

**THE  
CONSOLIDATED LAWS**

of the

**STATE OF NEW YORK**

Prepared pursuant to Laws 1904 Chapter 664 by the

**Board of Statutory Consolidation**

passed at the

**ONE HUNDRED AND THIRTY-SECOND SESSION OF THE LEGIS-  
LATURE BEGUN JANUARY 6, 1909, AND ENDED APRIL  
30, 1909, IN THE CITY OF ALBANY AS AMENDED  
BY THE LEGISLATURE OF 1909**

together with

**THE PUBLIC SERVICE COMMISSIONS LAW  
AND THE RAILROAD LAW**

and

Published by the State under the supervision of the Board  
pursuant to Laws 1909 Chapter 458

**OFFICIAL EDITION**

**Vol. IV**



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Pursuant to chapter 458 of the Laws of 1909, I, Samuel S. Koenig, Secretary of State, certify that the Consolidated Laws herein and the amendments thereto are a correct transcript of the text of the original laws and of the whole thereof and may be read in evidence from this volume.

SAMUEL S. KOENIG,

*Secretary of State of the State of New York.*

September 1, 1909.





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**CONSOLIDATED LAWS**

**OF THE**

**STATE OF NEW YORK**

**1909**



# CONSOLIDATED LAWS OF NEW YORK.

PASSED AT THE ONE HUNDRED AND THIRTY-SECOND REGULAR SESSION OF THE LEGISLATURE, BEGUN THE SIXTH DAY OF JANUARY, 1909, AND ENDING THE THIRTIETH DAY OF APRIL, 1909, AT THE CITY OF ALBANY.

## PENAL LAW

### Laws 1909, Chap. 88.

AN ACT providing for the punishment of crime, constituting chapter forty of the consolidated laws.

Became a law March 12, 1909, with the approval of the Governor. Passed by a two-thirds vote.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

## CHAPTER 40 OF THE CONSOLIDATED LAWS

### PENAL LAW

- Article
1. Short title and definitions (§§ 1-3).
  2. General provisions (§§ 20-43).
  4. Abduction (§§ 70, 71).
  6. Abortion (§§ 80-82).
  8. Adultery (§§ 100-103).
  10. Advertising (§§ 120, 121).
  12. Agents (§§ 140-143).
  14. Anarchy (§§ 160-166).
  16. Animals (§§ 180-196).
  18. Arson (§§ 220-227).
  20. Assault (§§ 240-246).
  22. Attempt to commit crime (§§ 260-262).
  24. Attorneys (§§ 270-280).
  26. Banking (§§ 290-302).
  28. Barratry (§§ 320-323).
  30. Bigamy (§§ 340-343).
  32. Bills of lading, receipts and vouchers (§§ 360-367).
  34. Bribery and corruption (§§ 370-381).
  36. Bucket shops (§§ 390-394).
  38. Burglary (§§ 400-408).
  40. Business and trade (§§ 420-443).
  42. Canals (§§ 460-465).
  44. Children (§§ 480-493).
  46. Civil rights (§§ 510-516).
  48. Coercion (§§ 530-533).
  50. Communication (§§ 550-553).
  52. Compounding crime (§§ 570, 571).
  54. Conspiracy (§§ 580-583).
  56. Contempt of court (§§ 600-602).
  58. Conviction (§ 610).
  60. Convict made goods (§ 620).

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- Article 62. Convicts (§§ 640-644).  
 64. Corporations (§§ 660-669).  
 66. Crime against nature (§§ 690, 691).  
 68. Disguises (§§ 710-713).  
 70. Disorderly conduct (§§ 720, 721).  
 72. Dueling (§§ 730-737).  
 74. Elective franchise (§§ 750-782).  
 76. Evidence (§§ 810-817).  
 78. Exhibitions (§§ 830-834).  
 80. Extortion and threats (§§ 850-860).  
 82. Ferries (§§ 870, 871).  
 84. Forgery (§§ 880-895).  
 86. Frauds and cheats (§§ 920-949).  
 88. Gambling (§§ 970-997).  
 90. Habitual criminals (§§ 1020-1022).  
 92. Hazing (§ 1030).  
 94. Homicide (§§ 1040-1055).  
 96. Horse racing (§§ 1080-1082).  
 98. Husband and wife (§§ 1090-1092).  
 100. Ice (§ 1100).  
 102. Incest (§ 1110).  
 104. Incompetent persons (§§ 1120-1122).  
 106. Indecency (§§ 1140-1147).  
 108. Indians (§§ 1160, 1161).  
 110. Insolvency (§§ 1170-1173).  
 112. Insurance (§§ 1190-1202).  
 114. Intoxication (§§ 1220, 1221).  
 116. Juries and jurors (§§ 1230-1237).  
 118. Kidnapping (§§ 1250-1255).  
 120. Labor (§§ 1270-1278).  
 122. Larceny (§§ 1290-1310).  
 124. Legislature (§§ 1320-1331).  
 126. Libel (§§ 1340-1352).  
 128. Logs (§ 1360).  
 130. Lotteries (§§ 1370-1386).  
 132. Maiming (§§ 1400-1404).  
 134. Malicious mischief (§§ 1420-1435).  
 134. Malicious mischief (§§ 1420-<sup>\*</sup>1435).  
 136. Marriages (§ 1450).  
 138. Married women (§ 1460). (*Article heading repealed by L. 1909, ch. 524, in effect May 27, 1909.*)  
 140. Meetings (§§ 1470-1472).  
 142. Military (§§ 1480-1487).

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\* So in original.

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- Article 144. Navigation (§§ 1500-1509).  
146. Negotiable instruments (§§ 1520, 1521).  
148. Nuisances (§§ 1530-1533).  
150. Oysters (§§ 1550, 1551).  
152. Passage tickets (§§ 1560-1571).  
154. Pawnbrokers (§§ 1590-1592).  
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158. Perjury and subornation of perjury (§§ 1620-1634).  
160. Poor persons (§ 1650).  
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166. Public health (§§ 1740-1763).  
168. Public justice (§§ 1780-1792).  
170. Public offices and officers (§§ 1820-1876).  
172. Public safety (§§ 1890-1913).  
174. Punishment (§§ 1930-1942).  
176. Quarantine (§§ 1960-1964).  
178. Railroads (§§ 1980-1991).  
180. Rape (§§ 2010-2013).  
182. Real property (§§ 2030-2039).  
184. Records and documents (§§ 2050, 2051).  
186. Religion (§§ 2070-2073).  
188. Riots and unlawful assemblies (§§ 2090-2097).  
190. Robbery (§§ 2120-2129).  
192. Sabbath (§§ 2140-2153).  
194. Salt works (§ 2170).  
195. Seduction (§§ 2175-2177).  
196. Sentence (§§ 2180-2198).  
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200. Societies and orders (§ 2240).  
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216. Weights and measures (§§ 2410-2417).  
218. Witness (§§ 2440-2445).  
220. Women (§§ 2460, 2461).  
222. Wrecks (§§ 2480-2482).  
224. Repeal of provisions of penal law must be explicit; laws repealed; time of taking effect (§§ 2500-2502).



**ARTICLE 1****Short Title and Definitions**

- Section 1. Short title.  
2. Definitions.  
3. Construction of terms.

§ 1. **Short title.** This chapter shall be known as "Penal Law."

§ 2. **Definitions.**

Crime. A "crime" is an act or omission forbidden by law, and punishable upon conviction by:

1. Death; or,
2. Imprisonment; or,
3. Fine; or,
4. Removal from office; or,
5. Disqualification to hold any office of trust, honor or profit under the state; or,
6. Other penal discipline.

