land for the payment of taxes, stating the demand of the payment of the tax, the person of whom, and the time and manner

in which it was made, and a like affidavit of the posting and publishing of notifications of the sale, with a copy of the original advertisement thereto annexed, and filed and recorded within three months after the date of sale in the registry of deeds of the county or district where the land lies, shall be competent evidence of said demand and of the notification. Sts. 1888, ch. 390, §§ 38, 39.

§ 1003. If the taxes are not paid, the collector shall, at the time and place appointed for the sale, sell by public auction so much of the real estate, or the rents and profits of the whole estate for such term of time as shall be sufficient to discharge the taxes and necessary intervening charges; or he may at his option sell the whole or any part of the land; and after satisfying the taxes and charges, he shall deposit the balance, if any, in the treasury of the city or town, and such city or town shall pay such balance to the owner of the estate upon demand. The collector may, in his discretion at such sale, require an immediate deposit by the purchaser of such sum as he shall deem necessary to insure good faith, in part payment of the purchase money, which deposit shall not exceed the amount of the tax and the costs and charges thereon; and if he fails to make such deposit forthwith, the sale shall be void and the estate shall, then and there, be again offered for sale. Sts. 1888, ch. 390, § 40.

This section does not authorize the sale of an individual interest in land, and an advertisement of a collector of taxes, which offers for sale a certain parcel of real estate, "or such undivided portions thereof as may be necessary," invalidates a sale thereunder, although in fact the whole parcel is sold. *Wall v. Wall*, 124 Mass. 65; *Sanford v. Sanford*, 135 Mass. 314.

§ 1004. The collector may adjourn his sale from day to day, not exceeding seven days in the whole; and he shall give notice of every such adjournment by a public declaration thereof at the time and place previously appointed for the sale. Sts. 1888, ch. 390, § 42.

§ 1005. The collector shall execute and deliver to the purchaser a deed of the real estate or rents and profits sold; which deed shall state the cause of sale, the price for which

the estate or rents and profits were sold, the name of the person on whom the demand for the tax was made, the places in the city or town where the notices were posted, the newspaper in which the advertisement of the sale was published, and the place of residence of the grantee, and a warranty that the sale has in all particulars been conducted according to the provisions of law; and, if the real estate has been sold, shall convey, subject to the right of redemption, all the right and interest which the owner had therein at the time when the same was taken for his taxes. Such deed, to be valid, shall be recorded within thirty days from the day of sale. Sts. 1888, ch. 390, § 43.

The deed of a collector, taking effect only as the execution of a statute power, should be construed with some strictness, and the description should be such as to enable the grantee to identify the land and the owner to redeem it. *Hill v. Mowry*, 6 Gray, 552.

The deed *must* state the cause of sale; it is a condition precedent to the operation of the deed. It is not enough to state that a demand for the tax was made upon the person taxed, but it must also state that payment was not made within fourteen days. *Harrington v. Worcester*, 6 Allen, 577.

§ 1006. If it should subsequently appear that, by reason of any error, omission, or informality in any of the proceedings of assessment or sale, the purchaser has no claim upon the property sold, there shall be paid to said purchaser, by the city or town whose collector executed said deed, upon his surrender and discharge of the deed so given, the amount paid by such purchaser, together with interest on the same at the rate of ten per cent per annum, which payment shall be in full satisfaction of all claims for damages for any defects in the proceedings: *provided*, the said purchaser, within two years from the date of such deed, offers in writing to surrender and discharge the same, or to assign and transfer to the city or town all his right, title, and interest therein, as the collector thereof shall elect.

§ 1007. Every person acquiring or holding title to real estate under a sale for the non-payment of any tax or other assessment, who is a resident of the city or town wherein such

real estate is situated, shall file with the treasurer of the city or town, and with the register of deeds of the county wherein such real estate is situated, a brief statement showing his place of residence and of business, specifying in each case, if practicable, the street and the number in the street. Every person acquiring or holding title to real estate as above, who is not a resident of the city or town wherein such real estate is situated, or who removes from such city or town, shall appoint and have some suitable agent or attorney residing therein, or in the city or town wherein the deed of such real estate is recorded, duly authorized to release such real estate in accordance with the provisions of law providing for such cases, and shall file with the treasurer of such city or town and with such register of deeds such original and additional statements containing the name of any such agent or attorney, and his place of residence and of business, as is herein required in the case of resident purchasers or holders; and whenever such person changes his place of residence or business, or his attorney, a new certificate as above shall be filed. Sts. 1888, ch. 390, §§ 44, 45.

§ 1008. No city or town and no collector or treasurer of a city or town shall, under the provisions stated in § 1006 *ante*, pay or be liable for the amount due upon any deed therein referred to, or for any part thereof, unless the offer of the holder of such deed contains a specific statement of the reason why such holder has no claim on the estate sold, with the evidence on which he relies; and if such evidence is based upon any public record, or upon facts shown in any such record, the statement above required shall contain a specific reference to the particular instrument relied upon. All existing deeds may under the provisions of this section be offered for surrender and discharge, assignment or transfer, for one year from May 19, 1882, but not afterwards.

§ 1009. If at the time and place of sale no person appears and bids for the estate, or for the rents and profits thereof, or for the whole or any part of the land, an amount equal to the tax and charges, and if the sale has been adjourned from day to day, as has been stated in § 1004 *ante*, a public declaration of the fact shall then and there be made by the collector;

immediately after which, if no bid equal to the tax and charges is then made, the collector shall give public notice that he shall, and that he then and there does, purchase on behalf of the city or town by which the tax is assessed the said estate, in the manner stated in § 1003 for the sale of property for taxes ; but no sum exceeding the amount of the tax and the incidental costs and expenses of levy and sale shall be offered by him therefor ; and the same shall be allowed him in his settlement with such city or town. Sts. 1888, ch. 390, §§ 47, 48.

§ 1010. If after the sale of real estate for the payment of taxes a purchaser thereof fails to pay the collector within twenty days the full sum offered by him and to receive his deed, the sale shall be null and void, and the city or town shall be deemed to be the purchaser of the estate, according to the provisions of the preceding section. Sts. 1889, ch. 334, § 13.

“The statute does not give the collector any option in the matter.” MORTON, C. J., in *Holt v. Weld*, 140 Mass. 578.

§ 1011. When the city or town becomes the purchaser, the deed to be given by the collector shall, in addition to the statements which are given in § 1005 *ante*, set forth the fact of the non-appearance of a purchaser at the sale advertised by him, or of the preceding sale and the failure of the purchaser to pay the sum offered, as the case may be, and shall confer upon such city or town the same rights as belong to an individual to whom such a deed may be given. Sts. 1888, ch. 390, § 50.

§ 1012. Deeds to a city shall be placed in the custody of its collector, and to a town shall be placed in the custody of its treasurer, and to said collector or treasurer all applications for the redemption of the estates described in said deeds shall be made. And the several cities and towns may, as holders of such estates, exercise the same rights and perform the same duties as any individual purchaser of real estate taken for taxes, and may make regulations for the custody, management and sale of such estates, and for the assignment of the tax titles thus obtained, not inconsistent with law or with the right to redeem the same. Sts. 1889, ch. 334, § 14.

§ 1013. In addition to the power to enforce the lien for a

tax or assessment on real estate, including taxes assessed under §§ 668, 669, and 670 *ante*, with all incidental costs and expenses by sale thereof, the collector shall have power to take for the city or town the whole of the real estate taxed or assessed, if the tax or assessment is not paid within fourteen days after a demand of payment made as is stated in §§ 993, 995, and 996 *ante*, and remains unpaid at the date of such taking. The collector shall give three weeks' notice of his intention to exercise such power of taking; which notice may be served either in the manner prescribed by law for the service of summonses for witnesses in civil cases, or by advertisement thereof in the manner stated in § 998 *ante*, and shall contain the particulars stated in § 999 *ante*. He may also post a similar notice in accordance with the provisions stated in § 1000 *ante*. Sts. 1888, ch. 390, § 52.

§ 1014. The affidavit of the collector, deputy collector, or of a disinterested person, taken before a justice of the peace, of the service of the demand of payment, and of the notice, as provided in the preceding section, with copies thereof annexed, recorded in the registry of deeds of the county or district where the land lies, shall be competent evidence of such demand and notice.

§ 1015. Said affidavits shall be annexed to the instrument of taking, which shall be under the hand and seal of the collector, and shall contain a statement of the cause of taking, a substantially accurate description of each parcel of land taken, the name of the person to whom the same was assessed, and the amount of the tax thereon, and of the incidental costs and expenses to the date of taking, and shall be recorded in the registry of deeds of the county or district where the land lies; and the title to the lands so taken shall thereupon vest in the city or town, subject to the right of redemption. Sts. 1892, ch. 109, §§ 1, 2.

§ 1016. Whenever the collector exercises the power of taking, above provided, there shall be allowed to him, and added to the amount of the tax, the same charges and fees as are fixed for similar proceedings by § 972 *ante*; and when service of the demand of payment and notice of intention to take is made in the manner prescribed by law for the service

of summonses for witnesses in civil cases, there shall be allowed therefor, and added as above mentioned, fifty cents, together with the fees of officers for travel fixed by chapter one hundred and ninety-nine of the Public Statutes.

§ 1017. Every sale or taking of real estate for payment of taxes shall be deemed to be in the name of the owner or owners thereof, if the proceedings of assessment, sale, or taking are made in the name of one or more of the persons who appear as record owners of such estate at the date of assessment; but any taking of real estate for payment of taxes shall be of the whole estate, and no sale or taking shall be of the undivided interest of any one or more of the joint owners thereof. Sts. 1888, ch. 390, §§ 55, 56.

§ 1018. Under certain circumstances the collector, or the town treasurer may receive tenders of the taxes and charges due by an owner of real estate which has been taken or sold for the non-payment of taxes. Sts. 1888, ch. 390, §§ 57-59, 65.

§ 1019. The respective sums apportioned to, and assessed upon, the several cities and towns of the Commonwealth for county taxes, shall be collected and paid into their respective city and town treasuries, in like manner as the state tax is now collected and paid; and the county commissioners in their warrants shall require the selectmen or assessors of such cities and towns to pay, or issue severally their warrant or warrants requiring the treasurers of their respective cities and towns to pay to the treasurers of their several counties the sums apportioned to said cities and towns, as aforesaid, at such times as shall be fixed and prescribed by said county commissioners of the several counties in their said warrants. Sts. 1889, ch. 253.

§ 1020. Any notice, summons, demand, or other paper which the collector of taxes is by law required to serve, may be served by leaving the same at the last and usual place of abode, or of business, of the person assessed, or by sending the same through the mail, postpaid and directed to the person assessed, at the city or town in which such person was registered as a voter for the last preceding state election. The affidavit of a collector or deputy collector, kept on file in the office of the collector of taxes, that he has served such notice,

summons, demand, or other paper in the manner described in such affidavit, shall be *prima facie* evidence that it was so served. Sts. 1892, ch. 168.

§ 1021. After proceedings have been commenced for the taking or sale of real estate for a tax assessed thereon, and before the taking or sale is made, the holder of any mortgage thereon may pay such tax with all intervening charges and expenses; and when the owner of real estate has neglected, for three months after demand, to pay such a tax, and the collector has made demand therefor upon a holder of a mortgage thereon, such holder may in like manner pay such tax, charges, and expenses. Sts. 1888, ch. 390, § 60.

§ 1022. The holder of a mortgage, upon taking possession of real estate thereunder, shall be liable to pay all taxes due thereon and the expenses of any taking or sale for taxes that has been commenced or has taken place; to be recovered of him in an action of contract by the collector, or, when a sale has taken place, by the purchaser; and upon payment or tender by the mortgagee to the collector or the purchaser of the same sums and within the same time as is provided for owners of real estate to make tender, the city or town, or such purchaser, shall execute and deliver to him a valid deed of assignment of all interest acquired by virtue of the taking or sale. Sts. 1888, ch. 390, § 61.

An action by the collector of taxes of a city or town against a mortgagee of land who has entered thereon, and foreclosed his mortgage, after the lien stated in § 993 *ante* has expired, for the amount of taxes assessed upon the land to the mortgagor in possession cannot be maintained. *Sherwin v. Boston Five Cents Savings Bank*, 137 Mass. 444.

§ 1023. For all sums paid to a collector by the holder of a mortgage under either of the two preceding sections, the collector shall upon demand give him a receipt therefor, duly acknowledged; and such sums shall be added to and constitute part of the principal sum of the mortgage; and the mortgage shall not be redeemed, without the consent in writing of the holder, until such sums and interest thereon are paid; and such receipt recorded, within thirty days from its date, in the registry of deeds for the county or district where

the land lies, shall be notice to all persons of the payment of such sums and of the lien upon the estate therefor.

§ 1024. If any part of a tax duly assessed upon real estate under the statements in §§ 668, 669, and 670 *ante* remains unpaid on the first day of January next after the same has been assessed, either party may pay the same; and, if it is paid by a mortgagee, he may take from the collector a certificate to be recorded with a note of reference from such record to the mortgage deed; and such sums so paid for taxes other than those assessed to himself, with costs and interest, shall be added to and constitute a part of the principal sum of his mortgage; and the recording of such certificate within thirty days from its date shall be notice to all persons of the payment of such sums and of the lien therefor upon the estate. When taxes so assessed to a mortgagee have been paid by the mortgagor, or by a person claiming under him, either to the collector or to a mortgagee who has paid the same as provided in this section, the person so paying may deduct the sum so paid, with the costs and interest thereon, from the amount due to the mortgagee to whom said taxes were assessed, unless the parties have otherwise agreed in writing. A person whose tax is so paid by another shall have the same right to recover it from the city or town, if illegally assessed, which he would have had if the tax had been paid under a protest by him in writing,

§ 1025. If an estate is purchased or taken by a city or town, according to the provisions of these sections, taxes shall be assessed upon the same in the same manner as though the same were not so purchased or taken; and said taxes shall be deducted from the proceeds of the final sale. Sts. 1888, ch. 390, §§ 62-64.

§ 1026. If no person lawfully entitled redeems, within the time prescribed by law, real estate purchased or taken for and held by a city or town under the provisions of this chapter, or any statute repealed by this statute, its collector of taxes for the time being, without any vote or other authority being required therefor, shall, within two years thereafter, proceed to sell the same by public auction, after having given the notice which is stated in § 998 *ante*; and if, from any cause, such sale

shall not be made within two years, as aforesaid, it shall be made by the collector at such time as he deems best, or at once, upon the service upon him of a written demand of any person interested therein. The collector shall state in his notice of sale the amount for not less than which the sale will be made, and shall, for the city or town, execute and deliver to the highest bidder therefor a quit-claim deed. From the money arising from said sale shall be deducted the expenses of making the sale, together with the amount named in the collector's deed or instrument of taking as the sum due when the same was executed, and all interest and charges thereon fixed by law, and also all subsequent taxes and assessments, with all interest and charges due in respect thereof; and the balance, if any, shall be deposited in the city or town treasury, and shall be paid to the party legally entitled to the estate if it had not been sold for taxes, if such balance is called for within five years; and if not demanded within that time, the same shall inure to the benefit of said city or town.

§ 1027. If no person bids at such sale for said real estate said amount or more, or if the person so bidding and to whom the estate is sold fails to pay to the collector within ten days the full sum offered by him for the estate, the collector shall make an affidavit before a justice of the peace of the non-appearance of a purchaser or the failure of such bidder to pay the sum offered, and the same shall be recorded in the registry of deeds in the county or district where the land lies, within thirty days of the date at which the same was offered for sale; such affidavit, or a copy thereof duly certified by the register of deeds, shall be *prima facie* evidence of the facts therein stated.

§ 1028. After the recording of said affidavit, the collector, for and in behalf of the city or town, shall, within thirty days thereafter, take possession of said real estate, and the city or town may make such regulations for the custody, management, and sale thereof as it deems best, and taxes shall be assessed thereon in the name of such city or town until such land shall be sold; the said affidavit shall be placed in the custody of its treasurer, and such subsequent sale and the money received therefrom shall be had and held as is stated in § 1026 *ante*. Sts. 1888, ch. 390, §§ 66-68.

(e) *Proceedings When Tax Title is Deemed Invalid.*

§ 1029. When a collector of taxes has reasonable cause to believe that the title created by a deed given in consequence of a sale for payment of taxes, or of an assessment a lien for which is enforceable by sale of real estate, is invalid by reason of an error, omission, or informality in the assessment or sale, he may, within two years from the date of said deed, give notice to the person appearing of record as owner of the real estate, requiring him within thirty days to surrender and discharge the deed so given, and to receive from the city or town the sum due therefor, with interest as provided by law, or to file with the collector a written statement that he refuses to make such surrender or discharge; and such statement shall be deemed an absolute release of the city or town from any liability whatever upon the warranty contained in said deed. Sts. 1888, ch. 390, § 69; Sts. 1889, ch. 334, § 15.

§ 1030. The notice required by the preceding section shall be served in the manner prescribed by law for the service of summonses for witnesses in civil cases; but in case the holder has no place of abode in the city or town, or cannot be there found, it shall be served by mail or by publication one week in some newspaper published in the county wherein the city or town lies; or, if there be none such, in some newspaper published in an adjacent county. If the holder fails to comply with such notice, the collector shall, upon the expiration of thirty days from the service thereof, cause a copy of the notice, with an affidavit by himself or a disinterested person of the service thereof, taken before a justice of the peace, to be filed and recorded in the registry of deeds of the county or district wherein the city or town lies. A note of reference to the record of said copy shall be made on the margin of the record of the collector's deed therein referred to; and from the time of such record the interest payable by law in respect to such deed shall cease, and said copy when so recorded shall have the effect to release and discharge all right and title acquired under such deed. The collector shall notify the treasurer of the city or town, who shall appropriate out of any funds in his hands the amount due in respect of said deed for the use

and benefit of the persons entitled thereto, and shall pay it over on reasonable demand.

§ 1031. If the invalidity of a deed so recalled by the collector arose by reason of any error, omission, or informality in the assessment, the collector, after obtaining a surrender and discharge of the deed from the holder, or causing a copy of the notice to be filed and recorded as provided in the preceding section, shall forthwith notify the board by which the tax or assessment was laid, who shall immediately reassess the same, in the manner stated in § 641 *ante*. If such invalidity arose by reason of an error, omission, or informality in the proceedings of the collector, he shall, after obtaining a surrender and discharge of the deed, or causing a copy of the notice to be filed and recorded as aforesaid, forthwith collect the unpaid tax or assessment referred to in such deed by proceedings in conformity to law. Sts. 1888, ch. 390, §§ 70, 71.

§ 1032. When the collector has reasonable cause to believe that a tax title, held by a city or town under a sale or taking for payment of a tax or assessment, is invalid by reason of any error, omission, or informality in the assessment, sale, or taking, he may release, disclaim, and annul such title by an instrument under his hand and seal, duly filed and recorded in the registry of deeds of the county or district where the land lies. If the invalidity of such title arose by reason of an error, omission, or informality in the assessment, the assessors shall immediately reassess the same, as is stated in § 641 *ante*. Sts. 1888, ch. 390, § 72; Sts. 1889, ch. 334, § 15.

(f) *Miscellaneous Provisions.*

§ 1033. Every city by ordinance, and every town by by-law, may direct which power its collector shall exercise to enforce the lien for taxes or assessments laid on real estate, that of sale or of taking; and in the absence of any such ordinance or by-law the collector may exercise either power at his discretion: and every city and town may in like manner provide regulations under which its collector shall exercise the powers mentioned in §§ 1029 and 1032 *ante*; but the passage of any such ordinance or by-law shall not render invalid any proceedings commenced before the passage of the same. Sts. 1888, ch. 390, § 77.

§ 1034. When the city council of a city or the inhabitants of a town vote to appoint their treasurer a collector, he may issue his warrants to the sheriff of the county, or his deputy, or to any of the constables of the city or town, returnable in thirty days, requiring them to collect any or all taxes due; and such warrants shall be in substance the same, and confer like powers as warrants issued by assessors to collectors.

Any officer to whom is given by law authority to collect taxes may appoint such deputy collectors of taxes as he may from time to time deem expedient, who shall give bonds for the faithful discharge of their duties, in such sums as the board of selectmen may from time to time prescribe; and such deputies shall have the same powers as collectors of taxes in towns.

§ 1035. The treasurer or other disbursing officer of any city or town may, and if so requested by the collector of that place shall, withhold payment of any moneys that may be made payable from the treasury of that place to any person whose taxes, assessed in that place, are then due, and wholly or partly unpaid: *provided*, that no greater sum shall be thus withheld than is necessary to pay the amount of tax then due as aforesaid, with interest and costs. The sum withheld shall be payable to the collector, who shall, if required, give a written receipt therefor. The person taxed may, in such case, have the same remedy as if he had paid such tax after a levy upon his goods. The collector's right as established by this section shall be valid against any trustee process not commenced, or any assignment not recorded, prior to the seventeenth day of May in the year eighteen hundred and seventy-eight.

§ 1036. Every collector shall once in two months, if required, exhibit to the mayor and aldermen or selectmen, a true account of all moneys received on the taxes committed to him, and shall produce the treasurer's receipts for all money paid into the treasury by him.

§ 1037. If a collector neglects so to exhibit his accounts, he shall forfeit two and a half per cent on the sums committed to him for collection.

§ 1038. The collector shall be credited with all sums abated according to law; with the amount of taxes assessed upon

any person committed to prison within one year from the receipt of the tax-list by the collector, and before paying his tax; with any sums which the city or town may see fit to abate to him, due from persons committed after the expiration of a year; and with the amount of the taxes and charges in case of lands purchased or taken by the city or town for payment of taxes.

§ 1039. If the collector fails to collect a tax without his own default, and there is a deficiency of the amount due on a state or county tax, such deficiency shall be supplied by him from the proceeds of the collection of city or town taxes, if any, in his hands; and if he have none, by the city or town treasurer, on the written requisition of the collector.

§ 1040. If a collector of taxes neglects to pay, within the time required by law, such sums of money as ought by him to be paid to the state or county treasurer, the city or town by which such collector was appointed shall be liable for such sums, to be recovered in an action of contract by such state or county treasurer respectively.

§ 1041. If a collector neglects seasonably to pay a state or county tax committed to him, whereby the city or town is compelled to pay the same, or neglects seasonably to account for and pay in a city or town tax committed to him, the city or town may recover the amount thereof, with all damages sustained through such neglect, and interest, by an action of contract, declaring on his official bond if any has been given.

§ 1042. If a collector becomes insane, or in the judgment of the selectmen otherwise unable to discharge his duty, or absconds, removes, or in the judgment of the selectmen is about to remove, from the place, or if he refuses on demand to exhibit to the mayor and aldermen, selectmen, or assessors his accounts of collections as herein provided, the selectmen may remove him from office and appoint another collector as in case of the death of the collector.

§ 1043. If a collector dies or is removed as provided in the preceding section, before completing the collection of a tax committed to him, the selectmen may appoint some suitable person to complete the collection, who shall receive a reason-

able compensation, to be paid by the town, and they may commit the same tax-list to him, with their warrant, accordingly; and he shall have the same powers and be subject to the same duties and liabilities as other collectors.

§ 1044. The tax-list of a collector who is paid by a fixed salary may, upon the expiration of his term of office, be committed to his successor, as in the case of the death of a collector, subject to all the provisions of law relating to the transfer of a tax-list in case of the death of a collector, as far as applicable thereto.