Division of crime. A crime is:

1. A felony; or,
2. A misdemeanor.

Felony. A "felony" is a crime which is or may be punishable by:

1. Death; or,
2. Imprisonment in a state prison.

Misdemeanor. Any other crime is a "misdemeanor."

Principal. A person concerned in the commission of a crime, whether he directly commits the act constituting the offense or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime, is a "principal."

Accessory. A person who, after the commission of a felony, harbors, conceals, or aids the offender, with intent that he may avoid or escape from arrest, trial, conviction, or punishment, having knowledge or reasonable ground to believe that such offender is liable to arrest, has been arrested, is indicted or convicted, or has committed a felony, is an "accessory" to the felony.

Attempt to commit a crime. An act, done with intent to commit a crime, and tending but failing to effect its commission, is "an attempt to commit that crime."

§ 3. **Construction of terms.** In construing this chapter or an indictment or other pleading in a case provided for

by this chapter, the following rules must be observed, except when a contrary intent is plainly declared in the provision to be construed, or plainly apparent from the context thereof:

1. Each of the terms "neglect," "negligence," "negligent," and "negligently," imports a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns;

2. Each of the terms "corrupt" and "corruptly" imports a wrongful desire to acquire, or cause some pecuniary or other advantage to or by the person guilty of the act or omission referred to or some other person;

3. Each of the terms "malice" and "maliciously" imports an evil intent or wish or design to vex, annoy or injure another person, or to maltreat or injure an animal;

4. The term "knowingly" imports a knowledge that the facts exist which constitute the act or omission a crime, and does not require knowledge of the unlawfulness of the act or omission;

5. Where an intent to defraud constitutes a part of a crime, it is not necessary to aver or prove an intent to defraud any particular person;

6. The term "vessel" includes ships, steamers, canal boats, and every boat or structure adapted to navigation or movement from place to place by water, either upon the ocean, lakes, rivers, or artificial water ways;

7. The term "signature" includes any memorandum, mark or sign, written with intent to authenticate any instrument or writing, or the subscription of any person thereto;

8. The term "writing" includes both printing and writing;

9. The terms "reputed house of prostitution or assignation," "house of prostitution," "house of ill-fame or assignation," "disorderly house," include all premises which by common fame or report are used for purposes of prostitution or assignation.

## ARTICLE 2

### General Provisions

- Section 20. Objects of penal law.
21. General rules of construction of this chapter.
22. Effect of chapter.
23. Civil rights and remedies not affected.
24. Civil remedies preserved.
25. Ambassadors and foreign ministers excepted from punishment.
26. Principal and accessory.
27. All principals in misdemeanors.

- Section 28. Acts punishable under foreign law.
29. Violation of statute which imposes no penalty is a misdemeanor.
30. Jury to find the degree of a crime.
31. Conviction must precede punishment.
32. Acquittal or conviction bars indictment for another degree.
33. Foreign conviction or acquittal a defense.
34. Morbid criminal propensity no defense.
35. Omission to perform act not punishable if act is performed by another.
36. Limit of fine where statute does not specify amount.
37. Proceedings to impeach preserved.
38. Application of this chapter to prior offenses.
39. Military punishments preserved.
40. Certain statutes continued in force.
41. Manner of prosecution and conviction.
42. Rule when act done in defense of self or another.
43. Penalty for acts for which no punishment is expressly prescribed.

**§ 20. Objects of Penal Law.** This chapter specifies the classes of persons who are deemed capable of crimes, and liable to punishment therefor; defines the nature of the various crimes; and prescribes the kind and measure of punishment to be inflicted for each.

**§ 21. General rules of construction of this chapter.** The rule that a penal statute is to be strictly construed does not apply to this chapter or any of the provisions thereof, but all such provisions must be construed according to the fair import of their terms, to promote justice and effect the objects of the law.

**§ 22. Effect of chapter.** No act or omission begun after the beginning of the day on which this chapter takes effect as a law, shall be deemed criminal or punishable, except as prescribed or authorized by this chapter, or by some statute of this state not repealed by it. Any act or omission begun prior to that day may be inquired of, prosecuted and punished in the same manner as if this chapter had not been passed.

**§ 23. Civil rights and remedies not affected.** The provisions of this chapter are not to be deemed to affect any civil rights or remedies existing at the time when this chapter takes effect, by virtue of the common law or of any provision of statute.

**§ 24. Civil remedies preserved.** The omission to specify or affirm in this chapter any liability to any dam-

ages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

**§ 25. Ambassadors and foreign ministers excepted from punishment.** Ambassadors and other public ministers from foreign governments, accredited to the president or government of the United States, and recognized according to the laws of the United States, with their secretaries, messengers, families and servants, are not liable to punishment in this state, but are to be returned to their own country for trial and punishment.

**§ 26. Principal and accessory.** A party to a crime is, either:

1. A principal; or,
2. An accessory.

**§ 27. All principals in misdemeanors.** A person who commits or participates in an act which would make him an accessory if the crime committed were a felony, is a principal and may be indicted and punished as such, if the crime be a misdemeanor.

**§ 28. Acts punishable under foreign law.** An act or omission declared punishable by this chapter, is not less so because it is also punishable under the laws of another state, government or country, unless the contrary is expressly declared in this chapter.

**§ 29. Violation of statute which imposes no penalty is a misdemeanor.** Where the performance of any act is prohibited by a statute, and no penalty for the violation of such statute is imposed in any statute, the doing such act is a misdemeanor.

**§ 30. Jury to find the degree of a crime.** Whenever a crime is distinguished into degrees, the jury, if they convict the prisoner, must find the degree of the crime of which he is guilty.

**§ 31. Conviction must precede punishment.** The punishments prescribed by this chapter can be inflicted only upon a legal conviction in a court having jurisdiction.

**§ 32. Acquittal or conviction bars indictment for another degree.** Where a prisoner is acquitted or convicted, upon an indictment for a crime consisting of different degrees, he can not thereafter be indicted or tried for the same crime, in any other degree, nor for an attempt to commit the crime so charged, or any degree thereof.

**§ 33. Foreign conviction or acquittal a defense.**

Whenever it appears upon the trial of an indictment, that the offense was committed in another state or country, or under such circumstances that the courts of this state or government had jurisdiction thereof, and that the defendant has already been acquitted or convicted on the merits upon a criminal prosecution under the laws of such state, or country, founded upon the act or omission in respect to which he is upon trial, such former acquittal or conviction is a sufficient defense.

**§ 34. Morbid criminal propensity no defense. A**

morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.

**§ 35. Omission to perform act not punishable if act is performed by another.**

No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

**§ 36. Limit of fine where statute does not specify amount.**

Where, in this chapter, or in any other statute making any crime punishable by a fine, the amount of the fine is not specified, a fine of not more than five hundred dollars may be imposed.

**§ 37. Proceedings to impeach preserved.**

The omission to specify or affirm in this chapter any ground or forfeiture of a public office or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension.

**§ 38. Application of this chapter to prior offenses.**

Nothing contained in any provision of this chapter applies to an offense committed or other act done, at any time before the day when this chapter takes effect. Such an offense must be punished according to, and such act must be governed by, the provisions of law existing when it is done or committed, in the same manner as if this chapter had not been passed; except that, whenever the punishment or penalty for an offense is mitigated by any provision of this chapter, such provision may be applied to any sentence or

judgment imposed for the offense after this chapter takes effect. An offense specified in this chapter, committed after the beginning of the day when this chapter takes effect, must be punished according to the provisions of this chapter and not otherwise.