§ 1045. In case of the death or removal from office of a collector, his executors or administrators, and all other persons into whose hands any of his unsettled tax-lists may come, shall forthwith deliver the same to the selectmen.

§ 1046. Collectors shall be paid such compensation for their services as their cities or towns shall determine. In towns they shall be elected by ballot, and their compensation shall be fixed by the towns at the annual meeting, or at a special meeting called for that purpose.

§ 1047. No tax paid to a collector shall be recovered back, unless it appears that it was paid after an arrest of the person paying it, a levy upon his goods, a notice of sale of his real estate, or a protest by him in writing; and the damages awarded in a suit or process based upon any error or illegality in the assessment or apportionment of a tax shall not be greater than the excess of the tax above the amount for which the plaintiff was liable to be taxed. And no sale, contract, or levy shall be avoided by reason of any such error or irregularity. Sts. 1888, ch. 390, §§ 80-93.

§ 1048. The following forms may be used in proceedings for the collection of taxes under this chapter, and, if substantially followed, they shall be deemed sufficient for the proceedings to which they respectively relate; but this shall not be so construed as to prohibit the use of other suitable forms. These forms may also be used, so far as applicable, in the collection of betterments and other assessments of like character. Sts. 1888, ch. 390, § 96.

Bond to be given by Collector of Town.

BOND.

Know all men by these presents,

That we, A B, of B——d, in the county of E—— and Commonwealth of Massachusetts, as principal, and C D and E F, of said B——d, as sureties, are holden and stand firmly bound and obliged unto the said town of B——d in the full and just sum of dollars, to be paid unto the said town; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such, That whereas said A B has been chosen collector of taxes for said town of B——d for the current year, and has accepted said office, and been duly sworn to the faithful discharge of the duties thereof, Now, if the said A B shall, as collector as aforesaid, faithfully collect, account for, and pay over all the taxes which he shall be legally required to collect, and also faithfully discharge all other legal duties of said office, then this obligation shall be void; otherwise to remain in full force and virtue.

A B. SEAL.

C D. “

E F. “

Signed, sealed, and delivered in presence of

SCHEDULE OF FORMS.

No. 1. — FORM OF DEMAND UNDER § 973.

Collector's Office, B, , 18 .

To

Herewith find your tax-bill due 18 , amounting to \$. Payment of the same is hereby demanded. (If interest has been voted by the city or town add) Interest at the rate of per cent per annum will be charged from 18 . You are hereby notified that unless your tax is paid in fourteen days from this date, with all legal charges, the collector will then proceed to collect the same according to law.

C D,

Collector of Taxes for the of .

NO. 2. — FORM OF NOTICE OF SALE OF DISTRAINED PROPERTY
UNDER § 978.

COLLECTOR'S SALE.

Distrained upon a warrant of distress for non-payment of taxes, and will be sold at public auction on _____, the _____ day of _____, 18____, at _____ o'clock M., at _____, unless said taxes shall be paid before the sale, the following described property, to wit: (Here describe the property.)

B, _____, 18____. C D,
Collector of Taxes for the _____ of _____.

NO. 3. — FORM OF NOTICE OF ADJOURNMENT OF SALE UNDER
§ 979.

To the original notice of sale or a copy thereof, add the following, and post at the place of sale: —

The collector hereby gives notice that the above sale stands adjourned to _____, the _____ day of _____, 18____, at the same hour and place.

B, _____, 18____. C D,
Collector of Taxes for the _____ of _____.

NO. 4. — FORM OF CERTIFICATE TO BE MADE UPON AN ATTESTED
COPY OF WARRANT WHEN CORPORATE STOCK IS SEIZED UNDER
§ 980.

Collector's Office, B, _____, 18____.

I hereby give notice that I have seized _____ share of the capital stock of the (A B Company) standing in the name of _____ by virtue of a warrant of distress, a copy of which is hereby presented. Said share _____ being seized and distrained for the non-payment of a tax duly assessed upon the said _____ by the Assessors of _____ for the year 18____, amounting to the sum of _____, which the said _____ after due demand has neglected and refused to pay.

C D,
Collector of Taxes for the _____ of _____.

NO. 5. — FORM OF CERTIFICATE REQUIRED BY § 984 TO BE GIVEN
BY A COLLECTOR WHEN A COMMITMENT IS MADE BY HIM.

I hereby certify that the tax assessed in the _____ of _____ as of the first day of May in the year _____ upon _____ remains _____, 18____.

unpaid for fourteen days after demand therefor made by me ; and that for want of goods and chattels whereof to make distress, I commit the said person to prison.

I also certify that the amount the said person is to pay for said tax and interest, and charges and fees, is dollars.

C D, *Collector of Taxes for the* *of* .

No. 6. — FORM OF COLLECTOR'S WARRANT TO DISTRAIN OR COMMIT UNDER § 988.

COMMONWEALTH OF MASSACHUSETTS.

To the Sheriffs of our several Counties, or their Deputies, or to any Constable of or Deputy Collector of Taxes for the
of *in the County of* ,

GREETING :

WHEREAS, a resident of in the County of was duly assessed as of the first day of May in the year eighteen hundred and , by the Assessors of the of a tax in the sum of dollars ; and the same now, after the expiration of fourteen days from the date of a demand made upon him by me in accordance with law for the payment of the same, remains unpaid ; Therefore,

In the name of the Commonwealth of Massachusetts, you and each of you are required and directed to distrain the goods or chattels of the said person so assessed sufficient to satisfy and pay the amount due for such tax and interest, and all fees and charges of keeping and selling the same, saving and excepting the tools or implements necessary for the trade or occupation of the said person so assessed, beasts of the plow necessary for the cultivation of his improved land ; military arms ; utensils for housekeeping necessary for upholding life ; and bedding and apparel necessary for the said person so assessed and his family. And the goods and chattels so distrained by you, you are required to keep at the cost and charge of the owner, and within seven days after the seizure to sell the same at public auction, for the payment of the said amount due ; having first posted up a notice of the sale in some public place in the town or city where found, forty-eight hours at least before the sale : *provided, however*, that you may, if you shall see fit, once adjourn said sale for a time not exceeding three days, in which case you shall forthwith post up a notice of such adjournment and of the time and place of sale. And if said distress shall be sold for more than the said amount due, you shall return the surplus to the owner

of such goods or chattels upon demand, with an account in writing of the sale and charges. And if you cannot find sufficient goods and chattels belonging to the person assessed, whereon to make distress, you shall take the body of the said person and him commit to one of the common jails in the county in which you shall arrest him, there to remain until he shall pay said tax, and interest, and charges, and fees, or until he shall be discharged therefrom by due course of law.

And in case you shall commit said person so assessed to prison by virtue of this Warrant, you are required to give the keeper of the prison wherein he may be committed an attested copy of this Warrant, with a certificate thereon under your hand, setting forth that for want of goods and chattels of the said person whereof to make distress, you have taken his body and committed him to prison as aforesaid; and also setting forth the amount said person is to pay as his tax and interest, and fees and charges.

Hereof fail not, and make return of this Warrant, with your doings thereon, within sixty days from the date hereof.

Given under my hand and seal this day of 18 .

C D, [SEAL.]
Collector of Taxes for the of .

No. 7. — FORM OF CERTIFICATE REQUIRED BY § 988 TO BE ENDORSED ON COPY OF WARRANT IN CASE OF COMMITMENT.

, 18 .

I hereby certify that, by virtue of the warrant of which the within is a true copy, for want of goods and chattels whereof to make distress, I have taken the body of the within named and committed him to prison, and that the amount which he is to pay as his tax and interest, and fees and charges is dollars.

Deputy Collector of Taxes for the of .

No. 8. — FORM OF DEMAND OF TAX ON REAL ESTATE UNDER § 993.

Collector's Office, C, , 18 .

To

In compliance with the statute I hereby demand of you the payment of dollars, that being the amount of tax assessed for the year 18 on the estate in this city or town (here give a brief statement of the estate) and owned (or occupied) by you at the date of the assessment. You are hereby notified that if said amount, together with the legal costs and charges thereon, is not paid within

fourteen days from this date, the said estate will be sold by public auction, pursuant to law.

C D,

Collector of Taxes for the of .

N. B. When the demand is made upon an attorney, this form should be changed accordingly.

NO. 9. — FORM OF COLLECTOR'S NOTICE OF SALE OF REAL ESTATE TO BE PUBLISHED IN A NEWSPAPER UNDER §§ 998 AND 999.

COLLECTOR'S NOTICE.

B, , 18 .

The owners and occupants of the following described parcels of real estate situated in the (city or town) of , in the county of , and Commonwealth of Massachusetts, and the public are hereby notified that the taxes thereon severally assessed for the years hereinafter specified, according to the list committed to me as Collector of Taxes for said by the Assessors of Taxes, remain unpaid, and that said parcels of real estate will be offered for sale by public action at the in said on , 18 , at o'clock M., for the payment of said taxes with costs and charges thereon, unless the same shall be previously discharged. (Here state the name of the party taxed if known; a substantially accurate description of the estate; the year in which the tax is assessed; and the amount of the tax on each parcel of real estate.) C D,

Collector of Taxes for the of .

NO. 10. — (UNDER § 1000, USE FORM NO. 9 FOR NOTICE TO BE POSTED ON THE PREMISES, WITH THE WORDS, "THIS ESTATE TO BE SOLD FOR UNPAID TAXES," WRITTEN OR PRINTED AT THE TOP OF THE NOTICE.)

NO. 11. — FORM OF AFFIDAVIT OF DISINTERESTED PERSON, DEPUTY COLLECTOR, OR COLLECTOR, OF DEMAND UNDER § 1002 TO BE RECORDED IN THE REGISTRY OF DEEDS.

S, , 18 .

I (A B, a disinterested person, or a deputy collector, or collector) hereby certify that on the day of , 18 , I served upon E F a demand for the payment of a tax of dollars assessed upon him by the assessors of , in 18 , upon the estate in said (Here give a substantially accurate description of the estate) with a notice that if said amount, together with the legal costs (and

interest) thereon was not paid within fourteen days from the date thereof that the said estate would be sold by public auction according to law. A B.

COMMONWEALTH OF MASSACHUSETTS.

H , ss. 18 .

Then personally appeared the said A B, and made oath that this statement by him subscribed is true.

Before me,
Justice of the Peace.

NO. 12. — FORM OF AFFIDAVIT UNDER § 1002, WHEN THE DEMAND IS MADE UPON TWO OR MORE DISTINCT PERSONS.

S, , 18 .

I (A B, a disinterested person, or a deputy collector, or collector) hereby certify that on or since the day of , 18 , I have served on each of the parties hereinafter mentioned, on the date and in the manner specified, as may be seen by reference to their respective names, a demand like the blank hereunto attached, the blanks being first filled with the date, name, amount of the tax, and location of the real estate. A B.

Names.	Amount of Tax.	Manner and Date of Service.

COMMONWEALTH OF MASSACHUSETTS.

H , ss. S, , 18 .

Then personally appeared the said A B, and made oath that the above statement subscribed by him is true.

Before me,
Justice of the Peace.

(Here annex the blank form, No. 8, referred to in the affidavit.)

NO. 13. — FORM OF AFFIDAVIT OF POSTING AND PUBLISHING ADVERTISEMENT OF SALE UNDER § 1002.

S, , 18 .

I, A B of , in the County of , and Commonwealth of Massachusetts (a disinterested person, or a deputy collector, or collector), hereby certify that I witnessed the posting (or posted) on the premises named therein the printed notice hereto annexed of

the Collector of Taxes of the (town or city) of _____ for the sale of real estate (or of the various parcels of real estate) situate in said _____, for non-payment of taxes, as specified in said notice hereto annexed, also in a convenient and public place, to wit: the _____, in said (town or city), and that said notice was advertised three weeks successively in the _____, a newspaper published in (city or town) (or if there is no such newspaper, state that fact and add: in said County), the last publication being at least one week before the advertised time of sale; and that said posting was done three weeks before the time of sale, in accordance with law. A B.

COMMONWEALTH OF MASSACHUSETTS.

H _____, ss. S, _____, 18 _____.

Then personally appeared the above-named _____, and made oath that the foregoing statements by him subscribed are true.

Before me,

Justice of the Peace.

(Here annex a copy of the advertisement.)

No. 14. — FORM OF DEED UNDER SECTIONS 1005 AND 1006.

COMMONWEALTH OF MASSACHUSETTS.

To all Persons to whom these Presents may come,
I, _____, Collector of Taxes for the _____ of _____
in the County of _____, and Commonwealth of Massachusetts,
Send Greeting:

WHEREAS, the Assessors of Taxes of said _____ of _____, in the lists of assessments for taxes, which they committed to me to collect for the year one thousand eight hundred and _____, duly assessed _____, as owner _____ of the real estate in said _____, which is hereinafter described, the sum of _____ dollars and _____ cents for State, (City or Town), and County Taxes thereon; and whereas, on the _____ day of _____, A. D. 18 _____, I duly demanded of said (if the demand was made on a mortgagee or an attorney of a non-resident owner, here insert the fact) the payment of said taxes, so as aforesaid assessed on said real estate, and the same were not paid; and whereas, after the expiration of fourteen days from the time of demanding payment of said taxes as aforesaid, the same still remaining unpaid, I duly advertised said real estate to be sold by public auction for the payment of said taxes, and all incidental costs and expenses, on the _____, A. D. 18 _____, at _____ o'clock in the _____, at the _____, in said

, by publishing an advertisement thereof, containing also a substantially accurate description, and the name of the owner of said real estate, and the amount of the taxes so as aforesaid assessed thereon, in the _____, a newspaper published in _____, in the county where said real estate lies, three weeks successively, the last publication whereof was one week before the time appointed for the sale, and by posting the said advertisement in _____ public and convenient place in said _____, to wit: the _____, and also on said real estate, three weeks before the time appointed for said sale; and whereas, said taxes so as aforesaid assessed on said real estate not being paid, I proceeded at the time and place appointed as aforesaid for the sale, to sell said real estate by public auction for the discharging and payment of said taxes thereon, and said incidental costs and expenses*, (If the sale is adjourned add here) and no person appeared and bid for the estate thus offered for sale an amount equal to the said taxes and costs and expenses, and I thereupon, at said time and place appointed for sale, adjourned said sale until _____ the _____ day of _____, A. D. 18 _____, at _____ o'clock in the forenoon at the same place, and then and there made public proclamation of said adjournment; and in like manner in all respects, I adjourned said sale from time to time, to the same hour and place, and then and there made public proclamation of said adjournments; and at the time so fixed and proclaimed for making said sale on each of the several days, at the said hour and place, I proceeded to offer for sale said real estate by public auction for the payment of said taxes, costs, and expenses and no person appeared at either time so fixed by adjournment for said sale and bid a sum equal to said taxes, costs, and expenses, until on _____, the day of _____, 18 _____; and at the said time and place so fixed for said sale by the last of the said adjournments, namely, on the _____ day of _____, A. D. 18 _____ (Use such of these averments as will conform to the facts), I proceeded again to offer for sale by public auction said real estate for the payment of said taxes and costs and expenses, and the said real estate was struck off to _____ of _____, in the county of _____, and State of _____, for the sum of _____ dollars and _____ cents, he being the highest bidder therefor;

Therefore know ye that I, the said _____, Collector of Taxes as aforesaid, by virtue of the power vested in me by law, and in consideration of the said sum of _____ dollars and _____ cents to me paid by said _____, the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell, and convey unto _____ the said

the following described real estate, the same being the land taxed as aforesaid, to wit: (Here describe the estate.)

To have and to hold the same, to the said heirs and assigns, to their use and behoof forever; subject to the right of redemption by any person legally entitled to redeem the same.

And I, the said Collector, do covenant with the said heirs and assigns that the sale aforesaid has, in all particulars, been conducted according to the provisions of law.†

In witness whereof I, the said , Collector as aforesaid, have hereunto set my hand and seal, this day of , in the year of our Lord one thousand eight hundred and .

[SEAL].

Collector of Taxes for the of .

Signed, sealed and delivered in presence of .

ss.

, 18 .

Then personally appeared the above-named , Collector of Taxes for the of , and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Justice of the Peace.

No. 15. — FORM OF DEED WHEN THE CITY OR TOWN IS THE PURCHASER UNDER §§ 1009 AND 1011.

COMMONWEALTH OF MASSACHUSETTS.

(Proceed as in No. 14 to the,* and continue as follows: —) and no person appeared and bid for the estate thus offered for sale an amount equal to the said taxes and costs and expenses, and I thereupon, at said time and place appointed for sale, adjourned said sale until the day of A. D. 18 , at o'clock in the forenoon, at the same place, and then and there made public proclamation of said adjournment; and in like manner in all respects, I adjourned said sale from time to time, to the same hour and place, and then and there made public proclamation of said adjournments; and at the time and place so fixed and proclaimed for making said sale on each of said several days, I proceeded to offer for sale said real estate by public auction for the payment of said taxes, costs, and expenses, and no person appeared at either time so fixed by adjournment for said sale and bid a sum equal to said taxes, costs, and expenses, and at the time and place so fixed for said sale by the last of said adjournments, namely, on the day of , A. D. 18 , at o'clock in the forenoon, I made

a public declaration of all the facts hereinbefore recited; and no person then appeared and bid a sum equal to said taxes, costs, and expenses (if only one adjournment is made, change these averments to conform to the facts); and I thereupon then and there immediately gave public notice that I should, and that I then and there did purchase on behalf of the said _____ of _____, said real estate for the sum of _____ dollars and _____ cents, being the amount of said taxes and said incidental costs and expenses;

Therefore know ye that I, the said _____, Collector of Taxes as aforesaid, by virtue of the power vested in me by law, and in consideration of the premises, hereby give, grant, bargain, sell, and convey unto the said _____ of _____, the following described real estate, the same being the land taxed as aforesaid, to wit: (Here describe the estate.)

To have and to hold the same, to the said _____ of _____, and its assigns, to its and their use and behoof forever; subject to the right of redemption by any person legally entitled to redeem the same.

And I, the said Collector, do covenant with the said _____ of _____, and its assigns, that the sale aforesaid has, in all particulars, been conducted according to the provisions of law. (Conclude as in No. 14 from the †.)

No. 16. — FORM OF DEED TO CITY OR TOWN, WHEN THE PURCHASER FAILS TO PAY, ETC., UNDER §§ 1010 AND 1011.

(Proceed as in No. 14 to the * and continue as follows: —) and the said real estate was struck off to _____ of _____ in the County of _____ and State of _____, for the sum of _____ dollars and _____ cents, he being the highest bidder therefor; and whereas, the said _____ failed to pay to me the sum offered by him as aforesaid, and receive his deed of the premises bid off by him within ten days after the said sale, and the said sale became null and void, and the said _____ of _____ thereby became the purchaser of the premises so bid off by the said _____ for the sum of _____ dollars and _____ cents, being the amount of said taxes and incidental costs and expenses;

Therefore know ye that I, the said _____, Collector of Taxes as aforesaid, by virtue of the power vested in me by law, and in consideration of the premises, hereby give, grant, bargain, sell, and convey unto the said _____ of _____ the following described real estate, the same being the land taxed as aforesaid, to wit: [Here describe the estate.]

To have and to hold the same, to the said _____ of _____, and its assigns, to its and their use and behoof forever; subject to the right of redemption by any person legally entitled to redeem the same.

And I, the said Collector, do covenant with the said _____ of _____, and its assigns, that the sale aforesaid has, in all particulars been conducted according to the provisions of law. (Conclude as in No. 14 from the †.)

No. 17. — FORM OF NOTICE OF INTENTION TO TAKE REAL ESTATE UNDER § 1013.

COLLECTOR'S NOTICE.

The owners and occupants of the following-described (parcels) of real estate situate in the _____ of _____, in the County of _____, and Commonwealth of Massachusetts, and all other persons, are hereby notified that the (taxes) thereon (severally) assessed for the year hereinafter specified, according to the list committed to me as Collector of Taxes for the said _____ of _____, by the Assessors of Taxes of said _____, remain unpaid, and that the said (parcels) of real estate will be taken for the said _____ of _____, on the _____ day of _____ A. D. 18 _____, at _____ o'clock M., for the payment of said taxes, together with the costs and charges thereon, unless the same shall be previously discharged. (Here state the name of owner or occupant, a description of the parcel or parcels of lands, the year for which the taxes were assessed, and the sum assessed upon each parcel.)

C D,
Collector of Taxes for the _____ of _____.

No. 18. — FORM OF AFFIDAVIT OF DEMAND AND NOTICE TO BE ANNEXED TO THE INSTRUMENT OF TAKING UNDER § 1014.

I, C D, _____ of _____, in the County of _____, and Commonwealth of Massachusetts, on oath depose and say that on the day of _____, A. D. 18 _____, I, as Collector of Taxes for the _____ of _____, made a written demand on _____ for the amount of the tax assessed by the assessors of said _____ of _____, as of the first day of May A. D. 18 _____, upon the said _____, with the costs then due on certain real estate situated in said _____ of _____, by (Here state manner in which the demand was made), of which the following is a true copy: —

"Collector's Office, _____, 18 .

To _____, I hereby demand of you the payment of _____ dollars and _____ cents, that being the amount of tax assessed for the year 18 _____, by the assessors of _____, on the real estate (Here describe the estate) owned by you. You are hereby notified that if said amount, together with the costs thereon, is not paid within fourteen days from this date, the said real estate will be taken for said taxes for the said _____ of _____. Tax, \$ _____; costs and charges, \$ _____.

C D,

Collector of Taxes for the _____ of _____."

(If notice is published and posted, add :) And I, the said C D, do further depose and say that I posted and published notices, of which the following is a copy (Here annex a copy of the notice), as follows: A copy thereof was posted on (Here state where posted), and I also published a copy of said notice in the _____, a newspaper published in said _____ (If there be no paper published in said town, state the fact and add, "in _____ in said county") three weeks successively, that the posting of said notices and the first publication thereof was more than fourteen days after the making the demand as aforesaid; and I do further depose and say that, at the date of the instrument of taking, hereto annexed, the amount of taxes due on the estate therein described, with the costs and expenses, amounted to the sum of _____ dollars and _____ cents, and that the (parcel or parcels) or (lot or lots) of land were taken for the reason that the taxes remained unpaid at the time of the said taking.

C D,

Collector of Taxes for the _____ of _____.

B _____, ss.

18 _____.

Then personally appeared the above named C D, and made oath that the foregoing affidavit by him subscribed is true.

Before me,

Justice of the Peace.

No. 19. — FORM OF TAKING OF REAL ESTATE UNDER § 1015.

WHEREAS, the tax assessed by the Assessors of _____ as of the first day of May, in the year 18, _____ upon E F as the owner (or occupant) of the real estate hereinafter described, was duly committed to me as Collector of Taxes for said _____ of _____; and whereas the said taxes, amounting to _____ dollars and _____ cents, have not been paid; and whereas, a demand for the payment of said taxes and the costs and expenses then due, was made by me on the said E F on the _____ day of _____, last past, in conformity to law;

and whereas, notice of my intention to take said real estate by virtue of the authority vested in me as Collector of Taxes for said _____ has been duly made as by law required; and whereas, the said taxes at the date of this instrument remain unpaid; now therefore, know all men by these presents, that I, C D, as Collector of Taxes as aforesaid, by virtue of the power and authority in me vested as aforesaid, have taken and by these presents do take, for the said _____ of _____, subject to redemption according to law, the following described lot or parcel of land, with the buildings thereon, the same being the estate assessed as aforesaid, to wit: (Here describe the estate.) The said E F is the only person known to me as owner of the above described estate.