**§ 39. Military punishments preserved.** This chapter does not affect any power conferred by law upon any court-martial or other military authority or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal or officers, to impose or inflict punishment for a contempt; nor any provisions of the laws relating to apprentices, bastards, disorderly persons, Indians and vagrants, except so far as any provisions therein are inconsistent with this chapter.

**§ 40. Certain statutes continued in force.** Nothing in this chapter affects any of the provisions of the following statutes; but such statutes are recognized as continuing in force, notwithstanding the provisions of this chapter; except so far as they have been repealed or affected by subsequent laws:

1. All acts incorporating municipal corporations, and acts amending acts of incorporation or charters of such corporation, or providing for the election or appointment of officers therein, or defining the powers and duties of such officers;

2. All acts relating to emigrants or other passengers in vessels coming from foreign countries, except as provided in section fifteen hundred and sixty-one of this chapter;

3. All acts for the punishment of intoxication or the suppression of intemperance or regulating the sale or disposition of intoxicating or spirituous liquors;

4. All acts defining and providing for the punishment of offenses and not defined and made punishable by this chapter.

**§ 41. Manner of prosecution and conviction.** The manner of prosecuting and convicting criminals is regulated by the code of criminal procedure.

**§ 42. Rule when act done in defense of self or another.** An act, otherwise criminal, is justifiable when it is done to protect the person committing it, or another whom he is bound to protect, from inevitable and irreparable personal injury, and the injury could only be prevented by the act, nothing more being done than is necessary to prevent the injury.

**§ 43. Penalty for acts for which no punishment is expressly prescribed.** A person who wilfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the

public peace or health, or which openly outrages public decency, for which no other punishment is expressly prescribed by this chapter, is guilty of a misdemeanor; but nothing in this chapter contained shall be so construed as to prevent any person from demanding an increase of wages, or from assembling and using all lawful means to induce employers to pay such wages to all persons employed by them, as shall be a just and fair compensation for services rendered.

## ARTICLE 4

### Abduction

Section 70. Abduction.

71. No conviction to be had on unsupported testimony.

§ 70. **Abduction.** A person who:

1. Takes, receives, employs, harbors or uses, or causes or procures to be taken, received, employed or harbored or used, a female under the age of eighteen years, for the purpose of prostitution; or, not being her husband, for the purpose of sexual intercourse; or, without the consent of her father, mother, guardian or other person having legal charge of her person, for the purpose of marriage; or,

2. Inveigles or entices an unmarried female, of previous chaste character, into a house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution or sexual intercourse; or,

3. Takes or detains a female unlawfully against her will, with the intent to compel her, by force, menace or duress, to marry him, or to marry any other person, or to be defiled; or,

4. Being parent, guardian or other person having legal charge of the person of a female under the age of eighteen years, consents to her taking or detaining by any person for the purpose of prostitution or sexual intercourse;

Is guilty of abduction and punishable by imprisonment for not more than ten years, or by a fine of not more than one thousand dollars, or by both.

§ 71. **No conviction to be had on unsupported testimony.** No conviction can be had for abduction or compulsory marriage, upon the testimony of the female abducted or compelled, unsupported by other evidence. (*Thus amended by L. 1909, ch. 524, in effect May 27, 1909.*)

Amendment of 1909 inserted the words "or compulsory marriage" and "or compelled".

## ARTICLE 6

### Abortion

Section 80. Definition and punishment of abortion.

81. Killing of child in attempting miscarriage.

82. Selling drugs or instruments to procure a miscarriage.

**§ 80. Definition and punishment of abortion.** A person who, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve the life of the woman, or of the child with which she is pregnant, either:

1. Prescribes, supplies, or administers to a woman, whether pregnant or not, or advises or causes a woman to take any medicine, drug, or substance; or,

2. Uses, or causes to be used, any instrument or other means,

Is guilty of abortion, and is punishable by imprisonment in a state prison for not more than four years, or in a county jail for not more than one year.

**§ 81. Killing of child in attempting miscarriage.** A pregnant woman, who takes any medicine, drug, or substance, or uses or submits to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is necessary to preserve her life, or that of the child whereof she is pregnant, is punishable by imprisonment for not less than one year, nor more than four years.

**§ 82. Selling drugs or instruments to procure a miscarriage.** A person who manufactures, gives or sells an instrument, a medicine or drug, or any other substance, with intent that the same may be unlawfully used in procuring the miscarriage of a woman, is guilty of a felony.

## ARTICLE 8

### Adultery

Section 100. Adultery defined.

101. Adultery a misdemeanor.

102. Punishment for adultery.

103. Conviction can not be had on unsupported testimony.

**§ 100. Adultery defined.** Adultery is the sexual intercourse of two persons, either of whom is married to a third person.

**§ 101. Adultery a misdemeanor.** A person who commits adultery is guilty of a misdemeanor.

**§ 102. Punishment for adultery.** A person convicted of a violation of this article is punishable by imprisonment in a penitentiary or county jail, for not more than six months or by a fine of not more than two hundred and fifty dollars, or by both.

**§ 103. Conviction can not be had on unsupported testimony.** A conviction under this article can not be had on



the uncorroborated testimony of the person with whom the offense is charged to have been committed.

## **ARTICLE 10**

### **Advertising**

Section 120. Advertising to procure divorces.

121. Affixing advertisement to property of another.

**§ 120. Advertising to procure divorces.** Whoever prints, publishes, distributes or circulates, or causes to be printed published, distributed or circulated any circular, pamphlet, card hand bill, advertisement, printed paper, book, newspaper or notice of any kind offering to procure or to aid in procuring any divorce, or the severance, dissolution, or annulment of any marriage, or offering to engage, appear or act as attorney or counsel in any suit for alimony or divorce or the severance, dissolution or annulment of any marriage, either in this state or elsewhere, is guilty of a misdemeanor. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state.

**§ 121. Affixing advertisement to property of another.** A person who places upon or affixes to, or causes or procures to be placed upon or affixed to, real property not his own, or a rock, tree, wall, fence, or other structure thereupon, without the consent of the owner, any words, characters, or device, as a notice of, or reference to, any article, business, exhibition, profession, matter or event, is punishable by imprisonment for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both.

The placing or affixing of any words, characters, device, or notice, of any article, business, or other thing, to or upon any property or place specified in this section, is presumptive evidence that the proprietor, vendor, or exhibitor thereof caused or procured the same to be so placed or affixed.

## **ARTICLE 12**

### **Agents**

Section 140. Agents must file statement of agency.

141. Failure to make and file statement a misdemeanor.

142. Duty and fees of county clerk.

143. Relief of principal from liability for future acts of agent.

**§ 140. Agents must file statement of agency.** Any person now carrying on or conducting a general mercantile or manufacturing business within this state, or hereafter commencing such business at or in a fixed location, as agent or manager for another shall, within thirty days after May sixteenth, eighteen hundred and ninety-three, or the commencement of such business, file a sworn statement, verified by such agent and principal, in the county clerk's office of the county within which said business is carried on, stating the nature of the business and the full name and residence of such principal.

**§ 141. Failure to make and file statement a misdemeanor.** Any person failing to make and file the statement required by section one hundred and forty, shall be guilty of a misdemeanor.

**§ 142. Duty and fees of county clerk.** The county clerk shall keep a register of the names of such agents in alphabetical order, and of their principals, for which registering and filing he shall receive a fee of one dollar; and copies of such certificate and registry certified by him and the affidavit of such publication shall be evidence.