In witness whereof, I, the said C D, as Collector aforesaid, hereunto set my hand and seal this _____ day of _____, in the year eighteen hundred and _____.

C D, [SEAL.]
Collector of Taxes for the _____ of _____.

No. 20.—FORM OF DEED BY CITY OR TOWN WHEN ESTATE IS REDEEMED UNDER § 1018 TO BE EXECUTED BY THE PROPER OFFICERS OF THE CITY OR TOWN.

Know all men by these presents,

That the _____ of _____, in consideration of _____, to it paid by _____ of _____, the receipt of which is hereby acknowledged, does hereby remise, release, and forever quit-claim unto the said _____ all the right, title, and interest which the said _____ of _____ acquired, by or under a deed made to it by _____, Collector of Taxes for said (City or Town), dated the _____ day of _____ in the year of our Lord one thousand eight hundred and _____, and recorded with _____ Deeds, Lib. _____ Fol. _____ in and to the following parcel of real estate in said _____, viz: (Here describe the estate.)

To have and to hold the above released premises, with all the privileges and appurtenances to the same belonging, to the said _____, heirs and assigns, to _____ use and behoof forever.

In witness whereof, the said _____ of _____ has caused its corporate seal to be hereunto affixed, and these presents to be signed, acknowledged, and delivered in its name and behalf by _____, its _____, hereto duly authorized, this _____ day of _____, in the year of our Lord eighteen hundred and _____.

Town (or City) of _____ [SEAL.]

Signed and sealed in presence of _____

By _____

No. 21. — FORM OF RECEIPT BY COLLECTOR TO A MORTGAGEE,
UNDER SECTION 1021.

Collector's Office 18 .

I, , Collector of Taxes for the of , hereby certify that the Assessors of Taxes of said of , in the list of assessments for taxes which they committed to me to collect for the year one thousand eight hundred and , duly assessed the sum of dollars and cents, as owner of the real estate situated as follows, viz :

and I further certify that the said neglected to pay such tax for three months after demand, and I thereupon made a demand therefor upon who claimed to be the holder of a mortgage upon said real estate ; and that the said has paid to me the sum of dollars and cents, being the amount of said tax, with all intervening charges and expenses, the receipt of which I hereby acknowledge.

C D,

Collector of Taxes for the of .

S , ss. 18 .

Then personally appeared the above named , Collector of the of , and made oath to the statement by him subscribed.

Before me,

Justice of the Peace.

No. 22. — FORM OF RECEIPT BY COLLECTOR UNDER §§ 1022
AND 1023.

Collector's Office 18 .

I, , Collector of Taxes for the of , hereby certify that the Assessors of Taxes of said of , in the list of assessments for taxes which they committed to me to collect for the year one thousand eight hundred and , duly assessed the sum of dollars and cents, as owner of the real estate situated as follows, viz :

and I further certify that proceedings have been commenced by me for the sale of said real estate for said tax, and that who claimed to be the holder of a mortgage thereon, has paid to me the sum of dollars and cents, being the amount of said tax, with all intervening charges and expenses, the receipt of which I hereby acknowledge, said receipt having been demanded by said mortgagee.

C D,

Collector of Taxes for the of .

S , ss.

18 .

Then personally appeared the above-named , Collector of Taxes for the of , and made oath to the statement by him subscribed.

Before me,

Justice of the Peace.

No. 23. — FORM OF NOTICE OF SALE OF UNREDEEMED REAL ESTATE, IN BEHALF OF A CITY OR TOWN, WITHIN TWO YEARS AFTER EXPIRATION OF THE RIGHT OF REDEMPTION, UNDER § 1026.

Sale of Unredeemed Real Estate by the of .

Collector's office, B, 18 .

In conformity with the laws of the Commonwealth of Massachusetts, the public and all persons interested as former owners and occupants of each of the following described parcels of real estate situated in the of , in the County of and Commonwealth aforesaid, are hereby notified that said parcels have been conveyed according to law to said (Town or City) for non-payment of taxes and assessments; and the time within which each of the estates might be redeemed by the owners thereof having expired, each of said parcels will be offered for sale in accordance with § 66 of chapter 390, of the Acts of the year eighteen hundred and eighty-eight, by public auction at the in said B on the day of . A. D. 18 , at o'clock M., and to the highest bidder for each of the several parcels a quit-claim deed will be delivered. For further particulars reference is made to the Registry of Deeds of the County of , the volume and folio numbers following the description of each parcel indicating the record of the deed under which the said of now holds title to the estate described. The sums set against the several estates show the amounts due thereon respectively for the taxes and assessments for the non-payment of which said estate was sold to (or taken by) the said , together with the subsequent taxes and assessments, interest on the same, and all lawful costs and charges. And none of the said estates will be sold for less than the amount set against the said estates, respectively. (Here set out the name of the original owner or occupant if known, a description of each parcel, the place of registry, vol. and folio, the years in which assessed, and the amount for not less than which the sale will be made.)

C D, *Collector of Taxes for the of .*

No. 24. — FORM OF DEED OF UNREDEEMED TAX TITLE UNDER
§ 1026.

Know all men by these presents,

That, whereas the real estate hereinafter described was by deed of Collector, dated A. D. 18 , and recorded with Deeds, Lib. Fol. duly conveyed to the of , a municipal corporation legally established in the County of , and Commonwealth of Massachusetts, for the non-payment of taxes; and whereas no person lawfully entitled has, within the time prescribed by law, redeemed said real estate; and whereas I, the Collector of Taxes of the said of , acting under the provisions of chapter 390 of the Acts of the year eighteen hundred and eighty-eight, duly advertised said real estate to be sold by public auction on the day of , 18 , at o'clock in the forenoon, at the in said of , by publishing an advertisement thereof, containing a substantially accurate description of said real estate in the , a newspaper published in , three weeks successively, the last publication whereof was at least one week before the time appointed for the sale, and by posting a like advertisement in public and convenient place in said, of to wit: the in said city or town, and also on said real estate, three weeks before the time appointed for said sale; and whereas the amounts due on said estate not being paid, the of by the Collector, , thereto duly authorized by statute, proceeded at the time and place appointed as aforesaid for the sale, to sell real estate by public auction, and the said real estate was then and there struck off to , of in the County of , and State of , for the sum of dollars and cents, he being the highest bidder therefor;

Now, therefore, the of , by its Collector of Taxes, by virtue of the statutes in such case made and provided, and every other power hereto it enabling, in consideration of dollars and cents paid by said , the receipt whereof is hereby acknowledged, does hereby remise, release, and forever quit-claim unto the said , heirs and assigns, all the right title and interest which the said of acquired, by or under the deed above mentioned, in and to the following parcel of real estate in said , viz: (Here describe the estate.)

To have and hold the above released premises, with all the privileges and appurtenances thereto belonging, to the said , his heirs and assigns, to his and their behoof forever.

In witness whereof the said _____ of _____ has caused its seal to be hereto affixed and these presents to be signed, acknowledged, and delivered in its name and behalf by its Collector of Taxes hereto duly authorized by law, this _____ day of _____, in the year eighteen hundred and _____.

Town (or City) of _____ [SEAL.]

By C D,

Collector of Taxes for the _____ of _____.

(To be acknowledged by the Collector as the free act and deed of the City or Town.)

No. 25. — FORM OF AFFIDAVIT OF COLLECTOR OF THE NON-APPEARANCE OF A PURCHASER, OR THE FAILURE OF BIDDER TO PAY THE SUM BID, UNDER § 1027.

I, C D, Collector of Taxes for the _____ of _____, in the County of _____, and Commonwealth of Massachusetts, on oath depose and say that the advertisement of the sale of unredeemed real estate, a copy of which is hereto annexed, was published and posted according to the requirements of law, and that at the time and place of sale as stated in the same (no person appeared and bid for the real estate advertised in said advertisement against the name of _____, the sum or amount therein stated, or more) and the estate advertised as aforesaid against the name of _____, was struck off to A B, for the sum of _____ dollars and _____ cents, he being the highest bidder therefor. I further depose and say that said A B failed to pay to me as such Collector, within ten days, the sum offered by him for said estate _____ C D,

Collector of Taxes for the _____ of _____.

S _____, ss. _____ 18 _____.

Then personally appeared the above named C D, Collector of Taxes for the _____ of _____, and made oath that the above statement by him subscribed is true. _____ Before me,

Justice of the Peace.

(Here annex a copy of the advertisement.)

No. 26. — FORMS OF NOTICES WHEN TAX TITLE IS DEEMED INVALID, UNDER SECTIONS 1029 AND 1032.

(From the Assessors to the Collector.)

Office of the Board of Assessors; _____ 18 _____.

To the Collector of Taxes for the _____ of _____:

Sir: You are hereby notified that the tax assessed as of the first day of May, 18 _____, in the name of _____ upon an estate estimated to

contain (here insert the area) land, situated (here insert the name of street or other description) was invalid by reason of error in assessment; and that any deed given by you in consequence of a sale for the non-payment of such tax, conveyed no valid title to the purchaser. And the Board approves of your sending a notice to that effect, to the owner of said estate.

Board of Assessors of the *of* , by
A B,

One of said Assessors.

No. 27. —

(From the Collector to the Holder of the Title.)

Collector's Office, 18 .

To

You are hereby notified that I have reason to believe that the tax assessed as of the first day of May, 18 , in the name of , upon an estate estimated to contain of land, situated (Here describe the estate), being the same conveyed to , by Collector, and recorded with Deeds, Libro , Folio , was in my opinion invalid by reason of an error (in the assessment or in the proceedings of the sale). (Here give a brief statement of the defect:) and I do hereby, with the approval of the assessors of said , notify and require you, within thirty days from the time when this notice shall be served upon you, to surrender and discharge the deed so given, and to receive from the of the sum due therefor, with interest as provided by law, or to file with the Collector a written statement that you refuse to make such surrender and discharge.

C D,

Collector of Taxes for the *of* .

CHAPTER XI.

TOWN TREASURERS.

§ 1049. The town treasurer shall give bond in such sum as the selectmen require, with sureties to their satisfaction, for the faithful discharge of the duties of his office; shall receive and take charge of all money belonging to his town, and shall pay over and account for the same according to the order of such town, or of the officers thereof duly authorized in that behalf. Sts. 1893, ch. 423, § 13.

The bond required in the preceding section should be given to the town, and not to the selectmen. *Stevens v. Hay*, 6 Cush. 229.

A town treasurer is not excused from paying over money collected by him because it has been stolen from him without his fault. And his sureties on his bond will be liable for his failure to pay on that account. *Hancock v. Hazard*, 12 Cush. 112.

§ 1050. He may in his own name and official capacity prosecute suits upon bonds, notes, or other securities given to him or to his predecessors in office; and where no other provision is specially made, he shall prosecute for all fines and forfeitures which enure to his town or to the poor thereof.

§ 1051. He shall prosecute for trespasses committed on any public building or enclosure belonging to his town; and when a public building is owned partly by the town and partly by the county, such prosecution may be made either by the town or county treasurer, whichever shall first institute the same. Sts. 1893, ch. 423, §§ 14, 15.

§ 1052. A town may at any meeting appoint its treasurer collector of taxes; and he may appoint deputies, who shall give such bonds for the faithful discharge of their duties as the selectmen may think proper. Such collector and deputies

shall have the same powers as are vested in collectors of taxes. Sts. 1893, ch. 423, § 16.

And such deputies may execute a warrant though it is directed to the collector only. *Aldrich v. Aldrich*, 8 Met. 102.

§ 1053. A treasurer so appointed collector may issue his warrant to the sheriff of the county, or to his deputy, or to any constable of the town, directing them to distrain the property or take the body of any person who is delinquent in the payment of taxes, and to proceed in like manner as collectors are required to do in like cases. Sts. 1893, ch. 423, § 16.

§ 1054. The treasurer shall annually render to his town a true account of all his receipts and payments, and other official doings, and shall receive such compensation for his services as the town may determine. Sts. 1893, ch. 423, §§ 13, 37.

§ 1055. Any person authorized to approve demands for the supply of materials, labor, or service to a town, may, before approving any such demand, require the claimant to certify under oath that all the articles for which claim is made have been furnished, or that all the labor or service has been performed, and that no commission, discount, bonus, reward, or present of any kind has been received, or is promised, or expected on account of the same. Sts. 1893, ch. 423, § 40.

§ 1056. The treasurers of counties, cities, and towns shall severally keep records of all licenses upon which the sums provided in § 488 *ante* have been paid to them, with the number of each, the names and residences of the persons licensed, and the sums received thereon, and all such records shall be open for public inspection. Pub. Stats. ch. 68, § 11.

BOND TO BE GIVEN BY TREASURER OF A TOWN.

Know all men by these presents,

That we, A B, of B _____, in the county of E _____, and Commonwealth of Massachusetts, as principal, and C D and E F of said B _____, as sureties, are holden and stand firmly bound and obliged unto the said town of B _____, in the full and just sum of _____ dollars, to be paid unto the said town; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such, That whereas the said A B has been chosen treasurer of said town of B , for the current year, and has accepted said office, and has been duly sworn to the faithful discharge of the duties thereof; Now if the said A B shall as treasurer aforesaid, faithfully account for all the moneys which he shall receive as treasurer of said town, and also faithfully discharge all other legal duties of said office, then this obligation shall be void; otherwise it shall remain in full force and virtue.

Sealed with our seals. Dated the day of , in the year of our Lord one thousand eight hundred and .

A B. [SEAL.]

C D. [SEAL.]

E F. [SEAL.]

Signed, sealed, and delivered in the presence of

CHAPTER XII.

CONSTABLES AND THEIR DUTIES.

§ 1057. A person chosen to the office of constable, able to perform the duties thereof and not exempt, who refuses to take the oath and to serve in such office, shall forfeit twenty dollars. If he is present in town meeting and declares his refusal or neglects for seven days after being summoned to take the oath of office or to pay such fine, he shall be prosecuted therefor by the treasurer. Sts. 1893, ch. 423, § 39.

§ 1058. A constable who gives to the inhabitants of the town for which he is chosen a bond with sureties in a sum not less than one thousand dollars to the satisfaction of the selectmen, with condition for the faithful performance of his duties in the service of all civil processes committed to him, and causes the same, with the approval of the selectmen indorsed thereon, to be filed in the office of the town clerk, may, within his town, serve any writ or other process in a personal action in which the damages are not laid at a greater sum than two hundred dollars, and any process in replevin in which the subject matter does not exceed in value two hundred dollars, and any writ or other process under the provisions of chapter one hundred and seventy-five of the Public Statutes; and no constables shall serve any process in a civil action until he gives such bond. Sts. 1893, ch. 423, § 27.

A constable has no authority to serve the process issuing upon a libel for divorce, unless by special order of the court. *Leavitt v. Leavitt*, 135 Mass. 191.

§ 1059. A constable, who gives and files such bond so indorsed in a sum not less than three thousand dollars, may, within his town, serve any writ or other process in a personal action in which the damages are laid at a sum not exceeding three hundred dollars, and any process in replevin in which the subject matter does not exceed in value three hundred dollars.

§ 1060. The town clerk shall note upon every bond given by a constable the time when the same was filed. Any person injured by a breach of the condition of such bond may at his own expense institute a suit thereon in the name of the town, and like proceedings shall be had as in a suit by a creditor on an administration bond. The writ shall be indorsed by the persons for whose benefit the suit is brought; and if neither of them is an inhabitant of this Commonwealth, it shall also be indorsed by some other responsible indorser residing in this Commonwealth. If judgment is for the defendants, execution shall issue for costs against the indorsers, as if they were plaintiffs of record. Sts. 1893, ch. 423, §§ 28, 29.

An action may be maintained on a constable's bond on proof of a judgment against him in an action for official misconduct. *Fall River v. Riley*, 138 Mass. 336.

To attach the goods of A., on a writ against B., is a breach of the condition of his official bond given for the faithful performance of his duties in the service of civil processes. *Greenfield v. Wilson*, 13 Gray, 386; *Turner v. Sisson*, 137 Mass. 191.

§ 1061. Constables may serve such writs and processes as are described in § 1058 *ante* and warrants and other processes in criminal cases, although their town, parish, religious society, or school district is a party, or interested. Sts. 1893, ch. 423, § 30.

§ 1062. They may serve by copy by them attested all demands, notices, and citations, and their returns of service thereof shall be *prima facie* evidence; but this provision shall not exclude the service thereof by other parties. Sts. 1893, ch. 423, § 31. They may require suitable aid in the execution of their office in a criminal case, or for the preservation of the peace, or for the apprehending or securing of a person for a breach of the peace; and may require like aid in cases of escape or rescue of persons arrested upon civil process. Pub. Stats. ch. 25, § 18; Sts. 1893, ch. 423, § 32.

§ 1063. They shall serve all warrants and other processes, lawfully directed to them by the selectmen of their town, for notifying town meetings or for other purposes.

§ 1064. They shall take due notice of and prosecute all violations of the laws respecting the observance of the Lord's

day, and of those to prevent profane swearing, and against gaming.

§ 1065. A constable in the execution of a warrant or writ directed to him may convey beyond the limits of his town prisoners and property in his custody under such process, either to the justice who issued it, or to the common jail or house of correction of his county.

§ 1066. If a person against whom a warrant is issued for an alleged offence committed within any town, before or after the issuing of the warrant, escapes from or is out of such town, any constable thereof to whom the warrant is directed may pursue and apprehend him in any place in the Commonwealth. Sts. 1893, ch. 423, §§ 33-36.

A constable may upon a *capias* issued by a district court in a criminal case, arrest a person outside of the town for which he is elected, but in the same county, and within the jurisdiction of the court issuing the warrant. *Sullivan v. Wentworth*, 137 Mass. 233.

§ 1067. Constables, city marshals, chiefs of police, and all other police officers, shall within their respective cities and towns aid the governor in the discharge of his duties whenever called upon for that purpose; and any such officer who refuses to do so when called upon shall be punished by imprisonment in jail not exceeding three months, or by fine not exceeding one hundred dollars. Pub. Stats. ch. 103, § 12.

§ 1068. A person found in a street, highway, or other public place, in the night-time, committing any offence or disorder mentioned in chapter 207 of the Public Statutes, may be apprehended by a sheriff, deputy sheriff, constable, or watchman, or by any other person by the order of a magistrate or either of said officers, without a written warrant, and kept in custody in a convenient place not more than twenty-four hours, Sunday excepted; at or before the expiration of which time he shall be brought before a trial justice, or police, district, or municipal court, and proceeded against in the manner directed in the preceding section, or discharged, as such justice or court shall determine.

§ 1069. Whoever remains in a street or elsewhere in a city or town in wilful violation of an ordinance or by-law, and

whoever in a street or other public place accosts or addresses another person with profane or obscene language in wilful violation of an ordinance or by-law, may, if unknown to the officer making such arrest, be arrested without a warrant by any officer authorized to serve criminal process in the place where the offence is committed, and kept in custody until he can be taken before a court having jurisdiction to punish such offence. Pub. Stats. ch. 207, §§ 34, 35.

§ 1070. Whoever is found in a state of intoxication in a public place, or is found in any place in a state of intoxication committing a breach of the peace or disturbing others by noise, may be arrested without a warrant by a sheriff, deputy sheriff, constable, watchman, or police officer, and kept in custody in some suitable place until he is so far recovered from his intoxication as to render it proper to carry him before a court or trial justice. The officer may then make a complaint against him for the crime of drunkenness. Pub. Stats. ch. 207, § 25.

A police officer (or constable) arresting a person without a warrant, under this section, for being intoxicated in a public street, is not liable criminally therefor, if he acted in good faith, and had reasonable cause to believe such person to be intoxicated, although he was not in fact intoxicated. *Com. v. Cheney*, 141 Mass. 102.

§ 1071. A sheriff, deputy sheriff, constable, or police officer, upon view or information, may without a warrant arrest a tramp or a vagrant, or one maliciously threatening to injure persons or property, or a person found carrying a firearm, or other dangerous weapon. Pub. Stats. ch. 207, §§ 38-41.

§ 1072. Sheriffs, deputy sheriffs, constables, and police officers, acting on the request of any person or upon their own information or belief, shall without a warrant arrest all idle persons who, not having visible means of support, live without lawful employment; all persons wandering abroad and visiting tippling-shops or houses of ill-fame, or lodging in groceries, out-houses, market-places, sheds, barns, or in the open air, and not giving a good account of themselves; all persons wandering abroad and begging, or who go about from door to door, or place themselves in the streets, highways, passages,

or other public places, to beg or receive alms, and carry any such vagrant before a trial justice, or police, district, or municipal court, for the purpose of an examination, and make complaint against him. Pub. Stats. ch. 207, §§ 42, 43.

§ 1073. A person known to be a pickpocket, thief, or burglar, and having no visible or lawful means of support, when found prowling around any steamboat landing, railroad depot, banking institution, broker's office, place of public amusement, auction-room, store, shop, crowded thoroughfare, car, or omnibus, or at any public gathering or assembly, shall be deemed a vagabond, and shall be punished by imprisonment in the house of correction for not less than four nor more than twelve months.

§ 1074. Sheriffs, deputy sheriffs, constables, and police officers shall take any such vagabond into custody without a warrant, and shall within twenty-four hours after such arrest, Sundays and legal holidays excepted, bring him before a trial justice, or police, district, or municipal court, and make complaint against him. Pub. Stats. ch. 207, §§ 44, 45.

§ 1075. Sheriffs, deputy sheriffs, constables, and police officers shall prosecute all violations of the provisions of sections fifty-two, fifty-three, fifty-four, and fifty-five of the Public Statutes, chapter 207, and of chapter two hundred and sixty-seven of the Statutes of 1889, which come to their notice, and fines collected upon or resulting from the complaint or information of an officer or agent of the Massachusetts Society for the Prevention of Cruelty to Animals shall be paid over to said society. Pub. Stats. ch. 207, § 58; Sts. 1889, ch. 267.

§ 1076. Any officer authorized to serve criminal process may without a warrant enter any place, building, or tenement where there is an exhibition of the fighting of birds, dogs, or other animals, or where preparations are making for such an exhibition, and arrest all persons there present, and take possession of and remove from the place of seizure the birds, dogs, or other animals engaged in fighting, or there found and intended to be used or engaged in fighting, or kept or trained for fighting, and hold the same in custody, subject to the order of court as hereinafter provided. Pub. Stats. ch. 207, § 61.

§ 1077. Constables and police officers shall, within their respective towns and cities, arrest and prosecute every person whom they may have reason to believe to be guilty of violating the provisions stated in §§ 486-489 *ante*, and one half of any forfeiture which may be incurred and recovered shall be paid to the complainant.¹ Pub. Stats. ch. 68, § 19.

FORMS.

Return on a Warrant for Town Meeting.

E—, ss. March 189 .

I have served the within warrant by posting up an attested copy of the same at the Town Hall, and also at the First Parish meeting-house fourteen days before the said day of March, 189 , as within directed.

A. B., Constable of T—d.

Notice to a Person drawn as Juror.

E—, ss. To E. F., of T—d. You are hereby notified that on the day of instant, you were drawn to serve as juror at the term of the Superior Court to be holden at N— on the first Monday of next, and to attend said court on said first Monday at o'clock, A. M.

A. B., Constable of T—d.

Return on a Venire for the Appointment of Jurors.

E—, ss. Pursuant to the within directions I notified the selectmen and town clerk of said T—d to meet as within prescribed and draw a juror to serve at the court within named, and on the day of instant G. H. was drawn as such juror ; and on the day of instant I summoned him to attend said court on the first Monday of 189 .