**§ 143. Relief of principal from liability for future acts of agent.** Any person or principal may be relieved from all liability for the future act of such agent or manager by filing in the office of the county clerk where the original statement appointing such agent or manager is filed, a statement revoking such agent or managership, to take effect ten days after the filing thereof; provided he shall, at or before the date of such filing, serve either personally or by mail, in the manner prescribed by the code of civil procedure for service of papers in civil actions, a copy of such revocation statement on each person or firm with whom such principal shall have transacted any business through such agent or manager within six months previous to such filing. But failure to make service of such statement shall not invalidate such revocation except as to persons not so served, said statement to be acknowledged before an officer authorized to take acknowledgments of deeds and to be published in at least three consecutive issues of the newspaper published in the county and nearest to the place where the business of said agent or manager is carried on; but if no newspaper is published in said county, then said statement shall be published in the newspaper published nearest to the place where such business shall be carried on.

**ARTICLE 14****Anarchy**

- Section 160. Criminal anarchy defined.
161. Advocacy of criminal anarchy.
162. Assemblages of anarchists.
163. Permitting premises to be used for assemblages of anarchists.
164. Liability of editors and others.
165. Leaving state with intent to elude provisions of this article.
166. Witnesses' privilege.

**§ 160. Criminal anarchy defined.** Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means. The advocacy of such doctrine either by word of mouth or writing is a felony.

**§ 161. Advocacy of criminal anarchy.** Any person who:

1. By word of mouth or writing advocates, advises or teaches the duty, necessity or propriety of overthrowing or overturning organized government by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means; or,

2. Prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any book, paper, document, or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means; or,

3. Openly, wilfully and deliberately justifies by word of mouth or writing the assassination or unlawful killing or assaulting of any executive or other officer of the United States or of any state or of any civilized nation having an organized government because of his official character, or any other crime, with intent to teach, spread or advocate the propriety of the doctrines of criminal anarchy; or,

4. Organizes or helps to organize or becomes a member of or voluntarily assembles with any society, group or assembly of persons formed to teach or advocate such doctrine,

Is guilty of a felony and punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

**§ 162. Assemblages of anarchists.** Whenever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal anarchy, as defined in section one hundred and sixty, such an assembly is unlawful, and every person voluntarily participating therein by his presence, aid or instigation, is guilty of a felony and punishable by imprisonment for not more than ten years, or by a fine of \*more than five thousand dollars, or both.

**§ 163. Permitting premises to be used for assemblages of anarchists.** The owner, agent, superintendent, janitor, caretaker or occupant of any place, building or room, who wilfully and knowingly permits therein any assemblage of persons prohibited by section one hundred and sixty-two, or who, after notification that the premises are so used permits such use to be continued, is guilty of a misdemeanor, and punishable by imprisonment for not more than two years, or by a fine of not more than two thousand dollars, or both.

**§ 164. Liability of editors and others.** Every editor or proprietor of a book, newspaper or serial and every manager of a partnership or incorporated association by which a book, newspaper or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution therefor, the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes, by another who had no authority from him to make the publication and whose act was disavowed by him so soon as known.

**§ 165. Leaving state with intent to elude provisions of this article.** A person who leaves the state, with intent to elude any provision of this article, or to commit any act without the state, which is prohibited by this article, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this article if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

**§ 166. Witnesses' privilege.** No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this article upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

\* So in original.

**ARTICLE 16****Animals**

- Section 180. Definitions.
181. Keeping a place where animals are fought.
182. Instigating fights between birds and animals.
183. Officer may take possession of animals or implements used in fights among animals.
184. Disposition of animals or implements used in fights among animals.
185. Overdriving, torturing and injuring animals; failing to provide proper sustenance.
186. Abandonment of disabled animal.
187. Failure to provide proper food and drink to impounded animal.
188. Selling or offering to sell or exposing diseased animal.
189. Carrying animal in a cruel manner.
190. Poisoning or attempting to poison animals.
191. Throwing substance injurious to animals in public place.
192. Keeping milch cows in unhealthy places and feeding them with food producing unwholesome milk.
193. Transporting animals for more than twenty-four consecutive hours without unloading.
194. Running horses on highway.
195. Leaving state to avoid provisions of this article.
196. To whom fines and penalties are to be paid.

**§ 180. Definitions.** 1. The word "animal," as used in this article, does not include the human race, but includes every other living creature;

2. The word "torture" or "cruelty" includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted;

3. The words "impure and unwholesome milk" include all milk obtained from animals in a diseased or unhealthy condition, or which are fed on distillery waste, usually called "swill" or upon any substance in a state of putrefaction or fermentation.

**§ 181. Keeping a place where animals are fought.** A person who keeps or uses, or is in any manner connected with, or interested in the management of, or receives money for the admission of any person to, a house, apartment, pit or place kept

or used for baiting or fighting any bird or animal, and any owner or occupant of a house, apartment, pit or place who wilfully procures or permits the same to be used or occupied for such baiting or fighting, is guilty of a misdemeanor. Upon complaint under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, that the complainant has just and reasonable cause to suspect that any of the provisions of law relating to or in any wise affecting animals are being or about to be violated in any particular building or place, such magistrate shall immediately issue and deliver a warrant to any person authorized by law to make arrests for such offenses, authorizing him to enter and search such building or place, and to arrest any person there present found violating any of said laws, and to bring such person before the nearest magistrate of competent jurisdiction, to be dealt with according to law.

**§ 182. Instigating fights between birds and animals.** A person who sets on foot, instigates, promotes, or carries on, or does any act as assistant, umpire, or principal, or is a witness of, or in any way aids in or engages in the furtherance of any fight between cocks or other birds, or dogs, bulls, bears, or other animals, premeditated by any person owning, or having custody of such birds or animals, is guilty of a misdemeanor punishable by fine not less than ten dollars, nor more than one thousand dollars, or by imprisonment not less than ten days nor more than one year, or both.

**§ 183. Officer may take possession of animals or implements used in fights among animals.** Any officer authorized by law to make arrests may lawfully take possession of any animals, or implements, or other property used or employed, or about to be used or employed, in the violation of any provision of law relating to fights among animals. He shall state to the person in charge thereof, at the time of such taking, his name and residence, and also, the time and place at which the application provided for by the next section will be made.

**§ 184. Disposition of animals or implements used in fights among animals.** The officer, after taking possession of such animals, or implements, or other property, pursuant to the preceding section, shall apply to the magistrate before whom complaint is made against the offender violating such provision of law, for the order next hereinafter mentioned, and shall make and file an affidavit with such magistrate, stating therein the name of the offender charged in such complaint, the time, place and description of the animals, implements or other property so taken,

together with the name of the party who claims the same, if known, and that the affiant has reason to believe and does believe, stating the grounds of such belief, that the same were used or employed, or were about to be used or employed, in such violation, and will establish the truth thereof upon the trial of such offender. He shall then deliver such animals, implements, or other property, to such magistrate, who shall thereupon, by order in writing, place the same in the custody of an officer or other proper person in such order named and designated, to be by him kept until the trial or final discharge of the offender, and shall send a copy of such order, without delay, to the district attorney of the county. The officer or person so named and designated in such order, shall immediately thereupon assume such custody, and shall retain the same for the purpose of evidence upon such trial, subject to the order of the court before which such offender may be required to appear, until his final discharge or conviction. Upon the conviction of such offender, the animals, implements, or other property, shall be adjudged by the court to be forfeited. In the event of the acquittal or final discharge, without conviction, of such offender, such court shall, on demand, direct the delivery of the property so held in custody to the owner thereof.