A. B., Constable of T—d.

Fees, service, \$.
Travel, miles, \$.

¹ A town may establish and keep a watch, who shall see that all disturbances and disorders are prevented and suppressed ; and a town may establish watch districts. Pub. Stats. ch. 34, §§ 1-19.

CHAPTER XIII.

BOARDS OF HEALTH.

(a) *Town Boards.*

§ 1078. A town respecting which no provision is made by special law for choosing a board of health may, at its annual meeting or at a meeting legally warned for the purpose, choose a board of health by ballot, to consist of not less than three nor more than nine persons; or may choose a health officer. If no such board or officer is chosen, the selectmen shall be the board of health. Pub. Stats. ch. 80, § 3.

§ 1079. If a person elected a member of a board of health in any town, respecting which no provision is made by special law for choosing a board of health, after being duly notified of his election in the manner in which town officers are required to be notified, refuses or neglects to accept said office, or if a member of a board of health in such town declines further service, or from change of residence or otherwise becomes unable to attend to the duties of the board, the remaining members shall, in writing, give notice of the fact to the selectmen of such town, and the two boards shall thereupon, after giving public notice of at least one week, jointly proceed to fill such vacancy. Sts. 1885, ch. 307.

§ 1080. Every such board of health may appoint a physician to the board, who shall hold his office during its pleasure.

§ 1081. Such board shall establish the salary or other compensation of such physician, and shall regulate all fees and charges of persons employed by it in the execution of the health laws and of its own regulations. Pub. Stats. ch. 80, §§ 5, 6.

§ 1082. The board of health in a city or town may appoint an agent or agents to act for it in cases of emergency, or

when it cannot be conveniently assembled ; and such agent so appointed shall have all the authority which the board appointing him had ; but he shall, within two days, report his action in each case to it for its approval, and shall be directly responsible to it and under its control and direction. An agent appointed to make sanitary inspections may make complaint in cases of violation of any law, ordinance, or by-law relating to the public health in a city or town.

§ 1083. The board of health of a city or town shall retain charge of any case arising under the provisions of this chapter in which it shall have acted, to the exclusion of the overseers of the poor. Pub. Stats. ch. 80, §§ 16, 17.

(b) *Nuisances, Contagion, etc.*

§ 1084. The board of health of a town shall make such regulations as it judges necessary for the public health and safety, respecting nuisances, sources of filth, and causes of sickness, within its town, or on board of vessels within the harbor of such town, and respecting articles which are capable of containing or conveying infection or contagion, or of creating sickness, brought into or conveyed from its town, or into or from any vessel. Whoever violates any such regulation shall forfeit a sum not exceeding one hundred dollars. Pub. Stats. ch. 80, § 18.

A board of health in abating a private nuisance must not so act as to wilfully and intentionally do unnecessary acts in an improper manner to the injury of the property of the person upon whose premises the nuisance exists. *Conway v. Russell*, 151 Mass. 581. In the absence of statutory authority, neither the board of health nor the city council has any power to erect a dam on a person's land without his consent, for the purpose of abating a nuisance existing on adjacent land. "The general power vested in boards of health is not adequate to dealing with such cases." ALLEN, J., in *Cavanagh v. Boston*, 139 Mass. 426.

§ 1085. The board shall give notice of all regulations made by it by publishing the same in some newspaper of its town, or, where there is no such newspaper, by posting them up in

some public place in the town. Such notice shall be deemed legal notice to all persons.

§ 1086. The board shall examine into all nuisances, sources of filth, and causes of sickness, within its town, or in any vessel within the harbor of such town, that may in its opinion be injurious to the health of the inhabitants, and shall destroy, remove, or prevent the same, as the case may require. Pub. Stats. ch. 80, §§ 19, 20.

§ 1087. The board or the health officer shall order the owner or occupant at his own expense to remove any nuisance, source of filth, or cause of sickness, found on private property, within twenty-four hours, or such other time as it deems reasonable, after notice served as provided in the following section; and if the owner or occupant neglects so to do, he shall forfeit a sum not exceeding twenty dollars for every day during which he knowingly permits such nuisance or cause of sickness to remain after the time prescribed for the removal thereof. Pub. Stats. ch. 80, § 21.

Such order for the removal of a nuisance is valid without previous notice to the parties interested, and opportunity for them to appear and be heard.

But it is necessary that the order should be so explicit as to sufficiently inform the party of the nature and locality of the nuisance to be removed. And it need not prescribe a mode for the removal, as the owner or occupant of the property on which the nuisance is found is not restricted by such prescription if made. *Salem v. Eastern Railroad*, 98 Mass. 431.

A notice issued under this section, by the board of health of a town to the occupant of certain premises, ordering him to remove a nuisance existing thereon, may be served by a constable although he is a member of the board of health, and signs the notice. *Com. v. Alden*, 143 Mass. 113.

A notice issued under this section to the occupant of certain premises by the board of health of a town, reciting that a nuisance "consisting of a filthy hog-pen and stable" exists thereon, and ordering him "to abate the said nuisance on your estate, and also to remove your hogs outside the limits of the village, within forty-eight hours from the service thereof," is valid as an order to abate the nuisance, and is not rendered

void by the direction to remove the hogs. *Com. v. Alden*, 143 Mass. 113.

It is not necessary that a complaint to recover the forfeiture provided by this section, for permitting a nuisance to remain on the premises after the time prescribed by the board of health of the town for its removal, should be made by the town treasurer, but it may be made by an agent of the board of health. *Com. v. Alden*, 143 Mass. 113.

§ 1088. Such order shall be made in writing, and served by any person competent to serve a notice in a civil suit personally on the owner, occupant, or his authorized agent; or a copy of the order may be left at the last and usual place of abode of the owner, occupant, or agent, if he is known and within the state. But if the premises are unoccupied and the residence of the owner or agent is unknown or without the state, the notice may be served by posting the same on the premises, and advertising in one or more public newspapers in such manner and for such length of time as the board or health officer may direct. Pub. Stats. ch. 80, § 22.

§ 1089. If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth, or cause of sickness, to be removed, and all expenses incurred thereby shall be paid by the owner, occupant, or other person who caused or permitted the same, if he has had actual notice from the board of health of the existence thereof. Pub. Stats. ch. 80, § 23.

Upon the failure of the owner or occupant of the property on which the nuisance is found to remove the same, the board is not restricted to the mode prescribed in the order, but may adopt any which is suitable, even if, in so doing, it is necessary to subvert soil adjoining that on which the nuisance exists.

And in an action by the authorities against a party alleged to have caused a nuisance, to recover money expended by the board of health for removing it, if such party had no opportunity to be heard before the board, none of the findings or adjudications of the board preliminary to the incurring of such expenses are conclusive upon him, and all the facts on which the recovery is sought are open to be controverted, and must be established by the proofs. *Salem v. Eastern Railroad*, 98 Mass. 431.

§ 1090. The board, when satisfied upon due examination that a cellar, room, tenement, or building, in its town, occupied as a dwelling-place, has become, by reason of the number of occupants, want of cleanliness, or other cause, unfit for such purpose, and a cause of nuisance or sickness to the occupants or the public, may issue a notice in writing to such occupants, or any of them, requiring the premises to be put into a proper condition as to cleanliness, or, if they see fit, requiring the occupants to quit the premises within such time as the board may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleansed at the expense of the owners, or may remove the occupants forcibly, and close up the premises, and the same shall not be again occupied as a dwelling-place without the consent in writing of the board. If the owner thereafter occupies or knowingly permits the same to be occupied without such permission in writing, he shall forfeit not less than ten nor more than fifty dollars.

§ 1091. When a person is convicted on an indictment for a common nuisance injurious to the public health, the court in its discretion may order it to be removed or destroyed at the expense of the defendant, under the direction of the board of health; and the form of the warrant to the sheriff or other officer may be varied accordingly. Pub. Stats. ch. 80, §§ 24, 25.

§ 1092. When the board thinks it necessary for the preservation of the lives or health of the inhabitants to enter any land, building, premises, or vessel within its town, for the purpose of examining into and destroying, removing, or preventing a nuisance, source of filth, or cause of sickness, and the board or any agent thereof sent for that purpose is refused such entry, any member of the board, or such agent, may make complaint under oath to any justice of any court of record, or to two justices of the peace of the county, stating the facts of the case so far as he has knowledge thereof; and said justice or justices may thereupon issue a warrant, directed to the sheriff or any of his deputies, to such agent of the board, or to any constable of such town, commanding him to take sufficient aid, and at any reasonable time repair to the

place where such nuisance, source of filth, or cause of sickness complained of may be, and to destroy, remove, or prevent the same, under the directions of the board. Pub. Stats. ch. 80, § 27.

§ 1093. Lands in a city or town which are wet, rotten, or spongy, or covered with stagnant water, so as to be offensive to persons residing in the vicinity thereof, or injurious to health, shall be deemed to be a nuisance, and the board of health or health officer of such city or town may, upon petition and hearing, abate such nuisance in the manner provided in the following sections ; but no such nuisance shall be abated by a board of health or health officer of a city or town without a previous appropriation therefor by such city or town if the expense of such abatement will exceed the sum of two thousand dollars. Pub. Stats. ch. 80, § 28 ; Sts. 1887, ch. 338, § 1.

§ 1094. Any person claiming to be injuriously affected by such nuisance may, by petition describing the premises upon which it is alleged to exist, and setting out the nature of the nuisance complained of, apply to the board or health officer for its abatement ; whereupon such board or health officer shall proceed to view the premises, and examine into the nature and cause of such nuisance.

§ 1095. Upon such examination, the board or health officer, if of opinion that the prayer of the petition, or any part thereof, should be granted, shall appoint a time and place for a hearing, and before the time so appointed shall cause reasonable notice of the time and place to be given to the petitioners, the persons whose lands it may be necessary to enter upon to abate the nuisance, and any other persons who may be affected by the proceedings, and, except in those cities and towns in which the mayor and aldermen and selectmen constitute the board of health, to the mayor or the chairman of the selectmen, that they may be heard upon the necessity and mode of abating such nuisance, and the questions of damages, and of the assessment and apportionment of the expenses of the abatement.

§ 1096. Such notice shall be in writing, and may be served, by any person competent to serve civil process, upon the mayor or chairman of the selectmen, the petitioners, the

owner or occupant of any land upon which it may be necessary to enter, or which may be benefited by the abatement, or the authorized agent of such owner or occupant, or by leaving an attested copy of such notice at the last and usual place of abode of such persons; but if the lands are unoccupied, and the owner or agent is unknown, or out of the state, the notice to such owner may be served by posting an attested copy thereof upon the premises, or by advertising in one or more public newspapers in such manner and for such length of time as the board or health officer may direct. Pub. Stats. ch. 80, §§ 29-31.

§ 1097. At the time and place appointed for the hearing, the board or health officer shall hear the parties, and after the hearing may cause such nuisance to be abated, according to its or his discretion; and for that purpose may enter and make such excavations, embankments, and drains upon any lands, and under and across any streets and ways, as may be necessary for such abatement; and shall also determine in what manner and at whose expense the improvements made shall be kept in repair, and shall estimate and award the amount of damage sustained by and benefit accruing to any person by reason of such improvements, and what proportion of the expense of making and keeping the same in repair shall be borne by the city or town and by any person benefited thereby. The damages so awarded shall be paid by the city or town, and there shall be assessed to the several persons benefited by such improvements their proportionate part, to be ascertained as before provided, of the expense of making and keeping in repair such improvements, and the same shall be included in the next city or town taxes of such persons, and shall be a lien upon the real estate benefited thereby, and be collected in the same manner as other taxes upon real estate. Any person aggrieved by the assessment so made may at any time within three months after receiving notice thereof, apply for a jury; such application shall be made in like manner and the proceedings thereon shall be the same as in case of lands taken for laying out of highways: *provided*, that before making his application, the party shall give one month's notice in writing to the selectmen or mayor and aldermen of

his intention so to apply, and shall therein particularly specify his objections to the assessment, to which specification he shall be confined upon the hearing by the jury. Pub. Stats. ch. 80, § 32; Sts. 1887, ch. 338, § 3.

§ 1098. Any person entitled to notice of the time and place of hearing upon a petition to the board of health or health officer, under the provisions stated in § 1093 *ante* as has been mentioned in § 1095 *ante*, who is aggrieved by the decision of such board or health officer that the land described in such petition is a nuisance, may appeal therefrom to the superior court, who may hear and determine the matter of such appeal, and during such appeal all proceedings in regard to such nuisance by such board or health officer shall be stayed. The party so appealing shall within twenty-four hours after such decision give written notice to said board or health officer of his intention so to appeal, and within seven days shall present a petition to the superior court setting forth the grievances complained of, and the action of the board of health or health officer thereon, and shall thereupon enter into such recognizance before said court in such sum and with such surety or sureties as shall be ordered. Sts. 1887, ch. 338, § 2.

§ 1099. The board or health officer shall, within thirty days after the abatement of any nuisance in the manner hereinbefore provided, make return to the city or town clerk of its or his doings in the premises, which return shall be by him recorded in the city or town records.

§ 1100. If the board or health officer unreasonably refuses or neglects to proceed in the matter of such petition, the petitioner may apply by petition to the superior court, or any justice thereof, who, upon a hearing and good cause shown, may appoint three commissioners, who shall proceed in the manner hereinbefore provided.

§ 1101. Any person aggrieved by the decision of the board, health officer, or commissioners, in their estimate and award of damages, may make complaint to the county commissioners for the county at any time within one year after the return to the city or town clerk; whereupon the same proceedings shall be had as in cases where persons or parties are aggrieved by

the award of damages by selectmen for land taken for a town way.

§ 1102. Any person aggrieved by the neglect or refusal of the board of health in a city or town to pass all proper orders abating a nuisance or nuisances, may appeal to the county commissioners, who may hear and determine the matter of such appeal, and exercise in such case all the powers which the board might exercise.

§ 1103. The party so appealing shall, within twenty-four hours after such neglect or refusal, give written notice to the opposite party of his intention so to appeal, and within seven days shall present a petition to some one of the commissioners, setting forth the grievances complained of, and the action of the board of health thereon, and shall thereupon enter into such recognizance before the commissioners, in such sum, and with such surety or sureties, as they shall order. Pub. Stats. ch. 80, §§ 33-37.

§ 1104. The board of health of a town may grant permits for the removal of any nuisance, infected articles, or sick person, within the limits of its town, when it thinks it safe and proper so to do.

§ 1105. When a person coming from abroad or residing in a town in this state is infected, or lately has been infected, with the plague or other sickness dangerous to the public health, except as is otherwise provided in this chapter, the board shall make effectual provision in the manner which it judges best for the safety of the inhabitants, by removing such person to a separate house or otherwise, and by providing nurses and other assistance and necessaries, which shall be at the charge of the person himself, his parents, or master, if able, otherwise at the charge of the town to which he belongs; or, if he is not an inhabitant of any town, at the charge of the Commonwealth.

§ 1106. If the infected person cannot be removed without danger to his health, the board shall make provision for him, as directed in the preceding section, in the house in which he may be; and may cause the persons in the neighborhood to be removed, and take such other measures as it judges necessary for the safety of the inhabitants.

§ 1107. The board of health of a town near to or bordering upon either of the neighboring states, may appoint, by writing, suitable persons to attend at places by which travellers may pass from infected places in other states; who may examine such travellers as it suspects of bringing any infection dangerous to the public health, and, if need be, may restrain them from travelling until licensed thereto by the board of health of the town to which they may come. A traveller coming from such infected place, who without such license travels within this state (except to return by the most direct way to the state whence he came), after he has been cautioned to depart by the persons so appointed, shall forfeit a sum not exceeding one hundred dollars.

§ 1108. Two justices of the peace may, if need be, make out a warrant directed to the sheriff of the county or his deputy, or to any constable, requiring them under the direction of the board to remove any person infected with contagious sickness, or to impress and take up convenient houses, lodging, nurses, attendants, and other necessaries, for the accommodation, safety, and relief of the sick.

§ 1109. When, upon the application of the board, it appears to a justice of the peace that there is just cause to suspect that baggage, clothing, or goods, found within the town, are infected with the plague or other disease dangerous to the public health, he shall, by warrant directed to the sheriff or his deputy, or to any constable, require him to impress so many men as said justice may judge necessary to secure such baggage, clothing, or goods, and to post said men as a guard over the house or place where such articles are lodged; who shall take effectual care to prevent persons from removing or coming near the same until due inquiry is made into the circumstances.

§ 1110. The justice may by the same warrant, if it appears to him necessary, require the officers, under the direction of the board, to impress and take up convenient houses or stores for the safe keeping of such articles; and the board may cause them to be removed thereto, or otherwise detained, until, in the opinion of the board, they are freed from infection.

§ 1111. The officers, in the execution of the warrant, shall, if need be, break open any house, shop, or other place, mentioned in the warrant, where such articles are; and may require such aid as is necessary to effect the execution of the warrant. Whoever neglects or refuses to assist in the execution of the warrant, after being commanded to assist by either of said officers, shall forfeit a sum not exceeding ten dollars.

§ 1112. The charges of securing such articles, and transporting and purifying the same, shall be paid by the owners, at such rates and prices as may be determined by the board.

§ 1113. When a sheriff or other officer impresses or takes up any houses, stores, lodging, or other necessaries, or impresses men, as provided in this chapter, the several parties interested shall be entitled to a just compensation therefor, to be paid by the town in which such persons or property are so impressed.

§ 1114. When a person confined in a common jail, house of correction, or workhouse, has a disease which, in the opinion of the physician of the board, or of such other physician as it may consult, is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall by its order in writing direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept so as to prevent his escape until its further order. If such person recovers from the disease, he shall be returned to said prison or other place of confinement.

§ 1115. If the person so removed is committed by order of court or under judicial process, the order for his removal, or a copy thereof attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape.

(c) *Vaccination.*

§ 1116. Parents and guardians shall cause their children and wards to be vaccinated before they attain the age of two years, and revaccinated when the selectmen or mayor and

aldermen shall after five years from the last vaccination require it. For every year's neglect the party offending shall forfeit five dollars. Pub. Stats. ch. 80, §§ 39-51.

§ 1117. The selectmen or mayor and aldermen shall require and enforce the vaccination of all the inhabitants, and, when in their opinion the public health requires it, the revaccination of all the inhabitants who do not prove to their satisfaction that they have been successfully vaccinated or revaccinated within five years. Every person over twenty-one years of age, not under guardianship, who neglects to comply with any such requirement, shall forfeit five dollars. Towns shall furnish the means of vaccination to such of their inhabitants as are unable to pay for the same. Pub. Stats. ch. 80, §§ 52, 53.

§ 1118. Incorporated manufacturing companies, superintendents of almshouses, state reform schools, industrial schools, lunatic hospitals, and other places where the poor and sick are received, masters of houses of correction, jailers, keepers of prisons, warden of the state prison, and superintendents or officers of all other institutions supported or aided by the state, shall at the expense of their respective establishments or institutions cause all inmates thereof to be vaccinated immediately upon their entrance thereto, unless they produce sufficient evidence of previous successful vaccination within five years.

§ 1119. Each town may make further provision for the vaccination of its inhabitants, under the direction of the board of health or of a committee. Pub. Stats. ch. 80, §§ 54, 55.

(d) *Lying-in Hospitals.*

§ 1120. The selectmen of a town may license any person to establish or keep therein a lying-in hospital, hospital ward, or other place for the reception, care, and treatment of women in labor, if the board of health shall first certify to the selectmen that the person applying for such license is in its judgment a suitable person, and that, from its inspection and examination of such hospital, hospital ward, or other place aforesaid, the same is suitable, and properly arranged and provided for such business. Such license shall continue in

force for two years, subject, however, to revocation by the selectmen. Every such hospital, hospital ward, or other place, shall be subject to visitation and inspection at any time by the board of health, the chief of police, and the selectmen; and if it receives in a year more than six women as patients in labor, it shall also be subject to like visitation and inspection by the state board of health. Pub. Stats. ch. 80, §§ 56-58; Sts. 1886, ch. 101, § 4.

(e) *Protection of Infants.*

§ 1121. Whoever engages in the business of taking nursing infants or infants under three years of age to board, or of entertaining or boarding more than two such infants in the same house at the same time, shall, within two days after the reception of every such infant beyond the first two, give written notice to the board of health of the city or town where such infant is so to be entertained or boarded, specifying the name and age of the child and the name and place of residence of the party so undertaking its care; and such board may enter and inspect said house and premises while said business is carried on, and direct and enforce such sanitary measures respecting such children and premises as it may deem proper.

§ 1122. Whoever violates any of the provisions of the preceding section, or refuses admission to such board for said purpose, shall be punished by fine of not less than fifty nor more than five hundred dollars. Pub. Stats. ch. 80, §§ 60, 61.

§ 1123. No person shall maintain a boarding-house for infants under the age of five years unless licensed by the board of health of the city or the selectmen of the town in which the same is located. Whoever violates the provisions of this section shall be punished by fine not exceeding one hundred dollars or by imprisonment not exceeding one year or by both such fine and imprisonment.

§ 1124. Whoever shall for hire, gain, or reward have in his custody or control at one time more than three infants under the age of five years, unattended by a parent or guardian, for the purpose of providing care, food, and lodging for such infants, shall be deemed to maintain a boarding-house for infants within the meaning of this act.

§ 1125. The board of health of cities and the selectmen of towns may grant a license to maintain a boarding-house for infants. Said boards of health and the selectmen of towns shall annually, and may at all times, visit and inspect premises so licensed, and may at any time designate any person to visit and inspect said premises. Sts. 1889, ch. 416.

(f) *Quarantine.*

§ 1126. A town may establish a quarantine ground in a suitable place, either within or without its own limits; but if such place is without its limits, the assent of the town within whose limits it may be established shall be first obtained.

§ 1127. Two or more towns may at their joint expense establish a quarantine ground for their common use in a suitable place, either within or without their own limits; but if such place is without their limits, they shall first obtain the assent of the town within whose limits it may be. Pub. Stats. ch. 80, §§ 62, 63.

§ 1128. The board of health in each seaport town may from time to time establish the quarantine to be performed by vessels arriving within its harbor, and may make such quarantine regulations as it judges necessary for the health and safety of the inhabitants. Such regulations shall extend to all persons, goods, and effects arriving in such vessels, and to all persons who may visit or go on board of the same. Whoever violates any such regulation, after notice thereof has been given in the manner before provided in this chapter, shall forfeit not less than five nor more than five hundred dollars. Pub. Stats. ch. 80, §§ 64-66.

The board of health of a town may pass a regulation ordering rags imported into the town to be disinfected, and the expense of the disinfection to be borne by the owner of the rags; and the owner cannot show that the rags did not need disinfection, if they were of the class concerning which the regulation was made.

“The board of health is invested with the power to make regulations necessary for health, extending to all persons, goods, and effects, arriving in vessels. This is a reasonable regulation, made under the police power of the state, which

the board is executing." *DEVENS, J., in Train v. Boston Disinfecting Co.*, 144 Mass. 523.

§ 1129. The board in each seaport town may at any time cause a vessel arriving in such port, when such vessel or the cargo thereof is in its opinion foul or infected so as to endanger the public health, to be removed to the quarantine ground and thoroughly purified at the expense of the owners, consignees, or persons in possession of the same; and may cause all persons arriving in or going on board of such vessel, or handling the cargo, to be removed to any hospital under the care of the board, there to remain under their orders. Pub. Stats. ch. 80, § 67.