**§ 185. Overdriving, torturing and injuring animals; failing to provide proper sustenance.** A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who wilfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a misdemeanor.

Nothing herein contained shall be construed to prohibit or interfere with any properly conducted scientific experiments or investigations, which experiments shall be performed only under the authority of the faculty of some regularly incorporated medical college or university of this state.

**§ 186. Abandonment of disabled animal.** A person being the owner or possessor, or having charge or custody of a maimed, diseased, disabled or infirm animal, who abandons such animal, or leaves it to die in a street, road or public place, or who allows it to lie in a public street, road or public place more than

three hours after he receives notice that it is left disabled, is guilty of a misdemeanor. Any agent or officer of the American society for the prevention of cruelty to animals, or of any society duly incorporated for that purpose, or any police officer, may lawfully destroy or cause to be destroyed any animal found abandoned and not properly cared for, appearing in the judgment of two reputable citizens called by him to view the same in his presence, to be glandered, injured or diseased past recovery for any useful purpose; or after such agent or officer has obtained in writing from the owner of such animal his consent to such destruction. When any person arrested is, at the time of such arrest, in charge of any animal or of any vehicle drawn by or containing any animal, any agent or officer of said society or societies or any police officer may take charge of such animal and of such vehicle and its contents, and deposit the same in a safe place of custody, or deliver the same into the possession of the police or sheriff of the county or place wherein such arrest was made, who shall thereupon assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a charge thereon.

**§ 187. Failure to provide proper food and drink to impounded animal.** A person who, having impounded or confined any animal, refuses or neglects to supply to such animal during its confinement a sufficient supply of good and wholesome air, food, shelter and water, is guilty of a misdemeanor. In case any animal shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any person, from time to time, and as often as it shall be necessary, to enter into and upon any pound in which any such animal shall be so confined, and to supply it with necessary food and water, so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

**§ 188. Selling or offering to sell or exposing diseased animal.** A person who wilfully sells or offers to sell, uses, exposes, or causes or permits to be sold, offered for sale, used or exposed, any horse or other animal having the disease known as glanders or farcy, or other contagious or infectious disease dangerous to the life or health of human beings, or animals, or which is diseased past recovery, or who refuses upon demand to deprive of life an animal affected with any such disease, is guilty of a misdemeanor.



**§ 189. Carrying animal in a cruel manner.** A person who carries or causes to be carried in or upon any vessel or vehicle or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture, is guilty of a misdemeanor.

**§ 190. Poisoning or attempting to poison animals.** A person who unjustifiably administers any poisonous or noxious drug or substance to an animal, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by an animal, whether such animal be the property of himself or another, is guilty of a misdemeanor.

**§ 191. Throwing substance injurious to animals in public place.** A person who wilfully throws, drops or places, or causes to be thrown, dropped or placed upon any road, highway, street or public place, any glass, nails, pieces of metal, or other substance which might wound, disable or injure any animal, is guilty of a misdemeanor.

**§ 192. Keeping milch cows in unhealthy places and feeding them with food producing unwholesome milk.** A person who keeps a cow or any animal for the production of milk, in a crowded or unhealthy place, or in a diseased condition, or feeds such cow or animal upon any food that produces impure or unwholesome milk, is punishable by a fine not less than fifty dollars, or imprisonment not exceeding one year, or by both.

**§ 193. Transporting animals for more than twenty-four consecutive hours without unloading.** A railway corporation, or an owner, agent, consignee, or person in charge of any horses, sheep, cattle, or swine, in the course of, or for transportation, who confines, or causes or suffers the same to be confined, in cars for a longer period than twenty-four consecutive hours, without unloading for rest, water and feeding, during ten consecutive hours, unless prevented by storm or inevitable accident, is guilty of a misdemeanor. In estimating such confinement, the time during which the animals have been confined without rest, on connecting roads from which they are received, must be computed. If the owner, agent, consignee, or other person in charge of any such animals refuses or neglects upon demand to pay for the care or feed of the animals while so unloaded or rested, the railway company, or other carriers thereof, may charge the expense thereof to the owner or consignee and shall have a lien thereon for such expense.

**§ 194. Running horses on highway.** A person driving any vehicle upon any plank road, turnpike or public highway,

who unjustifiably runs the horses drawing the same, or causes, or permits them to run, is guilty of a misdemeanor.

**§ 195. Leaving state to avoid provisions of this article.** A person who leaves this state with intent to elude any of the provisions of this article or to commit any act out of this state which is prohibited by them, or who, being a resident of this state, does any act without this state, pursuant to such intent, which would be punishable under such provisions, if committed within this state, is punishable in the same manner as if such act had been committed within this state.

**§ 196. To whom fines and penalties are to be paid.** All fines, penalties or forfeitures imposed or collected for a violation of the provisions of this article, or of any act for the prevention of cruelty to animals, now in force or hereafter passed, must be paid on demand to the American society for the prevention of cruelty to animals; except where the prosecution shall be instituted or conducted by a society for the prevention of cruelty to animals duly incorporated under the general laws of this state, in which case such fine, penalty or forfeiture must be paid on demand to such society. A constable or police officer must, and any agent or officer of any of said societies may, arrest and bring before a court or magistrate having jurisdiction, any person offending against any of the provisions of this article. Any officer or agent of any of said societies may lawfully interfere to prevent the perpetration of any act of cruelty upon any animal in his presence. Any person who shall interfere with or obstruct any such officer or agent in the discharge of his duty shall be guilty of a misdemeanor. Any of said societies may prefer a complaint before any court, tribunal or magistrate having jurisdiction, for the violation of any law relating to or affecting animals and may aid in presenting the law and facts before such court, tribunal or magistrate in any proceeding taken. The officers and agents of all duly incorporated societies for the prevention of cruelty to animals or children are hereby declared to be peace officers within the provisions of section one hundred and fifty-four of the code of criminal procedure.

## ARTICLE 18

### Arson

Section 220. Definitions.

221. Arson in first degree.

222. Arson in second degree.

223. Arson in third degree.

Section 224. Punishment for arson.

225. Intent to destroy building requisite.

226. Contiguous buildings.

227. Ownership of building.

**§ 220. Definitions.** Building. Any house, vessel, or other structure, capable of affording shelter for human beings, or appurtenant to, or connected with a structure so adapted, is a "building" within the meaning of this article.

Inhabited building. A building is deemed an "inhabited building" within the meaning of this article, any part of which has usually been occupied by a person lodging therein at night.

Night time. The words "night time," as used in this article, include the period between sunset and sunrise, and every building or structure, which shall have been usually occupied by persons lodging therein at night, is a dwelling-house within the meaning of this article.

**§ 221. Arson in first degree.** A person who wilfully burns, or sets on fire, in the night time:

1. A dwelling-house in which there is, at the time, a human being; or,

2. A car, vessel, or other vehicle, or a structure or building other than a dwelling-house, wherein, to the knowledge of the offender, there is, at the time, a human being,

Is guilty of arson in the first degree.

**§ 222. Arson in second degree.** A person who:

1. Commits an act of burning in the day time, which, if committed in the night time, would be arson in the first degree; or,

2. Wilfully burns, or sets on fire, in the night time, a dwelling-house, wherein, at the time, there is no human being; or,

3. Wilfully burns, or sets on fire, in the night time, a building not inhabited, but adjoining or within the curtilage of an inhabited building, in which there is, at the time, a human being, so that the inhabited building is endangered, even though it is not in fact injured by the burning; or,

4. Wilfully burns, or sets on fire, in the night time, a car, vessel, or other vehicle, or a structure or building, ordinarily occupied at night by a human being, although no person is within it at the time,

Is guilty of arson in the second degree.

**§ 223. Arson in third degree.** A person who wilfully burns, or sets on fire:

1. A vessel, car, or other vehicle, or a building, structure, or other erection, which is at the time insured against loss or damage by fire, with intent to prejudice the insurer thereof; or,

2. A vessel, car, or other vehicle, or a building, structure, or other erection, under circumstances not amounting to arson in the first or second degree,

Is guilty of arson in the third degree.

**§ 224. Punishment for arson.** Arson is punishable as follows:

1. In the first degree, by imprisonment for a term not exceeding forty years.

2. In the second degree, by imprisonment for a term not exceeding twenty-five years.

3. In the third degree, by imprisonment for a term not exceeding fifteen years.

**§ 225. Intent to destroy building requisite.** The burning of a building under circumstances which show beyond a reasonable doubt that there was no intent to destroy it, is not arson.

**§ 226. Contiguous buildings.** Where an appurtenance to a building is so situated with reference to such building, or where any building is so situated with reference to another building that the burning of the one will manifestly endanger the other, a burning of the one is deemed a burning of the other, within the foregoing provisions, against any person actually participating in the original setting on fire, as of the moment when the fire from the one communicates to and sets on fire the other.

**§ 227. Ownership of building.** To constitute arson it is not necessary that another person than the defendant should have had ownership in the building set on fire.

## ARTICLE 20

### Assault

Section 240. Assault in first degree defined.

241. Punishment for assault in first degree.

242. Assault in second degree.

243. Punishment for assault in second degree.

244. Assault in third degree.

245. Punishment for assault in third degree.

246. Use of force not unlawful in certain cases.

**§ 240. Assault in first degree defined.** A person who, with an intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, or of another:

1. Assaults another with a loaded fire arm, or any other deadly

weapon, or by any other means or force likely to produce death; or,

2. Administers to or causes to be administered to or taken by another, poison, or any other destructive or noxious thing, so as to endanger the life of such other,

Is guilty of assault in the first degree.

**§ 241. Punishment for assault in first degree.**

Assault in the first degree is punishable by imprisonment for a term not exceeding ten years.

**§ 242. Assault in second degree.** A person who, under circumstances not amounting to the crime specified in section two hundred and forty,

1. With intent to injure, unlawfully administers to, or causes to be administered to, or taken by another, poison, or any other destructive or noxious thing, or any drug or medicine the use of which is dangerous to life or health; or,

2. With intent thereby to enable or assist himself or any other person to commit any crime, administers to or causes to be administered to, or taken by another, chloroform, ether, laudanum, or any other intoxicating narcotic or anaesthetic agent; or,

3. Wilfully and wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon; or,

4. Wilfully and wrongfully assaults another by the use of a weapon, or other instrument or thing likely to produce grievous bodily harm; or,

5. Assaults another with intent to commit a felony, or to prevent or resist the execution of any lawful process or mandate of any court or officer, or the lawful apprehension or detention of himself, or of any other person,

Is guilty of assault in the second degree.

**§ 243. Punishment for assault in second degree.**

Assault in the second degree is punishable by imprisonment in a penitentiary or state prison for a term not exceeding five years, or by a fine of not more than one thousand dollars, or both.

**§ 244. Assault in third degree.** A person who commits an assault, or an assault and battery, not such as is specified in sections two hundred and forty and two hundred and forty-two, is guilty of assault in the third degree.

**§ 245. Punishment for assault in third degree.**

Assault in the third degree is punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or both.

**§ 246. Use of force not unlawful in certain cases.**  
To use or attempt, or offer to use, force or violence upon or towards the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of a legal duty; or by any other person assisting him or acting by his direction;

2. When necessarily committed by any person in arresting one who has committed a felony, and delivering him to a public officer competent to receive him in custody;

3. When committed either by the party about to be injured or by another person in his aid or defense, in preventing or attempting to prevent an offense against his person, or a trespass or other unlawful interference with real or personal property in his lawful possession, if the force or violence used is not more than sufficient to prevent such offense;

4. When committed by a parent or the authorized agent of any parent, or by any guardian, master, or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar, and the force or violence used is reasonable in manner and moderate in degree;

5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them, at their request, in expelling from a carriage, railway car, vessel or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force or violence used is not more than sufficient to expel the offending passenger, with a reasonable regard to his personal safety;

6. When committed by any person in preventing an idiot, lunatic, insane person, or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or in enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

## ARTICLE 22

### Attempt to Commit Crime

Section 260. Attempt to commit crime.

261. Punishment for attempt to commit crime.

262. Restrictions \*under preceding section.

**§ 260. Attempt to commit crime.** A person may be convicted of an attempt to commit a crime, although it appears

\* So in original.

on the trial that the crime was consummated, unless the court, in its discretion, discharges the jury and directs the defendant to be tried for the crime itself.

**§ 261. Punishment for attempt to commit crime.**

A person who unsuccessfully attempts to commit a crime is indictable and punishable, unless otherwise specially prescribed by statute, as follows:

1. If the crime attempted is punishable by the death of the offender, or by imprisonment for life, the person convicted of the attempt is punishable by imprisonment for not more than twenty-five years.

2. In any other case, he is punishable by imprisonment for not more than half of the longest term, or by a fine not more than one-half of the largest sum prescribed upon a conviction for the commission of the offense attempted, or by both such fine and imprisonment.

**§ 262. Restrictions upon preceding section.** Section two hundred and sixty-one does not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

## ARTICLE 24

### Attorneys

Section 270. Practicing or appearing as attorney without being admitted and registered.

271. None but attorneys to practice in New York city.

272. Penalty for violation of last section.

273. Misconduct by attorneys.

274. Buying demands on which to bring an action.

275. Limitation of preceding section.

276. Application when party prosecutes in person or by a corporation.

277. Use of attorney's name by another.

278. Attorneys forbidden to defend criminal prosecutions carried on by their partners, or formerly by themselves.

279. Attorneys may defend themselves.

280. Corporations not to practice law.

**§ 270. Practicing or appearing as attorney without being admitted and registered.** It shall be unlawful for any person to practice or appear as an attorney-at-law or as at-

torney and counselor-at-law for another in a court of record in this state or in any court in the county of New York or in the county of Kings, or to make it a business to practice as an attorney-at-law or as an attorney and counselor-at-law for another in any of said courts, or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law, or counselor-at-law, or attorney, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person, has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, or, in case of persons licensed and admitted prior to July first, eighteen hundred and forty-seven, without having first been duly and regularly licensed and admitted to practice as attorney of or in the then supreme court or as solicitor in chancery or of the court of chancery, and without having taken the constitutional oath and without having subscribed and taken the oath or affirmation required by section four hundred and sixty-eight of the judiciary law and filed the same in the office of the clerk of the court of appeals as required by said section. Any person violating the provisions of this section is guilty of a misdemeanor and it shall be the duty of the district attorneys to enforce the provisions of this section and to prosecute all violations thereof.

**§ 271. None but attorneys to practice in New York city.** A person shall not ask or receive, directly or indirectly, compensation for appearing as attorney in a court or before any magistrate in the city of New York, or make it a business to practice as an attorney in a court or before a magistrate in said city, unless he has been regularly admitted to practice, as an attorney or counselor, in the courts of record of the state.