§ 1130. A master, seaman, or passenger, belonging to a vessel on board of which any infection then is or has lately been, or is suspected to have been, or which has been at or has come from a port where an infectious distemper prevails that may endanger the public health, who refuses to make answer on oath to such questions as may be asked him relating to such infection or distemper by the board of health of the town to which such vessel may come (which oath any member of the board may administer), shall forfeit a sum not exceeding two hundred dollars; and if not able to pay said sum, he shall suffer six months' imprisonment. All expenses incurred on account of any person, vessel, or goods, under quarantine regulations, shall be paid by such person or the owner of such vessel or goods respectively. Pub. Stats. ch. 80, §§ 68, 69.

But this does not include the expenses of a seaman at a hospital, to which he had been transferred by order of the board of health of a town, and which is under their care. *Provincetown v. Smith*, 120 Mass. 96.

(g) *Hospitals and Dangerous Diseases.*

§ 1131. Any town may establish within its limits, and be constantly provided with, one or more hospitals for the reception of persons having a disease dangerous to the public health. Such hospitals shall be subject to the orders and regulations of the board, or of a committee of the town appointed for that purpose. No such hospital shall be established within one hundred rods of an inhabited dwelling-house situated in an

adjoining town, without the consent of such town. Pub. Stats. ch. 80, §§ 70-72.

§ 1132. When a hospital is established, as provided in the preceding section, the physician, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits thereof, and all furniture and other articles used or brought there, shall be subject to such regulations as may be made by the board of health or the committee appointed for that purpose. Pub. Stats. ch. 80, § 74.

§ 1133. When a disease dangerous to the public health breaks out in a town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants, which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto, unless his condition will not admit of his removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and all persons residing in or in any way concerned within the same shall be subject to the regulations of the board, as before provided. Pub. Stats. ch. 80, § 75.

The board of health of a town has no authority to take possession of a dwelling house and the furniture therein, without the consent of the owner or occupant to his exclusion, and use the house as a hospital for a person found therein who is infected with a contagious disease, and is too sick to be removed without danger to his health; and the owner cannot maintain an action of contract against the town for the use and occupation of the house during the time it was so held by the board of health, as the act which they did was beyond the powers given to them by the town. *Spring v. Hyde Park*, 137 Mass. 554.

“These sections do not authorize the taking possession by the board of health acting without a warrant, of premises to the exclusion of the owner thereof, or of the person entitled to lawful possession, even where one is too sick to be removed; but authorize such premises and the use thereof, to be subjected to very stringent regulations.” DEVENS, J., in *Brown v. Murdock*, 140 Mass. 314.

§ 1134. When such disease is found to exist in a town, the selectmen and board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travellers, by displaying red flags at proper distances, and by all other means which in their judgment shall be most effectual for the common safety. And whoever obstructs the selectmen, board of health, or its agent, in using such means to prevent the spreading of the infection, or wilfully removes, obliterates, defaces, or handles the red flags or other signals so displayed, shall forfeit for each offence not less than ten nor more than one hundred dollars.

§ 1135. If a physician or other person in any of the hospitals or places of reception before mentioned, or who attends, approaches, or is concerned with the same, violates any regulation lawfully made in relation thereto, either with respect to himself or his or any other person's property, he shall for each offence forfeit not less than ten nor more than one hundred dollars. Pub. Stats. ch. 80, §§ 76, 77.

§ 1136. When a householder knows that a person within his family or house is sick of small-pox, diphtheria, scarlet fever, or any other infectious or contagious disease dangerous to the public health, he shall immediately give notice thereof to the board of health of the city or town in which he dwells, and upon the death, recovery, or removal of such person, such of the rooms of said house and such of the articles therein as, in the opinion of the board of health, have been subjected to infection or contagion shall be disinfected by such householder to the satisfaction of said board of health. Any person neglecting or refusing to comply with either of the above provisions shall be punished by a fine not exceeding one hundred dollars. Sts. 1890, ch. 102.

§ 1137. When a physician knows that a person whom he is called to visit is infected with small-pox, diphtheria, scarlet fever, or any other disease dangerous to the public health, he shall immediately give notice thereof in writing over his own signature to the selectmen or board of health of the town; and if he refuses or neglects to give such notice he shall forfeit for each offence not less than fifty nor more than two hundred dollars. Sts. 1891, ch. 188.

§ 1138. The boards of health in the several cities and towns shall cause a record to be kept of all reports received in pursuance of the two preceding sections, and such record shall contain the names of all persons who are sick, the localities in which they live, the diseases with which they are affected, together with the date and the names of the persons reporting any such cases. The boards of health shall give the school committee immediate information of all cases of contagious diseases reported to them, according to the provisions of this act.

§ 1139. The secretary of the Commonwealth shall furnish the boards of health with blank books for the record of cases of contagious diseases as above provided. Sts. 1884, ch. 98, §§ 3, 4.

§ 1140. Expenses incurred by a town in the removal of nuisances, or for the preservation of the public health, which are recoverable of a private person or corporation, may be sued for and recovered in an action of contract.

§ 1141. Fines and forfeitures incurred under general laws, the special laws applicable to a town, or the by-laws and regulations of a town, relating to health, shall inure to the use of such town.

§ 1142. The provisions stated in §§ 1105, 1106, 1133, 1134, and 1135 *ante*, so far as they confer authority for the removal of patients from their homes, except in cases of persons residing in boarding-houses, hotels, or where two or more families occupy the same dwelling, and other cases, where in the opinion of the board and the attending physician the case cannot be properly isolated, shall not apply to small-pox. Pub. Stats. ch. 80, §§ 80-82.

§ 1143. All reasonable expenses which have been heretofore or may hereafter be incurred by the board of health of a city or town, in making the provision required by law for a person infected with the small-pox or other disease dangerous to the public health, shall be paid by the person himself, his parents, or master, if able; otherwise by the town in which he has a legal settlement; and if he has no settlement, by the Commonwealth, in which case the bills therefor shall be approved by the state board of lunacy and charity. Pub. Stats. ch. 80, § 83; Sts. 1886, ch. 101, § 4.

§ 1144. When the board of health of any city or town has had notice of the occurrence of a case of small-pox in such city or town, such board of health shall, within twenty-four hours after the receipt of such notice, notify the state board of health of the same. Sts. 1883, ch. 138, § 1; Sts. 1886, ch. 101, § 4.

§ 1145. If the board of health of the city or town, in which a case of small-pox has occurred, refuses or neglects to send a notice as required in the preceding section, such city or town shall forfeit its claim upon the Commonwealth, for the payment of any expenses which may be incurred, as is stated in § 1143 *ante*. Sts. 1883, ch. 138, § 2.

(h) *Offensive Trades.*

§ 1146. The board of health of a town shall from time to time assign certain places for the exercise of any trade or employment which is a nuisance or hurtful to the inhabitants, or dangerous to the public health, or the exercise of which is attended by noisome and injurious odors, or is otherwise injurious to their estates, and may prohibit the exercise of such trade or employment in places not so assigned; the board may also forbid such exercise within the limits of the town, or in any particular locality thereof. All such assignments shall be entered in the records of the town, and may be revoked when the board shall think proper. Pub. Stats. ch. 80, § 84.

The board of health of a town may, under this section, pass a qualified order forbidding the exercise of the employment of keeping swine within the town "without a permit in writing first obtained from the board of health" (as well as an absolute order). *Quincy v. Kennard*, 151 Mass. 563.

The board of health of a town made a regulation which provided that no swine should be kept in any place without a permit first being obtained from the board. Held: that such a keeping of swine was an "employment" and that the authority of the board to regulate the same was under this section. *Com. v. Young*, 135 Mass. 526.

§ 1147. When it appears on a trial before the superior court for the county, upon a complaint made by any person,

that a place or building so assigned has become a nuisance, by reason of offensive smells or exhalations proceeding from the same, or is otherwise hurtful or dangerous to the neighborhood, or to travellers, the court may revoke such assignment and prohibit the further use of such place or building for the exercise of either of the aforesaid trades or employments, and may cause such nuisance to be removed or prevented.

§ 1148. A person injured either in his comfort or the enjoyment of his estate by such nuisance, may have an action of tort for the damage sustained thereby. Pub. Stats. ch. 80, §§ 85, 86.

§ 1149. Orders of prohibition under § 1146 *ante* shall be served upon the occupant or person having charge of the premises where such trade or employment is exercised. If the party upon whom such order is served for twenty-four hours after such service refuses or neglects to obey the same, the board shall take all necessary measures to prevent such exercise; and the person so refusing or neglecting shall forfeit not less than fifty nor more than five hundred dollars. Pub. Stats. ch. 80, § 87.

But an order by the selectmen of a town, acting as a board of health, forbidding the exercise of an offensive trade or employment therein, need not be served by an officer. *Winthrop v. Farrar*, 11 Allen, 398.

§ 1150. Any person aggrieved by an order passed under § 1146 *ante* or 1152 *post* may appeal therefrom, and shall within three days from the service thereof upon him apply to the superior court, if in session in the county where the premises are located with reference to which such order is made, or in vacation to a justice of said court, for a jury; and such court or justice shall issue a warrant for a jury, to be impanelled at a time and place expressed in the warrant, in the manner provided in regard to the laying out of highways. If a person by mistake of law or fact, or by accident, fails to appeal from any such order, and to apply to the superior court or a justice thereof for a jury within said three days, and if he makes it appear to the court or justice that such failure was caused by mistake or accident, he may at any time within thirty days from the service of the order upon him

appeal therefrom and apply for a jury with the same effect as if done within the said three days. During the pendency of the appeal such trade or employment shall not be exercised contrary to the order; and upon any violation of the order the appeal shall forthwith be dismissed. The verdict of the jury, which may either alter the order, or affirm or annul it in full, shall be returned to the court for acceptance as in case of highways; and said verdict when accepted shall have the authority and effect of an original order from which no appeal had been taken. If the order is affirmed by the verdict, the town shall recover costs against the appellant; if it is annulled, the appellant shall recover damages and costs against the town; and if it is altered the court may render such judgment as to costs as in its discretion may seem just. Pub. Stats. ch. 80, §§ 88-91.

§ 1151. Whoever occupies or uses a building for carrying on therein the business of slaughtering cattle, sheep, or other animals, or for a melting or rendering establishment, or for other noxious or offensive trades and occupations, or permits or allows said trades or occupations to be carried on upon premises owned or occupied by him, without first obtaining the written consent and permission of the mayor and aldermen of the city or selectmen of the town in which the building or premises are situated, shall forfeit a sum not exceeding two hundred dollars for every month he so occupies or uses such building or premises, and in like proportion for a longer or shorter time: *provided*, that this section shall not apply to any building or premises occupied or used for the trades or occupations before described on the eighth day of May in the year eighteen hundred and seventy-one; but no person occupying or using any building or premises on said date for the trades or occupations aforesaid shall enlarge or extend the same without first obtaining the written consent and permission of the mayor and aldermen or selectmen. Pub. Stats. ch. 80, § 92.

§ 1152. When any building or premises are so occupied or used, the state board of health shall, upon application made to it for that purpose, appoint a time and place for hearing the parties, and give due notice thereof to the party against whom

the application is made, and after such notice and hearing may, if in its judgment the public health or the public comfort and convenience so require, order any person to desist and cease from further carrying on said trades or occupations in such building or premises; and any person thereafter continuing so to occupy or use such building or premises shall forfeit a sum not exceeding two hundred dollars for every month of such occupancy and use, and in like proportion for a longer or shorter time. Pub. Stats. ch. 80, § 93; Sts. 1886, ch. 101, § 4.

§ 1153. The supreme judicial court in term time or vacation may issue an injunction to prevent the occupancy, use, enlargement, or extension of any building or premises occupied or used for the trades or occupations aforesaid, without the written consent and permission provided in § 1151 *ante* being first obtained; and also in like manner to enforce the orders of the state board issued under the preceding section.

§ 1154. The three preceding sections shall not be so construed as to impair any other remedies which may exist in cases of nuisance.¹

(i) *Pollution of Rivers and Sources of Water Supply.*

§ 1155. No sewage, drainage, or refuse or polluting matter, of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of any pond or stream hereinafter referred to, for domestic use, or render it injurious to health, and no human excrement, shall be discharged into any pond used as a source of water supply by a city or town, or upon whose banks any filter basin so used is situated, or into any stream so used, or upon whose banks such filter basin is situated, within twenty miles above the point where such supply is taken, or into any feeders of such pond or stream within such twenty miles.

¹ These provisions regarding the public health are not under the jurisdiction of town boards of health, but under that of the state board. If necessary, they can be found in the following volumes of the statutes. The provision to prevent the adulteration of food and drugs, Sts. 1882, ch. 263; Sts. 1884, ch. 289; Sts. 1886, 287; Sts. 1891, ch. 319: To prevent the sale of toys or confectionery containing arsenic, Sts. 1891, ch. 374: To prevent the sale of impure ice, Sts. 1886, ch. 287: To prevent the manufacture of clothing in unhealthy places, Sts. 1891, ch. 357; Sts. 1892, ch. 296.

§ 1156. The preceding section shall not be construed to destroy or impair rights acquired by legislative grant prior to the first day of July in the year eighteen hundred and seventy-eight, or to destroy or impair prescriptive rights of drainage or discharge, to the extent to which they lawfully existed on that date; and nothing therein contained shall be construed to authorize the pollution of any waters in this Commonwealth, in any manner contrary to law; nor shall it be applicable to the Merrimack or Connecticut Rivers, or to so much of the Concord River as lies within the limits of the city of Lowell. Pub. Stats. ch. 80, §§ 94-97.

§ 1157. The supreme judicial or superior court, in term time or vacation, upon the application of the mayor of a city or the selectmen of a town interested, may grant an injunction against any violation of the provisions stated in § 1155 *ante*. Sts. 1884, ch. 154.

§ 1158. Whenever the mayor of a city or the selectmen of a town, using a stream or pond as a source of water supply, complains to the state board of health that manure, excrement, garbage, sewage, or any other matter is so deposited, kept, or discharged within one hundred feet of the high water mark of any such stream or pond, or any stream, pond, spring, or water-course tributary thereto, as to pollute or tend to pollute the waters of such stream, pond, spring, or water-course, the said board of health shall appoint a time and place for hearing parties to be affected, and give due notice thereof to such parties; and after such hearing, if in its judgment the public health requires it, may prohibit the deposit, keeping, or discharge of any such material as aforesaid, and may order any person to desist therefrom and to remove any such material theretofore deposited; but shall not prohibit the use of any structure as was customary at the time of the passage of this act, unless the mayor of the city or the selectmen of the town making the complaint shall file with said state board of health an agreement in writing that such city or town shall at its own expense make such changes in said structure or its location as said board shall deem expedient, and such agreement shall be binding on such city or town; and when such changes have been made all damages occasioned thereby shall be paid by

such city or town; and if the parties cannot agree thereon, such damages shall be determined by a jury on petition of either party filed in the clerk's office of the superior court, in the manner provided by law in relation to determining the damages occasioned by taking land for highways in such city or town; said board shall not prohibit the cultivation and use of the soil in the ordinary methods of husbandry, provided no human excrement be used thereon.

§ 1159. Whoever deposits, keeps, or discharges on his premises any material in violation of such order of prohibition, after the same has been served upon him as aforesaid, shall forfeit a sum not exceeding ten dollars for each and every day until such order is complied with. Sts. 1890, ch. 441, §§ 2, 5.

§ 1160. Whoever bathes in a pond, the water of which is used for the purpose of domestic water supply for a city or town, shall be punished by fine not exceeding ten dollars. Sts. 1884, ch. 172.

§ 1161. Whoever drives a horse on the ice on a pond, the water of which is used for the purpose of domestic water supply for a city or town, shall be punished by fine not exceeding fifty dollars, or imprisonment not exceeding thirty days.

§ 1162. The preceding section shall not apply to persons engaged in cutting or harvesting ice from such ponds, or in hauling logs, wood, or lumber. Pub. Stats. ch. 80, §§ 101, 102.

CEMETERIES AND BURIALS.

§ 1163. Boards of health of cities and towns may prohibit the use by undertakers, for the purpose of speculation, of tombs as places of deposit for bodies committed to them for burial; may, if in their opinion the public health requires it, close any tomb, burial-ground, cemetery, or other place of burial within the city or town, for such length of time as they may deem necessary for the protection of the public health; may make all regulations which they judge necessary concerning burial-grounds and interments within their respective limits, and may establish penalties not exceeding one hundred dollars for any breach of such regulations. Sts. 1885, ch. 278, § 1.

They may make regulations prohibiting all persons, except the superintendent of the cemetery, or a duly appointed undertaker, or other person specially authorized, from removing the dead body of any person from any house or place within the city or town, to the place of burial, and may require from each undertaker a bond with a reasonable penalty, and with condition to collect and account for the burial fees. And the fact that such a regulation may be made with reference to a particular person, will not affect its validity. And if such person, having been so appointed as undertaker, fails to give the required bond, the board of health may revoke his appointment at pleasure, without previous notice to him.

The word "interments" properly includes and describes the removal of the bodies of deceased persons for the purpose of burial. That this necessary duty shall be performed, especially when undertaken for hire, by suitable and trustworthy persons, and that the moving of dead bodies through public streets shall be conducted with decency and safety, are obviously matters proper for municipal regulation, and which, as well as the mode of burial, may concern the public health to no slight extent. *Commonwealth v. Goodrich*, 13 Allen, 546.

§ 1164. Notice of such regulations shall be given by publishing the same in some newspaper of the city or town, or, if there is no such newspaper, by posting a copy in some public place therein; which shall be deemed legal notice to all persons. Pub. Stats. ch. 82, § 20.

§ 1165. Before a tomb, burial-ground, or cemetery is closed by order of such board of health for a time longer than one month, all persons interested shall have an opportunity to be heard, and personal notice of the time and place of hearing shall be given to at least one owner of the tomb, and to three at least, if so many there are, of the proprietors of such burial-ground or cemetery, and notice shall also be published two successive weeks at least preceding such hearing, in two newspapers, if so many there are, published in the county.

§ 1166. The owner of a tomb aggrieved by the order of the board of health closing a tomb, burial-ground, or cemetery, may appeal therefrom, and at any time within six months from

the date of the order, enter his appeal in the superior court; and the appellant shall give the board of health fourteen days' notice of his appeal previous to the entry thereof. But the order of the board shall remain in force until a decision is had on the appeal. Pub. Stats. ch. 82, §§ 22, 23.

§ 1167. The boards of health of towns and the mayor and aldermen of cities shall, on or before the first day of July in each year, license a suitable number of undertakers to take charge of the funeral rites preliminary to the interment of a human body. Pub. Stats. ch. 32, § 6.

§ 1168. No undertaker, sexton, or other person shall bury in a city or town or remove therefrom the body of a deceased person until he has received a permit so to do from the board of health or its duly appointed agent, or, if there is no board of health in such city or town, from the city or town clerk. No such permit shall be issued until there has been delivered to such board, or agent, or clerk, as the case may be, a satisfactory written statement containing the facts required to be returned and recorded, together with the certificate of the attending physician if any, or in lieu thereof a certificate as hereinafter provided. If there is no attending physician, or if the certificate of the attending physician cannot be obtained, for good and sufficient reasons, early enough for the purpose, the chairman of the board of health or any physician employed by a city or town for the purpose shall, upon request of said board, agent, or clerk, make such certificate as is required of the attending physician. When such satisfactory statement and certificate are delivered to the board of health or to its agent, the board or agent shall forthwith countersign and transmit the same to the clerk or registrar for registration. The person to whom the permit is so given shall thereafter furnish for registration any other information as to the deceased or to the manner and cause of the death, as the clerk or registrar may require. Sts. 1888, ch. 306, § 2.

DISEASED CATTLE.

§ 1169. The boards of health of cities and towns, in case of the existence in this Commonwealth of the disease called

pleuro-pneumonia among cattle, or farcy or glanders among horses, or any other contagious or infectious disease among domestic animals, shall cause the animals which are infected, or which have been exposed to infection in their respective cities and towns, to be secured or collected in some suitable place or places within their cities or towns, and kept isolated; and when taken from the premises or possession of their owners, the expense of their maintenance shall be paid by the city or town wherein the animal is kept, and four-fifths of such payment, when certified by the treasurer of such city or town, shall be refunded by the Commonwealth; such isolation to continue as long as the existence of such disease or other circumstances may render it necessary.

§ 1170. They may, within their respective cities and towns, prohibit the departure of animals from any enclosure or exclude animals therefrom, and may appoint agents who shall have power to enforce the prohibitions and regulations for which provision is made in the two following sections.

§ 1171. They may make regulations in writing to regulate or prohibit the passage from, to, or through their respective cities or towns, or from place to place within the same, of any cattle or other domestic animals, and may arrest and detain at the cost of the owners thereof all animals found passing in violation of such regulations; and may take all other necessary measures for the enforcement of such prohibition, and also for preventing the spread of any disease among the animals of their respective cities and towns and the immediate vicinity thereof.

§ 1172. Such regulations shall be recorded upon the records of their cities and towns respectively, and shall be published in such cities and towns in such manner as may be provided in such regulations.

§ 1173. Any person disobeying the orders of the boards of health, made in conformity with § 1171 *ante*, or driving or transporting any animals contrary to the regulations made, published, and recorded as aforesaid, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

§ 1174. Whoever has knowledge of, or has good reason to suspect the existence of a contagious disease among any

species of domestic animals in this state, whether such knowledge is obtained by personal examination or otherwise, shall forthwith give notice thereof to the board of health of the city or town where such diseased animals are kept; and for failure so to do shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in jail not exceeding one year.

§ 1175. The board of health of a city or town, having received notice of a suspected case of contagious disease among any of the domestic animals in their city or town, shall forthwith make an examination thereof personally, or by a competent person appointed by them for that purpose, and if satisfied there are good reasons for believing that contagion is present, shall immediately inform the cattle commissioners.

§ 1176. A city or town whose officers refuse or neglect to carry into effect the provisions stated in §§ 1169-1172, and in the preceding section, shall forfeit a sum not exceeding five hundred dollars for each day's neglect.

§ 1177. The boards of health of cities and towns, when in their judgment it is necessary to carry into effect the provisions of this chapter, may within their respective cities and towns take and hold, for a term not exceeding one year, any land, without buildings other than barns thereon, upon which to enclose and isolate any animals; and they shall cause the damage sustained by the owner in consequence of such taking and holding to be appraised by the assessors of the city or town wherein the lands so taken are situated; and they shall further cause a description of such land, setting forth the boundaries thereof, and the area as nearly as may be estimated, together with the said appraisal, to be entered on the records of the city or town. The amount of said appraisement shall be paid as is stated in § 1169 *ante*, in such sums and at such times as the board of health may order. If the owner of land so taken is dissatisfied with said appraisement he may by action of contract recover of the city or town wherein the lands lie a fair compensation for the damages sustained by him, but no costs shall be taxed unless the damages recovered in such action, exclusive of interest, exceed said appraisement. And the Commonwealth shall reimburse to the city or town four-fifths of any sum recovered of it in any such action.

§ 1178. When a board of cattle commissioners, appointed in accordance with the provisions of chapter three hundred and seventy-eight of the acts of the year eighteen hundred and eighty-five, is in existence, and makes and publishes any regulations concerning the extirpation, cure, or treatment of animals infected with, or which have been exposed to, any contagious disease, such regulations shall supersede those made by boards of health, and boards of health shall carry out and enforce all orders and directions of said commissioners to them directed. Sts. 1887, ch. 252, §§ 1-10.

§ 1179. All appraisements under these sections shall be in writing and signed by the appraisers and certified by the boards of health or commissioners, respectively, to the treasurers of the cities and towns where the animals are kept, and forwarded to the auditor of the Commonwealth. Sts. 1887, ch. 252, § 16.

CHAPTER XIV.

FENCE VIEWERS.

§ 1180. Fences four feet high and in good repair, consisting of rails, timber, boards, or stone, and brooks, rivers, ponds, creeks, ditches, and hedges, or other things which the fence viewers within whose jurisdiction the same shall lie shall consider equivalent thereto, shall be deemed legal and sufficient fences. Pub. Stats. ch. 36, § 1.

§ 1181. The respective occupants of lands enclosed with fences shall, so long as both parties improve the same, keep up and maintain partition fences between their own and the next adjoining enclosures, in equal shares. Pub. Stats. ch. 36, § 2.

“In the first place, it is to be considered that the division fence — that is, the whole of the division fence — is made for their mutual and equal benefit; and therefore, upon the plainest principles of equity, the expense, as well of cost of building as of land to build upon, must be borne by them equally. For although the fence is built, one section by one party and another by the other, this is only an easy and convenient mode of dividing the expense of building. Though thus built in separate sections, each has an interest in the whole and in every section; and, when built, it belongs beneficially to both, as much as if it had been done by contract and the expense divided, or both joined in building the whole. If it is to be, in all respects, for their common benefit and at their common expense, it follows that it is at their equal expense of land, as well as cost of building. As every species of fence must take some land, and cannot stand on a mathematical line, and as there is no reason why it should stand more on the land of one than the other, it follows as a necessary consequence that it is to stand equally on the land of both, or one-half on each. It is one of the cases where equality is equity.” SHAW, C. J. in *Newell v. Hill*, 2 Met. 182.

This rule as to division fence between adjoining proprietors does not apply as between the public and the owner of land abutting upon a highway, no such mutual duty or obligation existing; and therefore there can be no corresponding right or privilege. *Holbrook v. McBride*, 4 Gray, 215.

A reasonable quantity of land can be taken for building such fence upon. And it is to be determined by a just regard to the proper accomplishment of the purpose which both parties have in view, and in which they have a common interest. And great regard should be had to the usage and practice of men of ordinary skill and judgment in the building of fences in their own lands on similar kinds of soil, and for like purposes. *Newell v. Hill*, 2 Met. 183.

§ 1182. If a party refuses or neglects to repair or rebuild a partition fence which he ought to maintain, the aggrieved party may complain to two or more fence viewers of the place, who after due notice to each party shall survey the same, and if they determine that the fence is insufficient, and that a partition fence is required between the lands of the respective occupants, they shall signify the same in writing to the delinquent occupant, and direct him to repair or rebuild the same within such time, not exceeding fifteen days, as they may judge reasonable; and if the fence is not repaired or rebuilt accordingly, the complainant may make or repair the same. Pub. Stats. ch. 36, § 3.

§ 1183. When a deficient fence built up or repaired by a complainant as provided in the preceding section is, after due notice to each party, adjudged sufficient by two or more of the fence viewers, and the value thereof with their fees ascertained by a certificate under their hands, the complainant may demand, either of the occupant or owner of the land where the fence was deficient, double the sum so ascertained; and in case of neglect or refusal to pay the same for one month after demand, he may recover the same, with interest at one per cent a month, in an action of contract. Pub. Stats. ch. 36, § 4.

No action lies to recover upon an award of fence viewers under this and the preceding section, unless they have previously adjudicated that the existing fence was insufficient and illegal, and that the fence which the plaintiff has rebuilt is sufficient. *Sears v. Charlemont*, 6 Allen, 437.

An action to recover double the value of a partition fence, rebuilt by the plaintiff, and double the amount of the fees of the fence viewers for their services in relation thereto, cannot be maintained, unless the fence is built upon the line which divides the premises of the parties, if this is known and undisputed; and in the absence of any adjudication of the fence viewers designating the line upon which the fence should be built, the line adopted by the plaintiff is not conclusively binding upon the defendant. *Kennedy v. Owen*, 131 Mass. 431.

The remedy provided by this section for enforcing payment of an award of fence viewers is applicable only to a case where the duty of maintaining the fence is required by statute, and does not apply to a case where such duty arises from the acceptance of a deed containing a condition to maintain it. *Kennedy v. Owen*, 134 Mass. 227.

§ 1184. When a controversy arises concerning the rights of the respective occupants in partition fences and their obligation to maintain the same, either party may apply to two or more fence viewers of the places where the lands lie, who after due notice to each party may in writing assign to each his share thereof, and may direct the time within which each party shall erect or repair his share, in the manner before provided; which assignment, being recorded in the city or town clerk's office, shall be binding upon the parties and upon the succeeding occupants of the lands, who shall thereafter maintain their respective parts of said fence. Pub. Stats. ch. 36, § 5.

A division by fence viewers would ordinarily embrace the whole continuous line of fence between two adjacent proprietors. But a division may be legal, although the assignment to the parties does not include the entire line of the land of the adjacent owner. *Alger v. Pool*, 11 Cush. 450.

Under a complaint that *a fence is out of repair*, fence viewers have no authority to assign to each of the owners of adjoining land his respective share of the fence, and to direct the building thereof within a specified time. *Sears v. Charlemont*, 6 Allen, 437.

§ 1185. If a party refuses or neglects to erect and main-

tain the part of a fence assigned to him by the fence viewers, the same may, in the manner before provided, be erected and maintained, by any aggrieved party; and he shall be entitled to double the value thereof, ascertained and recovered in the manner aforesaid.

§ 1186. When, in a controversy between adjoining occupants as to their respective rights in a partition fence, it appears to the fence viewers that a partition fence is required between their lands, and that either of the occupants had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or had otherwise become proprietor thereof, the other occupant shall pay the value of so much thereof as may be assigned to him to repair or maintain, to be ascertained and recovered as provided in this chapter.

§ 1187. Partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides otherwise agree.

§ 1188. When lands of different persons, which are required to be fenced, are bounded upon or divided from each other by a river, brook, pond, or creek, if the occupant of the land on one side refuses or neglects to join with the occupant of the land on the other side in making a partition fence on the one side or the other, or disagrees respecting the same, then two or more fence viewers of the place or places wherein such lands lie, on application made to them, shall forthwith view such river, brook, pond, or creek; and if they determine the same not to answer the purpose of a sufficient fence, and that it is impracticable to fence on the true boundary line without unreasonable expense, and that a partition fence is required between the lands of the respective occupants, they shall, after giving notice to the parties to be present, determine how, or on which side thereof, the fence shall be set up and maintained, or whether partly on the one side and partly on the other, as to them shall appear just, and shall reduce their determination to writing; and if either of the parties refuses or neglects to make and maintain his part of the fence according to the determination of the fence viewers, the same may be made and maintained as before provided, and the

delinquent party shall be subject to the same costs and charges, to be recovered in like manner.

§ 1189. When lands belonging to two persons in severalty have been occupied in common without a partition fence between them, and one of the occupants desires to occupy his part in severalty, and the other occupant refuses or neglects on demand to divide the line where the fence ought to be built, or to build a sufficient fence on his part of the line when divided, the party desiring it may, if a partition fence is required between the lands of the respective occupants, have the same divided and assigned by two or more fence viewers of the same place, in the manner provided in this chapter; and the fence viewers may in writing assign a reasonable time, having regard to the season of the year for making the fence; and if the occupant complained of does not make his part of the fence within the time so assigned, the other party may, after having made up his part of the fence, make up the part of such occupant, and recover therefor double the expense thereof, together with the fees of the fence viewers, in the manner provided in this chapter.

§ 1190. Where a division of fence between the owners of improved lands has been made, either by fence viewers or under an agreement in writing between the parties, recorded in the office of the clerk of the city or town, the several owners of such lands, and their heirs and assigns, shall erect and support said fences agreeably to such division; but if a person lays his lands common, and determines not to improve any part of the same adjoining the fence divided as aforesaid, and gives six months' notice of his determination to all the adjoining occupants of lands, he shall not be required to keep up or support said fence during the time that his lands lie common and unimproved.

§ 1191. When one party ceases to improve his land, or lays open his enclosure, he shall not take away any part of the partition fence belonging to him and adjoining to the next enclosure: *provided*, the owner or occupant thereof will allow and pay therefor so much as two or more fence viewers in writing determine to be the reasonable value thereof.

§ 1192. When land which has lain unenclosed is after-

wards enclosed or used for depasturing, the occupant or owner thereof shall pay for one half of each partition fence standing upon the line between the same land and the land of the enclosures of any other occupant or owner, the value thereof to be ascertained in writing (in case the parties do not agree between themselves) by two or more of the fence viewers of the same place wherein such partition fence stands; and if such occupant or owner, after the value has been so ascertained, neglects or refuses, for thirty days after demand made, to pay for one half of the partition fence, the proprietor of the fence may maintain an action of contract for such value, and for the costs of ascertaining the same; but the occupant or owner of unenclosed land on the island of Nantucket, used for depasturing only, shall not be subject to the foregoing provisions of this section.

§ 1193. Fence viewers, when called to act under the provisions of this chapter, may determine whether a partition fence is required between the lands of the respective occupants, and may, when the division line between their lands is in dispute, or unknown, designate a line on which the fence shall be built, and may employ a surveyor therefor, if necessary; and such line shall, for the purpose of maintaining a fence, be deemed the division line between such lands, until it shall be determined by judicial proceedings, or otherwise, that the true line is in another place, and, until so determined, all provisions of law relating to the erection, maintenance, and protection of fences shall be applicable to the fence erected, or to be erected, on such line. Pub. Stats. ch. 36, §§ 6-14.

§ 1194. If, after a fence has been made upon a line thus designated, it is determined by judicial proceedings, or otherwise, that the true division line is in another place, each occupant shall remove his part of the fence to, and rebuild the same on, such line; and in case of neglect or refusal by either party to remove and rebuild his share thereof, the other may apply to two or more fence viewers, who, upon such application, shall view the premises and assign a time within which the fence shall be removed and rebuilt, and shall give the delinquent party notice thereof; and if such party does

not remove and rebuild the fence within the time so assigned, the other party may remove and rebuild the same, and recover double the expense thereof, together with the fees of the fence viewers, to be ascertained and recovered in the manner stated in § 1183, *ante*. Pub. Stats. ch. 36, § 15.

The line designated by the fence viewers for a fence under the provisions of this and the preceding section has no effect upon the title or right of possession of the land. It is a line established only for the purpose of maintaining a fence. *Currier v. Esty*, 116 Mass. 577.

§ 1195. Where the line upon which a partition fence is to be made or divided is the boundary line of one or more cities or towns, or partly in one and partly in another, a fence viewer shall be taken from each place.

§ 1196. When a water fence, or fence running into the water, is necessary to be made, the same shall be done in equal shares unless otherwise agreed by the parties; and in case either party refuses or neglects to make or maintain the share to him belonging, similar proceedings shall be had as in other cases of the like kind respecting other fences before mentioned.

§ 1197. Any fence viewer, duly chosen and sworn, who, when requested, unreasonably neglects to view a fence, or to perform any other duties required of him in this chapter, shall forfeit five dollars, to be recovered by action of tort to the use of the place, or on complaint to the use of the Commonwealth, and he shall also be liable for all damages to the party injured.

§ 1198. Each fence viewer shall be paid at the rate of two dollars per day for the time he is employed. Such payment shall be made by all or by such of the parties in dispute, and in such proportions, as shall be determined by a certificate in writing, under the hands of the fence viewers, acting in each case. And if any person or persons, so required to pay the whole or any portion of said fees, neglect to pay the fence viewers within thirty days after the certificate has been delivered, the fence viewers may recover, in an action of tort, double the amount of the fees due from such delinquent party. Pub. Stats. ch. 36, §§ 16-19.

FORMS.

Complaint to the Fence Viewers by the Owner of Land that the Fence between his Land and the adjoining is insufficient.

To A. B. and C. D., two fence viewers of the town of W——. The partition fence between my land and that of G. K., situated in W——, on the road leading from to which he ought to maintain, is insufficient. I hereby request you to survey the same, and direct him to repair or rebuild it.

N. O.

W——, 189 .

Notice to Adverse Party in above Complaint.

To G. K., of W——. N. O., of said W——, has complained to us, two fence viewers of said W——, that the partition fence between your land and his adjoining situated in W——, on the road leading from to is insufficient, and has requested us to survey the said fence and direct you to repair the same. You are notified that we shall make the survey on Monday next at nine o'clock, A. M.

P. R. }
S. T. } *Fence Viewers.*

W——, 189 .

Award of Fence Viewers.

To G. K., of W——. We, having surveyed the partition fence between your land and that of N. O., situated in said W——, on the road leading from to which you ought to maintain, and having found said fence out of repair and insufficient, hereby direct you to repair or rebuild said fence in days from the date hereof.

P. R. } *Fence Viewers of the*
S. T. } *town of W——.*

W——, 189 .

Certificate of the Sufficiency and Appraisal of Fence built by the Complainant when the Occupant of the adjoining Lot has neglected to comply with the Directions of the Fence Viewers.

We hereby certify that we surveyed a certain partition fence between the land of N. O. and G. K., situated in said W——, on the road leading from to and adjudged the same to be in-

sufficient and illegal, and did order and direct that the said G. K. should repair and build the same within _____ days from the date of said order, and the said G. K. not having complied with said order, the said N. O. at his own proper costs and charges has repaired and rebuilt the same, and we now adjudge the same to be sufficient, and appraise the said fence at the sum of _____ dollars.

And we certify that our fees for that service are as follows : —

For viewing said fence, \$

For appraising the same, \$

Paid us by the said N. O.,

P. R. } *Fence Viewers of W—.*
S. T. }

W—, 189 .

Notice of Fence Viewers when the right of Occupants in Partition Fence is in dispute, and their Award.

To — of . M. N. has represented to us, two fence viewers of the town of W—, that a controversy has arisen between him and you about your respective rights in the partition fence between your land and his (*or the land occupied by him and you as the fact may be*), situated _____ and has applied to us on that account; we therefore hereby notify you that we shall be at the premises on _____ the _____ day of _____ at _____ o'clock in the _____ noon, to assign to each party his share of said fence.

H. N. } *Fence Viewers.*
N. O. }

Dated _____ 189 .

Whereas a controversy has arisen between A. B. and C. D. of _____ about their respective rights in a partition fence in the line between their lands situated at _____ we the subscribers, fence viewers of the town of W—, having, on the application of the said A. B. (and after having given due notice to the said C. D.), viewed the premises and duly considered the matter in dispute, do hereby assign to each of the said parties his share of said fence, as follows, viz. : —

The said A. B. shall build and keep in repair a good and sufficient fence from _____ to _____. And the said C. D. shall build and keep in repair a like fence on the other part of said line, viz., from _____ to _____. And each party is to erect (or repair) his part of said fence within _____ days from the date hereof.

Given under our hands at said W—, this _____ day of _____ 189 .

H. N. } *Fence Viewers.*
N. O. }

Notice issued by Fence Viewers when Lands are divided by a Brook, River, Pond, &c.; and their Determination in such Case.

To — of A. B. of has represented to us, two fence viewers of the town of B—, that you refuse to join with him (*or that you and he disagree, as the fact may be*) in making a partition fence between your land and his (*or between the lands occupied by him and you*), the same being bounded or divided by a pond (*river, brook, &c., as the fact may be*), and has therefore made application to us to view the same and determine thereupon. We therefore hereby notify you that we shall make such view and determination on the day of at o'clock.

H. N. } *Fence Viewers of the*
M. P. } *town of B—d.*

Dated the day of 189 .

Whereas it has been represented to us, two fence viewers of the town of B—, by A. B. of whose land is bounded or divided from the land of C. D. (*or occupied by C. D.*), that the said C. D. hath refused to join with him (*or that they disagreed in making a partition fence, as the fact may be*), and the said A. B. having applied to us to view the same and determine thereupon, we have, after giving due notice to the said C. D., performed that duty, and do determine that the said pond (*river, brook, or creek, as the fact may be*) does not answer the purpose of a sufficient fence, and that it is impracticable to fence at the boundary line. We therefore determine that said fence shall be set up as follows, viz. And that the said A. B. shall build and maintain and the said C. D. shall build and maintain

Given under our hands this day of 189 .

H. N. } *Fence Viewers.*
M. P. }

CHAPTER XV.

FIELD DRIVERS AND POUND KEEPERS.

FIELD DRIVERS.

§ 1199. Every field driver, within his city or town, shall take up, at any time, swine, sheep, horses, asses, mules, goats, or neat cattle, going at large in the public highways or town ways, or on common and unimproved lands, and not under the care of a keeper; and for any such cattle or beasts so going at large on the Lord's day, the field driver or any other inhabitant of the city or town may, in an action of tort, recover for each beast the same fees which the field driver is entitled to receive for like beasts when distrained and impounded. Pub. Stats. ch. 36, § 23.

The duty of the field driver, under the last section, is confined to the taking up of cattle going at large, and impounding them. And he is not required to state the cause of such acts, has no claim for any damage, and can demand only his fees, which are provided by statute. No notice is required by the statute to be given at the time of impounding by the field driver, as it seems to be taken for granted that the pound keeper will be bound to take notice of the public office, power, and duty of the field driver in the performance of his duties under the statute. *Wild v. Skinner*, 23 Pick. 251; *Pickard v. Howe*, 12 Met. 198.

A turnpike road is a highway within the meaning of the statute restraining cattle from going at large. *Pickard v. Howe*, 12 Met. 198.

The owner of land adjoining a highway, and who owns to the centre thereof, has a right to depasture his land in the highway; but he cannot, in virtue of this right, be exempted from the duty of preventing his cattle from going at large thereon without the care of a keeper, but is bound by the same law which is applicable to others. *Parker v. Jones*, 1 Allen, 270.

Cattle must be "actually under the efficient care of a keeper" while upon the highways, or they will be "going at large," and may be impounded by a field driver. *Bruce v. White*, 4 Gray, 345.

The mere driving of cows off a person's land into the highway, and detaining them there until the owner comes and takes them away, and then demanding a sum of money as damages is not as a matter of law an impounding of the cows. *Conners v. Loker*, 134 Mass. 510.

§ 1200. Beasts so taken up and distrained by a field driver shall be forthwith impounded in the city or town pound, and the keeper shall furnish them with suitable food and water while they are detained in his custody. Pub. Stats. ch. 36, § 24.

§ 1201. When a person is injured in his land by sheep, swine, horses, asses, mules, goats, or neat cattle, he may recover his damages in an action of tort against the owner of the beasts, or by distraining the beasts doing the damage, and proceeding therewith as hereinafter directed; but if the beasts were lawfully on the adjoining lands, and escape therefrom in consequence of the neglect of the person who suffered the damage to maintain his part of the division fence, the owner of the beasts shall not be liable for such damage. Pub. Stats. ch. 36, § 27.

A field driver cannot at the same time distrain and impound cattle for both causes prescribed by these sections, — for going at large in the highway without a keeper and for doing damage on private lands. *Phillips v. Bristol*, 131 Mass. 426.

The restriction in the foregoing section upon the right to maintain an action clearly applies, and applies only, to cases where there has been a division of the fence. It is when the party neglects to maintain "his part of the division fence;" but it cannot with propriety be said that any particular part of the fence is to be kept in repair by one rather than the other until a division has taken place. *Thayer v. Arnold*, 4 Met. 589.

If beasts doing damage are distrained, and driven to the distrainer's yard till the pound keeper can be called, and then delivered to the latter in the highway, it is the duty of the distrainer to state his demand, and to give notices, as required

in §§ 30 and 32, Pub. Stats. ch. 36; otherwise he will be liable as a trespasser *ab initio*. *Merrick v. Work*, 10 Allen, 544; *Sherman v. Braman*, 13 Met. 407.

§ 1202. The beasts so distrained for doing damage shall be impounded in the city or town pound, or in some suitable place, under the immediate care and inspection of the person who distrained them, and he shall furnish them with suitable food and water while they remain impounded. Pub. Stats. ch. 36, § 28.

FORMS.

Notice to Owner of Beasts taken up and impounded.

To A. B., of B——d. I have this day taken up and impounded in the town pound in said town, under the care of C. D., pound-keeper, one pair of red oxen belonging to you, found doing damage in the enclosure of E. F. (*or running at large without a keeper on the public highway in said town*), and for that cause I have impounded said oxen.

O. P., *Field Driver of B——d.*

B——D, June 189 .

Memorandum to be left with Pound Keeper.

To C. D., keeper of the town pound in the town of B——d. I have this day taken up and distrained one bay horse, belonging to E. F. of said B——d, found doing damage in my enclosure, and for that reason I have impounded said horse in the town pound under your care.

The damages demanded are, \$

Charges for keeping per day, \$

G. H.

B——D, June 189 .

POUND KEEPERS.

§ 1203. Each city and town shall, at its own expense and in such places therein as the city council of the city or the inhabitants of the town direct, maintain one or more sufficient pounds. A city or town which for three months neglects to provide or maintain a sufficient pound shall forfeit fifty dollars.

§ 1204. Each city and town shall annually appoint a suitable keeper of each pound therein. Pub. Stats. ch. 36, §§ 20, 22.

§ 1205. When beasts are taken up and distrained by a field driver, in a town which has adopted the provisions of chapter three hundred and sixty-six of the statutes of the year eighteen hundred and sixty-nine, or of this section, he may impound them in any suitable place, on his own premises; and for the purposes of this chapter he shall be considered a pound keeper, and such place on his own premises shall be considered a town pound, in relation to beasts therein impounded. Pub. Stats. ch. 36, § 29.

To "forthwith impound" is to impound without unnecessary delay. The act of impounding by the field driver does not require that he should open or close a gate. The pound is under the care and in the custody of a keeper elected for the purpose. *Byron v. Crippen*, 4 Gray, 312.

A pound keeper may lawfully impound beasts which have been distrained damage feasant in a yard furnished and used by the town as a town pound, if the town have furnished and used no other place as a pound, although the inhabitants of the town have passed no vote concerning the same, and taken no action at any town meeting for the purpose of establishing it as a pound. *Anthony v. Anthony*, 6 Allen, 408.

§ 1206. The field driver shall be entitled to fifty cents per head for horses, asses, mules, swine, and neat cattle, and ten cents per head for sheep and goats so taken up by him, and the pound keeper shall be entitled to four cents per head for the animals so impounded; but if more than ten sheep are taken up at the same time, the fees for all above that number shall be only one half of the above fees.

§ 1207. The pound keeper shall not deliver to the owner any beasts so impounded, until the owner pays him his fees, the expense of keeping the beasts, and the fees of the field driver, which latter, when received, he shall pay to the field driver. Pub. Stats. ch. 36, §§ 25, 26.

§ 1208. If the beasts are impounded in the city or town pound, the distrainer shall leave with the pound keeper a memorandum in writing under his hand, stating the cause of impounding, and the sum that he demands from the owner for the damage done by the beasts, and also for the daily charges of feeding them; and if they are impounded in any other

place, he shall give a like memorandum to the owner of the beasts if demanded by him. Pub. Stats. ch. 36, § 30.

The owner of the land where the damage is committed is not required to employ a field driver to take up and impound the cattle, but he may do it himself. *Wild v. Skinner*, 23 Pick. 253.

§ 1209. The pound keeper, when the beasts are in his custody, shall not deliver them to the owner until the owner pays him his fees, the sum so demanded by the distrainer for the damages and charges aforesaid, the expense of advertising the beasts if they are advertised, and all other legal costs and expenses. Pub. Stats. ch. 36, § 31.