**§ 272. Penalty for violation of last section.** A person who violates the last section is guilty of a misdemeanor, and shall be punished by imprisonment in the county jail, not exceeding one month, or by a fine of not less than one hundred dollars or more than two hundred and fifty dollars, or by both such fine and imprisonment.

But this and the last section do not apply to a case where a person appears in a cause to which he is a party.



**§ 273. Misconduct by attorneys.** An attorney or counselor who:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Wilfully delays his client's suit with a view to his own gain; or, wilfully receives any money or allowance for or on account of any money which he has not laid out, or become answerable for,

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by this chapter, he forfeits to the party injured treble damages, to be recovered in a civil action.

**§ 274. Buying demands on which to bring an action.**

An attorney or counselor shall not:

1. Directly or indirectly, buy, or be in any manner interested in buying, a bond, promissory note, bill of exchange, book debt, or other thing in action, with the intent and for the purpose of bringing an action thereon.

2. By himself, or by or in the name of another person, either before or after action brought, promise or give, or procure to be promised or given, a valuable consideration to any person, as an inducement to placing, or in consideration of having placed, in his hands, or in the hands of another person, a demand of any kind, for the purpose of bringing an action thereon, or of representing the claimant in the pursuit of any civil remedy for the recovery thereof. But this subdivision does not apply to an agreement between attorneys and counselors, or either, to divide between themselves the compensation to be received.

3. An attorney or counselor convicted of a violation of any of the provisions of this section, in addition to the punishment by fine and imprisonment prescribed therefor by this section, forfeits his office.

4. An attorney or counselor, who violates either of the first two subdivisions of this section, is guilty of a misdemeanor; and, on conviction thereof, shall be punished accordingly, and must be removed from office by the supreme court.

**§ 275. Limitation of preceding section.** The last section does not prohibit the receipt, by an attorney or counselor, of a bond, promissory note, bill of exchange, book debt, or other thing in action, in payment for property sold, or for services actually rendered, or for a debt antecedently contracted; or from buying or receiving a bill of exchange, draft, or other thing in action for the purpose of remittance, and without intent to violate that section.

**§ 276. Application when party prosecutes in person or by a corporation.** The last two sections apply to a person prosecuting an action in person and to a corporation engaged in the business of conducting litigation and providing counsel therefor, who or which does an act which an attorney or counselor is therein forbidden to do.

**§ 277. Use of attorney's name by another.** If an attorney knowingly permits any person, not being his general law partner or a clerk in his office, to sue out any process or to prosecute or defend any action in his name, except as authorized by this section, such attorney, and every person who shall so use his name, is guilty of a misdemeanor.

Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the people, or of any public officer, board of officers, or municipal corporation, on behalf of another party, the attorney-general, or district attorney, or attorney of such public officer or board or corporation may permit any proceeding therein, to be taken in his name by an attorney to be chosen by the party in interest.

**§ 278. Attorneys forbidden to defend criminal prosecutions carried on by their partners, or formerly by themselves.** An attorney, who directly or indirectly advises in relation to, or aids or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided or promoted by a person as district attorney or other public prosecutor, with whom such attorney is directly or indirectly connected as a partner; or who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any court, as district attorney or other public prosecutor, afterwards directly or indirectly advises in relation to, or takes any part in, the defense thereof, as attorney or otherwise; or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor, and on conviction thereof, shall be punished accordingly, and must be removed from office by the supreme court.

**§ 279. Attorneys may defend themselves.** The last section does not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

**§ 280. Corporations not to practice law.** It shall be unlawful for any corporation to practice or appear as an attorney-at-law for any person other than itself in any court in this state or before any judicial body, or to make it a business to practice as an attorney-at-law, for any person other than itself, in any of said courts or to hold itself out to the public as being entitled to practice law, or to render or furnish legal services or advice, or to furnish attorneys or counsel or to render legal services of any kind in actions or proceedings of any nature or in any other way or manner, or in any other manner to assume to be entitled to practice law or to assume, use or advertise the title of lawyer or attorney, attorney-at-law, or equivalent terms in any language in such manner as to convey the impression that it is entitled to practice law, or to furnish legal advice, services or counsel, or to advertise that either alone or together with or by or through any person, whether a duly and regularly admitted attorney-at-law, or not, it has, owns, conducts or maintains a law office or an office for the practice of law, or for furnishing legal advice, services or counsel. It shall be unlawful further for any corporation to solicit itself or by or through its officers, agents or employees any claim or demand for the purpose of bringing an action thereon or of representing as attorney-at-law, or for furnishing legal advice, services or counsel to, a person sued or about to be sued in any action or proceeding or against whom an action or proceeding has been or is about to be brought, or who may be affected by any action or proceeding which has been or may be instituted in any court or before any judicial body, or for the purpose of so representing any person in the pursuit of any civil remedy. Any corporation violating the provisions of this section shall be liable to a fine of not more than five thousand dollars and every officer, trustee, director, agent, or employee of such corporation who directly or indirectly engages in any of the acts herein prohibited or assists such corporation to do such prohibited acts is guilty of a misdemeanor. The fact that any such officer, trustee, director, agent, or employee shall be a duly and regularly admitted attorney-at-law shall not be held to permit or allow any such corporation to do the acts prohibited herein nor shall such fact be a defense upon the trial of any of the persons mentioned herein for a violation of the provisions of this section. This section shall not apply to any corporation lawfully engaged in a business authorized by the provisions of any existing statute, nor to a corporation lawfully engaged in the examination and insuring of titles to real property, nor shall it prohibit a corporation from employing an attorney or attorneys in and about its own immediate affairs or in any litigation to which it is or may be a party, nor shall it apply to organizations organized for benevolent or charitable purposes, or for the purpose of assisting persons without means in the pursuit of any civil remedy, whose existence, organization or incorporation may be approved by the

appellate division of the supreme court of the department in which the principal office of said corporation may be located. (*Added by L. 1909, ch. 483, in effect September 1, 1909.*)

## ARTICLE 26

### Banking

- Section 290. Misconduct of officers, directors, trustees, or employees of banking corporations.
291. Sale or hypothecation of bank notes by officer.
292. Officer of bank putting excessive number of its notes in circulation.
293. Officer or agent of banking corporation making guaranty or indorsement, in its behalf, beyond the legal limit.
294. Bank officer overdrawing his account or asking for or receiving commissions or gratuities from persons procuring loans or making overdrafts of their accounts.
295. Receiving deposits in insolvent bank.
296. Unlawful investments by officers of savings banks.
297. Misconduct by directors of moneyed corporations.
298. Misconduct by banks and bankers.
299. Unlawful discount of bills of foreign banks.
300. Misconduct by officers of banking department.
301. Using dies and plates of extinct state bank.
302. Unauthorized use of the term "bank."

**§ 290. Misconduct of officers, directors, trustees, or employees of banking corporations.** A director of a corporation, organized under the laws of this state, having banking powers, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended to make a loan or discount to any director of such corporation, or upon paper upon which any such director is liable or responsible to an amount exceeding the amount allowed by statute; or,

Any director, trustee, officer or employee of any corporation to which the banking law is applicable who makes or maintains, or attempts to make or maintain, a deposit of such corporation's funds with any other corporation on condition, or with the understanding, express or implied, that the corporation receiving such deposit make a loan or advance, directly or indirectly, to any director, trustee, officer or employee of the corporation so making or maintaining or attempting to make or maintain such deposit; or,

Any officer or employee of any corporation to which the banking law is applicable who intentionally conceals from the directors or trustees of such corporation any discounts or loans made by it between the regular meetings of its board of directors or trustees,

or the purchase of any securities or the sale of any of its securities during the same period, or knowingly fails to report to its board of directors or trustees when required to do so by law, all discounts or loans made by it and all securities purchased or sold by it between the regular meetings of its board of directors or trustees; or,

Any director, officer or employee of a trust company who makes any agreement, express or implied, before or at the time of issuing a certificate of deposit, by which its holder may demand or receive payment thereof in advance of its maturity,

Is guilty of a misdemeanor.