A pound keeper, who receives and impounds beasts for going at large, and refuses to deliver them to the owner on demand, is justified in his refusal until his fees and those of the field drivers are paid. And he is not liable therefor in an action of replevin. *Folger v. Hinckley*, 5 Cush. 263.

§ 1210. When beasts are impounded, the person impounding them shall within twenty-four hours thereafter give notice thereof in writing to the owner or person having the care of them, if known and living within six miles from the place of impounding, which notice shall be delivered to the party or left at his place of abode, and shall contain a description of the beasts, and a statement of the time, place, and cause of impounding. Pub. Stats. ch. 36, § 32.

Such notice *must* be given within twenty-four hours after the beasts are taken up and impounded; and the notice is valid, although the hour of the day on which they were thus taken up does not appear on the face of it. It is sufficient if it is left at the dwelling-house of the party; and a personal service of it upon the owner of the beasts is not required. *Pickard v. Howe*, 12 Met. 198.

An oral notice is not sufficient; and the owners of the beasts impounded have a right to insist on the precise notice required by law. Upon it their rights and remedies might materially depend; and unless by their actions the persons impounding the beasts are induced to omit it, the failure to give such notice is a fatal defect in their proceedings, and deprives them of their justification.

Neither is the notice rendered unnecessary where the owners of the beasts impounded have actual knowledge of it. *Coffin v. Field*, 7 Cush. 355; *Sanderson v. Lawrence*, 2 Gray, 178.

If one cause of the impounding of cattle by a field driver is the damage done by them to the land of A, a notice by the field driver to the owner of the cattle, describing them and stating that they were impounded "for being at large out of enclosure in the highway, said cattle being delivered to me in said highway by the agent of A," and that the damage to A, together with the fees of the field driver and pound keeper, amounted to a certain sum, is not a sufficient notice. *Phillips v. Bristol*, 131 Mass. 426.

A written notice, posted up and published in a newspaper by a field driver who has impounded beasts going at large in a public highway, which states that the beasts were "going at large, and without a keeper," sets forth a sufficient cause of impounding under the statute.

"There are but two causes for which animals can lawfully be taken up by a field driver and impounded in the town pound. He may take them up, in the first place, when they are at large without a keeper in highways or town ways, or on common and unimproved land; or, in the second place, as the agent of a private proprietor other than the owner, when they are unlawfully upon his enclosed or improved land, doing or having done damage there. In either of these cases the animals may be impounded, and then the notices required by law are to be given, containing a description of the animals, and a statement of the time, place, and cause of impounding. It is not essential to the validity of the notices to be given that they should be framed in the very words of the statute; but any form of expression which evinces in a clear and intelligible manner the cause for which the animals were taken up and impounded is sufficient." MERRICK, J., in *Cleverly v. Fowle*, 3 Allen, 39.

§ 1211. If there is no person entitled to notice according to the provisions of the preceding section, the person impounding the beasts shall within forty-eight hours thereafter cause to be posted in some public place in the city or town, and in a public place in each of any two adjoining cities or towns,

if within four miles from the place where they were taken, a written notice containing a description of the beasts, and a statement of the time, place, and cause of impounding them; and in such case, if the value of the beasts exceeds thirty dollars, and if no person appears to claim them within seven days after the day of impounding, a like notice shall be published three weeks successively in some public newspaper, if there is any published within twenty miles from the place of impounding, the first publication to be within fifteen days after the day of impounding.

§ 1212. If the owner or keeper of the beasts is dissatisfied with the claim of the person impounding them, he may have the amount for which he is liable ascertained and determined by two disinterested and discreet persons, to be appointed and sworn for that purpose by a justice of the peace or by the city or town clerk; and the sum so determined by them shall be received instead of the sum demanded by the person who impounded the beasts, and they shall thereupon be delivered to the owner or keeper thereof.

§ 1213. If the sum for which the beasts are impounded and detained is not paid within fourteen days after notice of the impounding has been given as before directed, or after the last publication of such notice in a newspaper, the person who impounded them shall apply to a justice of the peace, or to the city or town clerk, and obtain a warrant to two disinterested and discreet persons, to be appointed and sworn by the justice or clerk, and the person so appointed shall ascertain and determine the sum due from the owner or keeper of the beasts for the damages, costs, and expenses for which they are impounded and detained, including a reasonable compensation for their own services.

§ 1214. If the sum so found to be due is not forthwith paid, the person who impounded the beasts shall cause them to be sold by auction, in the city or town where they are impounded, first advertising the sale by posting up a notice thereof twenty-four hours beforehand at some public place in the same city or town.

§ 1215. The proceeds of such sale, after paying all said damages, costs, expenses, and charges for advertising and

selling the beasts, shall be deposited in the treasury of the city or town, for the use of the owner of the beasts, in case he substantiates his claim thereto within two years from the sale.

§ 1216. If beasts lawfully distrained or impounded escape or are rescued, the pound keeper, field driver, or other person who distrained them may at any time within seven days thereafter retake the beasts, and hold and dispose thereof as if no such escape or rescue had taken place. Pub. Stats. ch. 36, §§ 33-38.

FORM.

Appointment of Persons to determine Damages done by Beasts taken up and impounded.

To A. B. and C. D. of B——. You are hereby appointed to appraise, on oath, the damage done to the enclosure of E. F. by a pair of red oxen, which for that cause have been taken up and impounded in the town pound.

B——, this day of 189 .

J. H., *Clerk of the town of B——.*

If the appointment is made at the request of the person impounding, add to the foregoing, "Also the costs and expenses of impounding, etc., including a reasonable compensation for your own services."

CHAPTER XVI.

SEALERS OF WEIGHTS AND MEASURES.

§ 1217. The city council of every city, and the selectmen of every town, shall annually in March or April appoint one or more sealers of weights and measures, or one sealer and one or more deputy sealers to act under the direction of the sealer, and they may also appoint gaugers of liquid measures; and such sealers, deputy sealers, and gaugers they may at any time remove, and appoint others in their places. Pub. Stats. ch. 65, § 8.

§ 1218. The standard weights, measures, and balances which shall be kept by the counties, cities, and towns of the Commonwealth, except as hereinafter provided, shall be the following: A set of avoirdupois-weights, consisting of fifty, twenty-five, twenty, ten, five, four, two, and one pounds; and eight, four, two, one, one-half, one-fourth, one-eighth, and one-sixteenth ounces. One balance. A set of dry measures, consisting of one half-bushel, one eight-quart, one four-quart, one two-quart, and one one-quart measures. A set of liquid measures, consisting of one wine gallon, one wine half-gallon, one wine quart, one wine pint, one wine half-pint, and one wine gill. One yard measure.

§ 1219. Any county, city, or town which has not received from the Commonwealth a complete set of the standard weights, measures, and balances, as provided in the preceding section, shall at once make application to the treasurer and receiver-general for the weights, measures, and balances which such county, city, or town has not received, and the same shall be furnished to such county, city, or town at the expense of the Commonwealth. Sts. 1890, ch. 426, §§ 1, 3.

§ 1220. In addition to the standards mentioned above, each shire town, and each city not a shire town, shall keep the

metre and kilogram, and also such standard troy-weights as the treasurer and receiver-general may designate. And all persons selling anything by troy-weight shall have their weights and balances which are used for this purpose duly tested and sealed by an authorized sealer having the proper standards. Sts. 1890, ch. 426, § 2.

§ 1221. The several county, city, and town treasurers shall, at the expense of their respective counties, cities, and towns, provide therein places for the safe and suitable keeping and preservation of the weights, measures, and balances furnished by the Commonwealth, which shall be used only as standards. Said treasurers shall have the care and oversight thereof; shall see that they are kept in good order and repair; and if any of them are lost, destroyed, or irreparably damaged, shall, at the expense of the county, city, or town, replace the same by similar weights, measures, or balances. Cities and towns may effect insurance on such weights, measures, and balances for their own benefit. Pub. Stats. ch. 65, § 5.

§ 1222. It shall hereafter be the duty of the several city and town treasurers to have the standards in their custody tried, adjusted, and sealed once at least in every five years, and it shall be the duty of the deputy sealer to try, adjust, and seal the weights, measures, and balances of every city and town, at least once in five years, and to see that they are kept in proper condition and order. And at any time, at the request of a city or town treasurer, the deputy shall visit such city or town, and try, adjust, and seal its standards. Sts. 1890, ch. 426, § 6.

§ 1223. Every sealer of weights and measures shall receive from the treasurer of his city or town a set of the standards and a seal, and shall give a receipt therefor, expressing the condition in which the same are; and he shall be accountable to his city or town for the due preservation of the same in the like condition until he redelivers them to the treasurer.

§ 1224. When a city or town votes to have more than one sealer of weights and measures, the treasurer of such city or town shall at its expense procure and preserve the necessary additional seals, weights, and measures before specified, so that each sealer may have a complete set of the same.

§ 1225. The treasurer of the Commonwealth and his deputy, the county treasurers, and the city and town sealers, shall each keep a seal for his several use. The seals of the treasurer and of his deputy shall bear the letters *C. M.*; those of county treasurers shall bear the initial and final letters of their respective counties, followed by the letters *Co.*; and those of city and town sealers, the name of their respective cities or towns, or such intelligible abbreviation thereof as the mayor and aldermen or selectmen may prescribe. Any such treasurer or sealer who neglects to keep a seal according to the provisions of this section shall forfeit a sum not exceeding twenty dollars.

§ 1226. The sealers of weights and measures in the several cities and towns shall annually give public notice by advertisement, or by posting in one or more public places in their respective cities and towns notices to all inhabitants or persons having usual places of business therein, and who use weights, measures, or balances for the purpose of selling any goods, wares, merchandise, or other commodities, or for public weighing, to bring in their weights, measures, and balances to be adjusted and sealed. Such sealers shall attend in one or more convenient places, and shall adjust, seal, and record all weights, measures, and balances so brought in.

§ 1227. After giving said notice, the said sealers shall go to the houses, stores, and shops of persons who neglect to comply therewith, and, having entered the same with the assent of the occupants thereof, shall adjust and seal their weights, measures, and balances.

§ 1228. Said sealers shall go once a year, and oftener if necessary, to every hay and coal scale, and to every platform balance within their respective cities and towns that cannot be easily or conveniently removed, and shall test the accuracy of, and adjust and seal, the same.

§ 1229. All persons using any scales, weights, or measures for the purpose of buying or selling any commodity may, when they desire it, have the same tested and sealed by the sealers of weights and measures at the office of any of said sealers.

§ 1230. In case a sealer of weights and measures cannot

seal any weights, measures, and balances in the manner before provided, he may mark them with a stencil, or by other suitable means, so as to show that they have been inspected; but he shall in no case seal or mark as correct any weights, measures, or balances which do not conform to the standards. If such weights, measures, or balances can be readily adjusted by such means as he has at hand, he may adjust and seal them; but if they cannot be readily adjusted, he shall affix to such weights, measures, or balances a notice forbidding their use until he is satisfied that they have been so adjusted as to conform to the standards; and whoever removes said notice without the consent of the officer affixing the same shall for each offence forfeit a sum not exceeding fifty dollars, one half to the use of the city or town, and one half to the use of the complainant.

§ 1231. A sealer or his deputy, when visiting the place of business of any person for the purpose of testing any weights, measures, or balances, may use for that purpose such weights, measures, or balances as he can conveniently carry with him; and each city and town shall furnish its sealer with one or more duplicate sets of weights, measures, and balances, which shall at all times be kept to conform to the standards furnished by the Commonwealth; and all weights, measures and balances so sealed shall be deemed to be legally sealed, the same as if tested and sealed with the standard weights, measures, and balances.

§ 1232. A sealer or deputy sealer of weights and measures may seize without a warrant such weights, measures, or balances as may be necessary to be used as evidence in cases of violation of the law relating to the sealing of weights and measures, such weights, measures, or balances to be returned to the owners, or forfeited, as the court may direct.

§ 1233. When a complaint is made to a sealer of weights and measures, by any person, that he has reasonable cause to believe, or when such sealer himself has reasonable cause to believe, that a weight, measure, or balance used in the sale of any commodity within his city or town is incorrect, the said sealer shall go to the place where such weight, measure, or balance is, and shall test the same and mark it according

to the result of the test applied thereto; and if the same is incorrect and cannot be adjusted, the said sealer shall attach a notice thereto certifying that fact, and forbidding the use thereof until it has been made to conform to the authorized standard. Any person using a weight, measure, or balance after a sealer has demanded permission to test the same and has been refused such permission, shall be liable to a penalty of not less than ten nor more than one hundred dollars.

§ 1234. All weights, measures, and balances that cannot be made to conform to the standard shall be stamped "condemned," or "CD.," by the sealer; and no person shall thereafter use the same for weighing or measuring any commodity sold or exchanged under the penalties provided in the case of the use of false weights and measures.

§ 1235. If a person knowingly uses a false weight, measure, scale, balance, or beam, or, after a weight, measure, scale, balance, or beam has been adjusted and sealed, alters it so that it does not conform to the public standard, and fraudulently makes use of it, he shall forfeit for each offence fifty dollars, one half to the use of the city or town, and one half to the use of the complainant. And every sealer, who has reasonable cause to believe that a weight, measure, scale, balance, or beam has been altered since it was last adjusted and sealed, shall enter the premises in which it is kept or used, and shall examine the same.

§ 1236. Each sealer of weights and measures, including the deputies of the treasurer and county treasurers, shall receive a fee of three cents for every weight, measure, scale, beam, or balance by him sealed, except platform balances. For sealing each platform balance weighing five thousand pounds and upwards, the sealer shall receive one dollar; and for sealing each platform balance weighing less than that amount, fifty cents. Every sealer shall also have a reasonable compensation for all repairs, alterations, and adjustments which it may be necessary for him to make.

§ 1237. The city council of a city may by ordinance, and a town may by by-law, provide that the sealer of weights and measures for their city or town shall be paid by a salary, and that he shall account for and pay into the treasury of the

city or town the fees received by him by virtue of his office ; and where such salary is paid, no fees shall be charged for the services stated in § 1226 *ante*.

§ 1238. The vibrating steelyards, which have been heretofore allowed and used in this Commonwealth, may continue to be used : *provided*, that each beam and the poises thereof are annually tried, proved, and sealed by a sealer of weights and measures, like other beams and weights. Pub. Stats. ch. 65, §§ 9-24.

§ 1239. When commodities are sold by the hundred-weight, it shall be understood to mean the net weight of all packages from one to one hundred pounds avoirdupois ; and all contracts concerning goods sold by weight shall be understood and construed accordingly.

§ 1240. Every public weigher of goods or commodities shall weigh the same according to the provisions of the preceding section, and shall make his certificate accordingly ; and for each refusal or neglect he shall forfeit a sum not exceeding ten dollars. Every weigher of goods appointed by a city or town, and every weigher for hire or reward, shall be deemed and taken to be a public weigher within the provisions of this section.

§ 1241. In every city and town in which the provisions of this section or the corresponding provisions of earlier laws have been or shall be accepted by the city council of the city, or by the inhabitants of the town at a legal meeting, every measure by which salt or grain is sold, in addition to being conformable in capacity and diameter to the public standards, shall have a bar of iron across the middle thereof at the top, to be approved by a sealer of weights and measures, and a bar or standards of iron from the centre of the first-mentioned bar to the centre of the bottom of the measure, to be approved in like manner ; and every such measure shall be filled by shovelling such salt or grain into the same, and the striking thereof shall always be lengthwise of the first-described bar. And whoever sells or exposes to sale any salt or grain in any other measure, or fills or strikes such measure in any other manner, than is provided in this section, shall forfeit fifty cents for every bushel of salt or grain so measured, filled, or

stricken : *provided*, that salt may be measured from vessels in such measures as are used by the government of the United States, and that nothing contained in this section shall prevent the measuring of salt in tubs, or in any proportional parts of hogsheads, without bars, as may be determined by any city or town.

§ 1242. The mayor and aldermen or selectmen of any city or town in which boilers and heavy machinery are sold shall appoint one or more persons, not engaged in the manufacture or sale thereof, to be weighers of boilers and heavy machinery, who shall be sworn to the faithful discharge of their duties, and shall be removable at the pleasure of the board appointing them. They shall receive such fees as may be ordered by such board, which fees shall be paid by the seller. Pub. Stats. ch. 65, §§ 27-30.

§ 1243. All apparatus for linear measurements used by a land surveyor shall be tested and proved once in each year by the sealer of weights and measures in the town or city where such surveyor resides, or where he has his office, and all chains, tapes, or other implements used for linear measurements that cannot be made to conform to the standard shall be marked "condemned," or "*CD.*," by the sealer of weights and measures, and no surveyor shall thereafter use the same for measuring land, under the penalty of twenty dollars for each offence.

§ 1244. The mayor and aldermen of a city, or the selectmen of a town, may, if they deem it expedient so to do, appoint a suitable and competent person, other than the sealer of weights and measures, to test and prove such measuring implements.

§ 1245. The standards used for such tests shall be based upon and shall correspond to the standards furnished by the Commonwealth to sealers of weights and measures.

§ 1246. The fees for such testing and proof of each article of apparatus shall be twenty-five cents, to be paid by the person presenting the apparatus for test. Pub. Stats. ch. 64, §§ 6-9.

§ 1247. A sealer or deputy sealer of weights and measures, or any person specially authorized thereto by the mayor and

aldermen of a city, or selectmen of a town, may seize any measures in the possession of a vendor of merchandise or of articles offered for sale and used or intended to be used for measuring merchandise, or articles offered for sale and not made of the shape and dimensions required by law and sealed as so required, and having seized any such measures shall make complaint against such vendor of having in his possession such measures with intent to use the same in violation of law. The possession of any such measures by such vendor shall be *prima facie* evidence that the said measures were intended to be used in violation of law, and any person convicted on the complaint aforesaid shall be subject to a fine not exceeding twenty dollars for each offence, and the court so convicting shall cause said measures to be destroyed. Sts. 1883, ch. 225.

§ 1248. In the sale by measure of coal in quantities less than five hundred pounds, the baskets or measures used in measuring the same shall be of a cylindrical form, of the following dimensions in the inside thereof, to wit: nineteen inches in diameter in every part, and nine inches in depth, measured from the highest part of the bottom thereof, each of which shall be deemed to be of the capacity of one bushel; or nineteen inches in diameter in every part, and four inches and one half in depth, measured from the highest part of the bottom thereof, each of which shall be deemed to be of the capacity of one half-bushel. Such measures, in selling, shall be filled level full, and every such measure shall be sealed by a sealer of the city or town in which the person using the same usually resides or does business. Sts. 1883, ch. 218, § 1.

§ 1249. The capacity of the baskets or measures mentioned in the preceding section shall be plainly marked or stamped thereon by the sealer of weights and measures. Coal sold in accordance with the provisions of said section shall be delivered to the purchasers thereof in the same baskets or measures that are used in measuring such coal. Sts. 1884, ch. 70, § 1.

CHAPTER XVII.

THE REGULATION OF FISHERIES.

§ 1250. A city or town, either alone or with another city or town, may, for the purpose of cultivating useful fishes, and under such conditions and restrictions as the commissioners of inland fisheries may prescribe, take a lease of a great pond situated either wholly or partly within its limits, and may appropriate money therefor. Pub. Stats. ch. 91, § 14.

§ 1251. The county commissioners for each county shall, upon the request and at the expense of any party claiming to be interested in any great pond, cause the same to be measured in the month of July, and such measurement when determined shall be recorded in the town clerk's office of each town within which such pond is situated; and no arm or branch shall be included as a part of a pond, unless it is at least fifty feet in width and one foot in depth.

§ 1252. The selectmen of a town may measure ponds wholly within the town in the manner provided in the preceding section, and such measurement shall be recorded in the town clerk's office.

§ 1253. A pond not more than twenty acres in area, bounded in part by land belonging to a town or county, shall only become the exclusive property of the individual proprietors as to the fisheries therein upon payment to the town treasurer, county commissioners, or state treasurer, of a just compensation for their respective rights therein, to be determined by a board of three persons, one of whom shall be one of the riparian proprietors of said pond, one the chairman of the board of selectmen, if the rights of a town are in question, or of the county commissioners, if the rights of a county or the Commonwealth are in question, and one to be appointed by the commissioners on inland fisheries. Pub. Stats. ch. 91, §§ 21-23.

§ 1254. The mayor and aldermen of cities, and the selectmen of towns, bordering on the Connecticut or Merrimack River shall appoint and fix the compensation of one or more suitable persons as fish-wardens within their respective cities and towns, who shall, respectively, make complaint of all offences under sections thirty-two, thirty-five, and forty of chapter ninety-one of the Public Statutes. Pub. Stats. ch. 91, § 42.

§ 1255. A city or town may open ditches, sluiceways, or canals into any pond within its limits, for the introduction and propagation of herrings or alewives, and for the creation of fisheries for the same; and the land for opening such ditches, sluiceways, or canals within such city or town may be taken according to the provisions of the statutes which regulate and limit the taking of land for highways.

§ 1256. A city or town creating such fishery shall own the same, and may make any proper regulations concerning it, and may lease it for a period not exceeding five years, upon such terms as may be agreed upon. And a town may lease for a like period, and upon like terms, any fishery now owned by it, or any public fishery which has heretofore been regulated and controlled by such town. Pub. Stats. ch. 91, §§ 63, 64.

§ 1257. The mayor and aldermen of cities, and the selectmen of towns, when so instructed by their cities and towns, may control and regulate or prohibit the taking of eels, clams, quahaugs, and scallops within the same, including ponds which are now or may hereafter be leased by the commissioners; and may grant permits prescribing the times and methods of taking eels and the shell-fish above named within such cities and towns, and make such other regulations in regard to said fisheries as they may deem expedient. But any inhabitant of the Commonwealth, without such permit, may take, from the waters of his own or any other city or town, eels and the shell-fish above named for his own family use; and may take from the waters of his own city or town any of the shell-fish above named for bait, not exceeding three bushels, including shells, in any one day, but subject nevertheless to the general rules prescribed by the mayor and

aldermen and selectmen, respectively, as to the times and methods of taking such fish. Sts. 1889, ch. 391.

There is no private right to dig quahaugs in this Commonwealth; whatever right of that kind that a man has is a public right. *Com. v. Manimon*, 136 Mass. 456.

§ 1258. The mayor and aldermen of a city and the selectmen of a town lying upon tide water may authorize in writing any person to construct fish-weirs in said waters within the limits of such city or town for a term not exceeding five years: *provided*, such weirs cause no obstruction to navigation, and do not encroach on the rights of other persons. Pub. Stats. ch. 91, § 70.

§ 1259. The mayor and aldermen of a city, or selectmen of a town, in which there are oyster-beds, may grant a permit in writing to any person to take oysters from their beds, at such times, in such quantities, and for such uses, as they shall express in their permit; and every inhabitant of such city or town may, without such permit, take oysters from the beds therein for the use of his family, from the first day of September to the first day of June, not exceeding in any week two bushels, including the shells. Pub. Stats. ch. 91, § 94.

There is a public right to take shell-fish on the shore and flats below high-water mark and within one hundred rods of the upland, until the flats are enclosed by the proprietors. *Packard v. Ryder*, 144 Mass. 440.

§ 1260. The mayor and aldermen of a city, or selectmen of a town, may, by writing under their hands, grant a license for a term not exceeding ten years to any inhabitant thereof, to plant, grow, and dig oysters at all times of the year, upon and in any flats and creeks therein, at any place where there is no natural oyster-bed; not, however, impairing the private rights of any person, nor materially obstructing the navigable waters of any creek or bay. Pub. Stats. ch. 91, § 97; Sts. 1884, ch. 284, § 2.

§ 1261. Such license shall describe by metes and bounds the flats and creeks so appropriated, and shall be recorded by the city or town clerk before it shall have any force; and the person licensed shall pay to the mayor and aldermen or

selectmen, for their use, two dollars, and to the clerk fifty cents. Pub. Stats. ch. 91, § 98.

§ 1262. The provisions of the preceding sections, relating to the planting and growing of oysters, are hereby extended so as to apply to any waters where there is no natural oyster bed, not however impairing the private rights of any person, and not materially obstructing any navigable waters. Sts. 1884, ch. 284, § 1.

§ 1263. No license shall be granted to plant, grow and dig oysters under the three preceding sections, without a public hearing upon the matter, due notice of which shall be given in writing, to be posted in three or more public places in the town in which the premises lie, at least seven days before the time fixed for such hearing.

§ 1264. In case any person to whom such license shall be granted fails for two years thereafter to plant and grow oysters in the waters described in said license, the same shall be revoked by the officers who granted it, which revocation shall be recorded as is stated in § 1261, *ante*. Sts. 1885, ch. 220, §§ 1, 2.

§ 1265. The selectmen of any town, or mayor and aldermen of any city, may designate one or more constables for the detection and prosecution of any violation of the laws of the state relating to shell fisheries, within their respective jurisdictions. Each of said constables so designated may without warrant arrest any person found violating any of said laws, and detain him for prosecution not exceeding twenty-four hours, and may seize any boat or vessel used in such violation, together with her tackle, apparel, and furniture, with all implements belonging thereto, which shall be forfeited to the use of the town or city in which such seizure is made. Sts. 1885, ch. 220, § 6.

§ 1266. No license to plant, grow, and dig oysters shall be assigned or transferred without the written consent of the mayor and aldermen of the city, or the selectmen of the town in which the premises described in the license are situated, and no license shall be granted, assigned, or transferred to persons who are not inhabitants of the city or town wherein the licensed premises are situated.

§ 1267. The authority to dig, take, or carry away oysters from any premises for which a license has been granted, is hereby limited to the hours in each day between one hour before sunrise and one hour after sunset. Sts. 1886, ch. 299, §§ 1, 2.

CHAPTER XVIII.

THE MILITIA LAW IN ITS RELATION TO TOWNS.

(a) *Persons Subject to Military Duty.*

§ 1268. Every able-bodied male citizen, resident within this state, of the age of eighteen years and under the age of forty-five years, except persons exempt as stated in §§ 1269, 1270, and 1272 *post*; and idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime shall be enrolled in the militia. Persons so convicted after enrolment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him.

§ 1269. In addition to the persons exempted from enrolment in the militia by the laws of the United States, the persons hereinafter mentioned shall also be absolutely exempted from enrolment, viz.: Justices and clerks of courts of record; registers of probate and insolvency; registers of deeds, and sheriffs; officers who have held or may hold commissions in the regular or volunteer army or navy of the United States; officers who have held, for a period of five years, commissions in the militia of this or any other state of the United States, or who have been superseded and discharged, or who held commissions in any organization of the Massachusetts volunteer militia at the time of its disbandment; ministers of the gospel; practising physicians; superintendents, officers and assistants employed in or about either of the state hospitals, state almshouses, state prisons, jails, or houses of correction; keepers of lighthouses; conductors and engine-drivers of railroad trains; seamen actually employed on board of any vessel, or who have been so employed within three months next preceding the time of enrolment.

§ 1270. Every person of either of the religious denominations of Quakers or Shakers, who, on or before the first

Tuesday in May, annually, produces to the assessors of the city or town in which he resides a certificate signed by two or more of the elders or overseers, as the case may be, and countersigned by the clerk of the society with which he meets for public religious worship, shall be exempted from enrolment. The certificate shall be in form as follows:—

We, the subscribers of the society of the people called _____ in the _____ of _____, in the county of _____, do hereby certify that _____ is a member of our society, and that he frequently and usually attends religious worship with said society, and we believe he is conscientiously scrupulous of bearing arms.

A. B. } *Elders or Overseers*
C. D. } *(as the case may be).*

E. F., *Clerk.*

§ 1271. If elders or overseers of a society of Quakers or Shakers give the certificate provided in the preceding section to a person who does not profess the religious faith of their society, or who is not a member thereof, or who is not conscientiously scrupulous of bearing arms, each elder or overseer so offending shall forfeit two hundred dollars to the use of the Commonwealth, and be imprisoned not exceeding six months; and any person, claiming to be exempted from enrolment by virtue of such a certificate, who does not profess the religious faith, or is not a member of the society named therein, or who is not conscientiously scrupulous of bearing arms, shall be liable to the same penalty.

§ 1272. Engine-men or members of the fire department in a city or town shall be exempted from military duty by forthwith filing with the assessors of the city or town in which they reside a certificate that they are engine-men or members of the fire department as aforesaid, signed by the mayor and aldermen or fire commissioners of such city or the selectmen of such town; but when a member of a volunteer company is, after his enlistment, appointed an engine-man or member of the fire department, it shall not vacate his enlistment.

§ 1273. The enrolled militia shall be subject to no active duty except in case of war, invasion, the prevention of invasion, the suppression of riots, and to aid civil officers in the execution of the laws of the Commonwealth.

(b) *The Enrolment of Persons Subject to Military Duty.*

§ 1274. Assessors shall annually, in May or June, make a list of persons living within their respective limits liable to enrolment, and place a certified copy thereof in the hand of the clerks of their respective cities and towns, who shall place it on file with the records of such city or town, and annually, in May, June, or July, transmit returns of the militia thus enrolled to the adjutant-general.

§ 1275. Keepers of taverns or boarding-houses, and masters and mistresses of dwelling-houses, shall, upon application of the assessors within whose bounds their houses are situated, or of persons acting under them, give information of the names of persons residing in their houses liable to enrolment or to do military duty, and every such person shall, upon like application, give his name and age; and if such keeper, master, mistress, or person refuses to give such information, or gives false information, such keeper, master, or mistress shall forfeit twenty dollars, and such person shall forfeit twelve dollars, to be recovered on complaint of either of the assessors.

(c) *Calling out and Organizing the Enrolled Militia for Active Duty.*

§ 1276. When it is necessary to call out any portion of the enrolled militia for active duty, the commander-in-chief shall direct his order to the mayor and aldermen of cities, or to the selectmen of towns, who, upon receipt of the same, shall forthwith, by written oral notice to each individual, or by proclamation, appoint a time and place for the assembling of the enrolled militia in their city or town, and shall then and there proceed to draft as many thereof, or to accept as many volunteers, as is required by the order of the commander-in-chief, and shall forthwith forward to the commander-in-chief a list of the persons so drafted or accepted as volunteers.

§ 1277. Every member of the enrolled militia ordered out, or who volunteers or is detached or drafted, under the provisions hereof, who does not appear at the time and place designated by the mayor and aldermen or selectmen, or who

has not some able-bodied and proper substitute at such time and place, or does not pay to such mayor and aldermen or selectmen, for the use of the Commonwealth, seventy-five dollars within twenty-four hours from such time, or who does not produce a sworn certificate, from a physician in good standing, of physical disability to so appear, shall be taken to be a deserter, and dealt with accordingly. Sts. 1887, ch. 411, §§ 1-10.

§ 1278. Petitions for organizing volunteer companies may be granted by the commander-in-chief, due regard being had to a proper distribution of the force through the Commonwealth; such petition shall be accompanied by the approval of the mayor and aldermen of cities or the selectmen of towns in which a majority of the petitioners reside; but no new company shall be organized except as provided in the preceding section, if thereby the whole number of companies shall exceed the number established in this act.

§ 1279. No person shall be eligible to election or appointment to office in the militia of this Commonwealth who is not a male citizen of the United States, of eighteen years of age or upwards, resident in this state, or who is disqualified by law from enrolment in the militia; but no citizen otherwise qualified shall be ineligible to office in the militia from not having been enrolled therein. No person shall be eligible to military office who is under sentence of disability to hold office or command, or of suspension from command, in the military forces of the United States or of any state. No citizen of the Commonwealth above the age of forty-five years shall on account of such age be ineligible to office in the militia, nor incapable of serving in a volunteer company. Sts. 1887, ch. 411, §§ 24, 32.

§ 1280. Every person recruited for the Massachusetts volunteer militia shall sign an enlistment roll, in form as follows: —

I, whose signature is hereunto affixed, do hereby enlist, or re-enlist, as the case may be, in [company, battalion, or regiment or corps, etc.] of the Massachusetts volunteer militia for the term set against my name, subject to all laws and regulations which may govern the same; and I do declare that I know of no impediment

to my serving honestly and faithfully as a soldier for the term of my enlistment.

§ 1281. As soon as practicable, and not more than thirty days after such enlistment, the soldier shall be mustered in by a competent mustering officer, before whom he shall make oath as follows : —

I, _____, do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof; and I do also solemnly swear that I will faithfully observe and obey all laws and regulations for the government of the volunteer militia of said Commonwealth, and the orders of all officers elected or appointed over me. I do also solemnly swear that I will support the Constitution of the United States. So help me God.

Sworn to before me.

_____,
_____,
Mustering Officer.

And no enlisted man shall be held to duty in the volunteer militia, or receive any compensation or allowance, until he is so mustered in. Sts. 1887, ch. 411, §§ 59, 60.

§ 1282. The uniform of the volunteer militia shall consist of an overcoat, a coat, a fatigue blouse or jacket, a pair of trousers, a hat complete, and a fatigue cap for each enlisted man, the style of which shall be prescribed by the commander-in-chief, and uniforms hereafter provided shall be substantially alike for each arm of the service. No uniforms shall be provided by the state, except by a special appropriation for that purpose, in which case the purchase shall be made under such inspection as the commander-in-chief may direct. Sts. 1887, ch. 411, § 73.

(d) *Armories.*

§ 1283. The mayor and aldermen and selectmen shall provide for each regiment, battalion, corps of cadets, or portion of the volunteer militia, within the limits of their respective cities or towns, a suitable armory for the purpose of drill, and for the safe keeping of the arms, equipments, uniforms, and other military property furnished to such portion of the volunteer militia by the state; and shall also provide suitable

grounds or places for the parade, drill, and target-practice of the militia belonging to their respective cities and towns. They shall also provide for the headquarters, located within their limits of each brigade, regiment, separate battalion, or corps of cadets, a suitable room for the keeping of books, the transaction of business, and the instruction of officers. Necessary fuel and lights, or a reasonable allowance therefor, shall be furnished by cities and towns for each armory or headquarters located within their limits.

§ 1284. Where two or more companies of the same battalion are located within the limits of a city or town, the mayor and aldermen or selectmen thereof shall, if practicable, provide such companies with a drill hall, to be used by them in common, of capacity sufficient for battalion drill, together with a smaller room in the same building, for each of said companies, suitable for company meetings, and for the safe keeping of military property, as provided in the preceding section. The headquarters of each regiment, battalion, and corps of cadets shall be established with said commands, or portions thereof, as far as practicable.

§ 1285. Cities and towns in which regiments, battalions, corps of cadets or companies, or the headquarters of brigades, regiments, battalions, corps of cadets, signal and ambulance corps, or detachments of militia are located, may raise money, by taxation or otherwise, for the purpose of erecting suitable buildings for the armories or headquarters of such organizations.

§ 1286. When a company is formed from different places, the location of its armory shall be determined by a majority of its members, subject to the approval of the adjutant-general.

§ 1287. Armories provided for the militia shall not be used for any purpose whatever other than the legitimate uses of the commands occupying them; and no commander of any regiment, battalion, corps of cadets or company shall allow the armory or armories of his command to be let for other than a proper military purpose, unless by approval of the commander-in-chief and intermediate commanders.

§ 1288. Every officer whose command occupies, assembles or drills in any armory, drill hall, or building allowed accord-

ing to law for such purpose shall have control of such premises during the period of occupation, subject to the orders of his superior commanders; and any person who intrudes contrary to his orders or the orders of his superior commanders, or who interrupts, molests, obstructs, or insults the troops or any of them so occupying such premises may be dealt with as have been prescribed in §§ 118 and 119 of chapter 411 of the Acts of 1887 for like offences, at the discretion of the officer in charge of the troops or his superior commanders: *provided*, that nothing in this section shall be construed to prevent reasonable inspection of the premises by the mayor and aldermen or selectmen of a city or town, or by the owners of the premises, according to the terms which may have been specified therefor in a lease.

§ 1289. The mayor and aldermen of cities, and selectmen of towns, shall annually, on the first day of October, transmit to the adjutant-general a return, verified by oath or affirmation of at least two of their board, showing the name of each militia organization or headquarters furnished with an armory, the amount paid or charged for the rent thereof, and that the amount charged is fair and reasonable according to the value of real estate in their place. Returns not received by December first will not be allowed. Sts. 1887, ch. 411, §§ 90-96.

(e) *Tours of Duty, Inspection, and Drills.*

§ 1290. When there is in any city or town a tumult, riot, mob, or a body of men acting together by force, with attempt to commit a felony, or to offer violence to person or property, or by force and violence to break and resist the laws of the Commonwealth, or when such tumult, riot, or mob is threatened, and the fact is made to appear to the commander-in-chief, the sheriff of the county, the mayor of the city, or the selectmen of the town, the commander-in-chief may issue his order, or such sheriff, mayor, or selectmen may issue a precept, directed to any commander of a brigade, regiment, battalion, corps of cadets, or company, directing him to order his command, or a part thereof, to appear at a time and place therein specified, to aid the civil authority in suppressing such

violence, and supporting the laws ; which precept shall be in substance as follows : —

COMMONWEALTH OF MASSACHUSETTS.

—, ss.

L. S.

To (*insert the officer's title*) A. B., commanding (*insert his command*).

Whereas it has been made to appear to (*the sheriff, mayor, or the selectmen, as the case may be*) of the (*county, city, or town*) of that (*here state one or more of the causes above mentioned*) in our of , and that military force is necessary to aid the civil authority in suppressing the same: Now, therefore, we command you that you cause (*your command or such part thereof as may be desired*), armed and equipped with ammunition, and with proper officers, to parade at , on , then and there to obey such orders as may be given, according to law. Hereof fail not at your peril, and have you there this precept, with your doings returned thereon.

This precept shall be signed and properly attested as the act of such sheriff, mayor, or selectmen, and shall be under seal, and may be varied to suit the circumstances of the case ; and a copy of the same shall be immediately forwarded to the commander-in-chief.

§ 1291. The officer to whom the order of the commander-in-chief or brigade commander, or such precept, is directed shall forthwith order the troops therein called for to parade at the time and place appointed, and shall immediately notify the commander-in-chief of such order, directly, in the most expeditious manner, and by letter through the usual military channels. Sts. 1887, ch 411, §§ 99-100.

§ 1292. Such troops shall appear at the time and place appointed, armed, equipped, and with ball ammunition, and shall obey and execute such orders as they may then and there receive, according to law.

§ 1293. The mayor and aldermen of a city and the selectmen of a town to which men so ordered out, detached, or drafted belong, when required in writing by a commander of a regiment or detachment, shall provide carriages to attend them with further supplies of provisions, and to carry necessary baggage, and provide necessary camp equipage and

utensils, until notified by the commanding officer to desist; and shall present their accounts for the same to the quartermaster-general. For any neglect by such mayor and aldermen, or selectmen, under this section, such city or town shall forfeit to the use of the Commonwealth not less than twenty nor more than five hundred dollars. Sts. 1887, ch. 411, §§ 102, 104.

§ 1294. Each regiment, separate battalion, corps of cadets, and unattached company of the volunteer militia shall parade for drill one day in each year, at such time and place as the commander-in-chief may designate. The inspector-general, his assistants, or such other officers as the commander-in-chief shall indicate, shall attend such drills, and report upon the proficiency of the troops; such report to be made to the commander-in-chief, in writing, within thirty days from the date of such drill.

§ 1295. The volunteer militia shall perform five consecutive days of camp duty in each year; and unless the commander-in-chief prescribes the time, place, and manner of assembling the troops for that purpose, each commander of brigade or corps of cadets shall annually order an encampment of his command, by brigade, regiments, or battalions, at some time during the months of June, July, August, September, or October.

§ 1296. All encampments shall be held upon the state campground, unless otherwise directed by the commander-in-chief; and no ground shall be occupied for an encampment in the time of peace without the consent of the selectmen of the town, or mayor and aldermen of the city where the encampment is to be made, unless by order of the commander-in-chief; such ground to be paid for by the state on contracts to be approved by the adjutant-general. Sts. 1887, ch. 411, §§ 106-108.

§ 1297. Every company shall drill at least twice in each month. Battalion drills may count in the place of company drills. Nothing in this section shall prevent commanding officers ordering drills more frequently.

§ 1298. No parade or voluntary service shall be performed by any company, under arms or with state uniform, without

the approval of the regimental or separate battalion commander, or, if unattached, of its next superior.

§ 1299. Every commanding officer, when on duty, may ascertain and fix necessary bounds and limits to his parade or encampment, not including a road so as to prevent passing, within which no spectator shall enter without leave from such commanding officer. Whoever intrudes within the limits of the parade or encampment, after being forbidden, may be confined under guard during the time of parade or encampment, or a shorter time, at the discretion of the commanding officer; and whoever resists a sentry who attempts to put him or keep him out of such limits may be arrested by order of the commanding officer, and carried before the judge advocate general or a judge advocate on duty at the encampment, as provided in § 110 of chapter 411 of the Acts of 1887, or other court of justice having jurisdiction of the place, to be examined or tried upon complaint of the commanding officer for such assault or disturbance or breach of the peace. Sts. 1887, ch. 411, §§ 116-118.

§ 1300. United States forces or troops, or any portion of the militia parading or performing any duty according to law, shall have the right of way in any street or highway through which they may pass, provided the carriage of the United States mails, the legitimate functions of the police, and the progress and operations of fire engines and fire departments shall not be interfered with thereby. Sts. 1887, ch. 411, § 120.

§ 1301. No body of men whatsoever, other than the regularly organized corps of the militia, the troops of the United States, the ancient and honorable artillery company, the veteran artillery association of Newburyport, the veteran cadet association of Salem, the veteran association of the independent corps of cadets of Boston, the Salem light infantry veteran association, the veteran artillery association of Amesbury and Salisbury, and the Boston light infantry association, shall associate themselves together at any time as a military company or organization, for drill or parade in public with fire-arms, in any city or town of this Commonwealth, without the license of the governor thereof; and all applications for such

license must be approved by the mayor and aldermen of cities, and selectmen of towns, in which such organizations or associations may be located, which may at any time be revoked; nor shall any city or town raise or appropriate any money toward arming, equipping, uniforming, or in any way supporting, sustaining, or providing drill rooms or armories for any such body of men: *provided*, that associations wholly composed of soldiers and sailors honorably discharged from the service of the United States may parade at any time in public with fire-arms, having first obtained the written permission so to do of the mayor and aldermen of the cities, or selectmen of the towns, in which they desire to parade; and *provided, further*, that students in educational institutions where military science is a prescribed part of the course of instruction may, with the consent of the governor, drill and parade with fire-arms in public, under the superintendence of their teachers; and *provided, also*, that the provisions of this act shall not affect the provisions of chapter sixty-seven of the resolves of the year eighteen hundred and ninety which provides that regularly organized camps of the sons of veterans be permitted to parade their color guards of ten men armed with fire-arms in public at all times. Sts. 1890, ch. 425, § 10.

I N D E X.

I N D E X.

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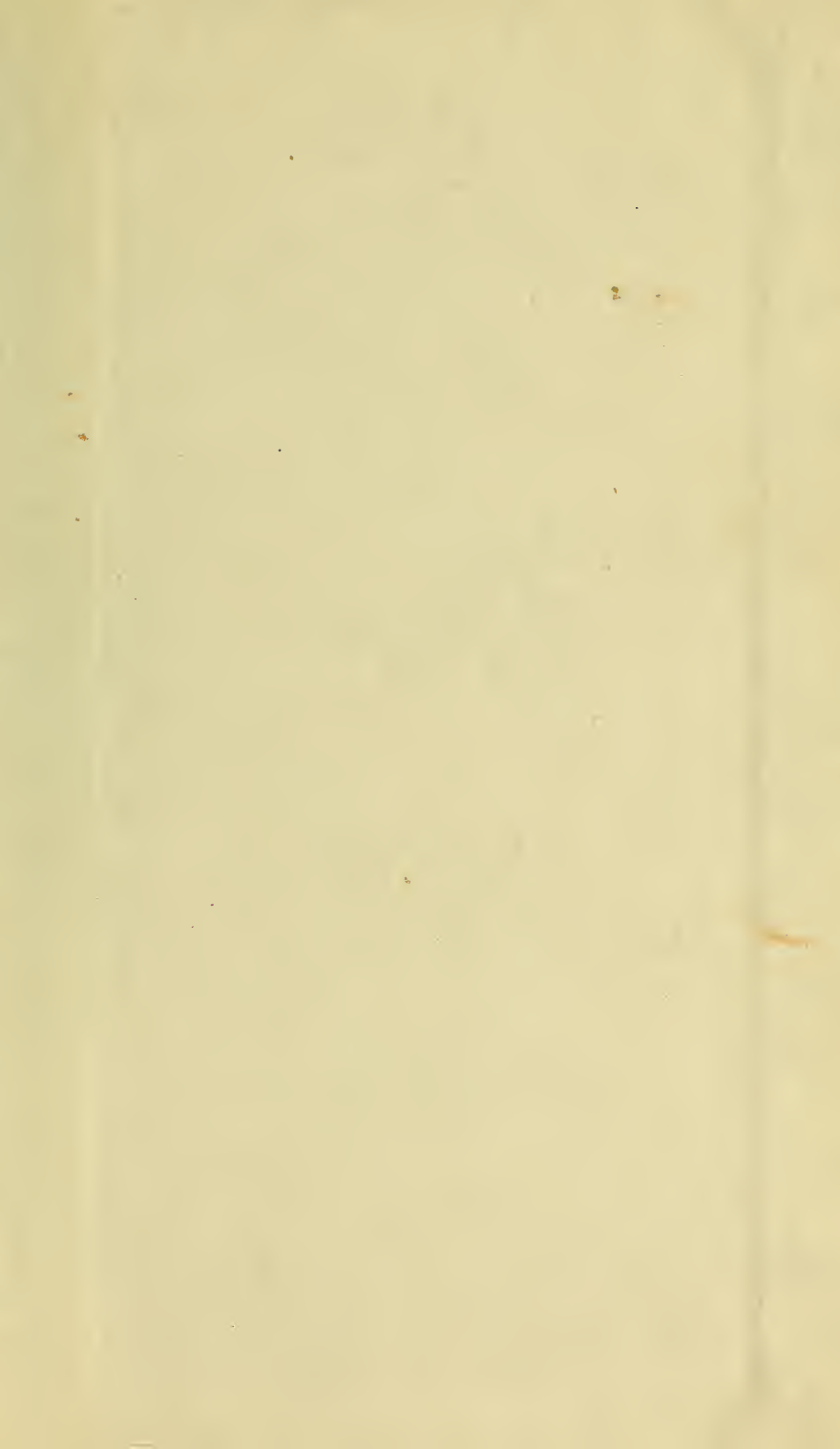
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