Nothing in this section shall render any loan made by the directors of any such corporation, in violation thereof, invalid.

**§ 291. Sale or hypothecation of bank notes by officer.** An officer or agent of any corporation having banking powers, who sells, or causes or permits to be sold, any bank notes of such corporation, or pledges or hypothecates, or causes or permits to be pledged or hypothecated, with any other corporation, association or individual, any such notes, as a security for a loan or for any liability of such corporation, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

**§ 292. Officer of bank putting excessive number of its notes in circulation.** An officer or agent of any corporation having banking powers, who issues or puts in circulation, or causes or permits to be issued or put in circulation, the bank notes of such corporation to an amount, which, together with previous issues, leaves in circulation or outstanding a greater amount of notes than such corporation is allowed by law to issue and circulate, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

**§ 293. Officer or agent of banking corporation making guaranty or indorsement, in its behalf, beyond the legal limit.** An officer or agent of any banking corporation, who makes or delivers any guaranty or indorsement on behalf of such corporation, whereby it may become liable on any of its discounted notes, bills or obligations, in a sum beyond the amount of loans and discounts which such corporation may legally make, is guilty of a misdemeanor.

**§ 294. Bank officer overdrawing his account or asking for or receiving commissions or gratuities from persons procuring loans or making overdrafts of their accounts.** An officer, director, agent, teller, clerk

or employee of any bank, banking association, savings bank or trust company, who:

1. Knowingly overdraws his account with such bank, banking association, savings bank or trust company, and thereby obtains the money, notes or funds of any such bank, banking association, savings bank or trust company; or,

2. Asks or receives, or consents or agrees to receive, any commission, emolument, gratuity or reward, or any promise of any commission, emolument, gratuity or reward, or any money, property or thing of value or of personal advantage, for procuring or endeavoring to procure for any person, firm or corporation, any loan from, or the purchase or discount of any paper, note, draft, check or bill of exchange, by any such bank, banking association, savings bank or trust company, or for permitting any person, firm or corporation to overdraw any account with such bank, banking association, savings bank or trust company,

Is guilty of a misdemeanor.

**§ 295. Receiving deposits in insolvent bank.** An officer, agent, teller or clerk of any bank, banking association or savings bank, and every individual banker or agent, and every private banker or agent and any teller or clerk of an individual banker, or of a private banker who receives any deposit, knowing that such bank or association or banker is insolvent, is guilty of a misdemeanor, if the amount or value of such deposit be less than twenty-five dollars; if the amount or value of such deposit be twenty-five dollars or over, such person shall be guilty of a felony, punishable by imprisonment for not less than one nor more than five years, or by a fine of not less than five hundred nor more than three thousand dollars, or by both.

**§ 296. Unlawful investments by officers of savings banks.** Any officer or trustee of a savings bank authorizing or making any investment of the funds of the bank in securities, not authorized by law, is guilty of a misdemeanor.

**§ 297. Misconduct by directors of moneyed corporations.** Every director of a moneyed corporation who:

1. In case of the fraudulent insolvency of such corporation, shall have participated in such fraud; or,

2. Wilfully does any act as such director which is expressly forbidden by law, or wilfully omits to perform any duty imposed upon him as such director by law,

Is guilty of a misdemeanor, if no other punishment is prescribed therefor by law.

The insolvency of a moneyed corporation is deemed fraudulent unless its affairs appear upon investigation to have been admin-

istered fairly, legally and with the same care and diligence that agents receiving a compensation for their services are bound, by law, to observe.

**§ 298. Misconduct by banks and bankers.** Any moneyed corporation or individual banker authorized to carry on the business of banking under the laws of this state who:

1. Receives, pays out, gives or offers in payment as money to circulate, or who attempts to circulate as money, any bill, note or other evidence of debt issued or purporting to have been issued by any corporation or individual, situated or residing without this state, and which bill, note or other evidence of debt shall, upon any part thereof, purport to be payable or redeemable at any place or by any corporation or individual within this state; or,

2. Issues, utters or circulates, as money, or in any way, directly or indirectly, aids or assists in the issuing, uttering or circulating as money within this state, of any bank bill, note or other evidence of debt in the similitude of a bank note issued or purporting to have been issued by any corporation or individual situated or residing without this state; or procures or receives, in any manner whatever, any such bank bill, note or other evidence of debt with intent to issue, utter or circulate, or with intent to aid in issuing, uttering or circulating the same as money within this state; or,

3. Directly or indirectly lends or pays out for paper discounted or purchased any bank bill, note or other evidence of debt, which is not received at par by such corporation or banker for debts due such corporation or banker; or,

4. Issues or puts in circulation any bank bill or note of any such corporation or banker, unless the same shall be made payable on demand and without interest, except bills of exchange on foreign countries or places beyond the limits or jurisdiction of the United States,

Is guilty of a misdemeanor.

Nothing in this section contained shall be construed to prohibit any such corporation or banker from receiving and paying out such foreign bank bills as they shall receive at par in the ordinary course of their business, or to prohibit such corporation or banker from receiving foreign notes from their dealers and customers in the regular and usual course of their business, at a rate of discount not exceeding that which is or shall be at the time fixed by law, for the redemption of the bills of the banks of this state at their agencies, or from obtaining from the corporations, associations or individuals by which such foreign notes are made, the payment or redemption thereof.

**§ 299. Unlawful discount of bills of foreign banks.** Any person, association or corporation within the state who, directly or indirectly, on any pretense whatever, procures or receives or offers to receive from any corporation or person any bank bill or note or other evidence of debt in the similitude of a bank note issued or purporting to have been issued by any corporation or individual, situated or residing without this state, at a greater rate of discount than is or shall be at the time fixed by law for the redemption of the bills of the banks of this state at their agencies, is guilty of a misdemeanor.

**§ 300. Misconduct by officers of banking department.** The superintendent of banks, or any officer in the banking department who countersigns bills or notes for any person or corporation exceeding the value of the interest bearing stocks of the state of New York or of the United States, or other securities deposited with such superintendent by such person or corporation on account thereof, is guilty of a felony, punishable by a fine of not less than five thousand dollars or by imprisonment for not less than five years, or by both.

**§ 301. Using dies and plates of extinct state bank.** Any person who uses the dies and plates of a state bank in the manufacture of notes and bills, after such bank has become a national bank in pursuance of law, is guilty of a misdemeanor.

**§ 302. Unauthorized use of the term "bank."** Any person engaged in banking in this state, not subject to the supervision of the superintendent of banks, and not required by law to report to such superintendent, who was not engaged in such banking before May twenty-third, eighteen hundred and eighty-five, who:

1. Uses an office sign at the place where such business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank; or,

2. Uses or circulates any letter-heads, bill-heads, blank notes, blank receipts, certificates, circulars or any written or printed paper whatever, having thereon any artificial or corporate name, or other word or words indicating that such business is the business of a bank,

Is guilty of a misdemeanor.



**ARTICLE 28****Barratry**

Section 320. Common barratry defined.

321. Barratry a misdemeanor.

322. Proof required to convict of barratry.

323. Interest no defense to prosecution for barratry.

**§ 320. Common barratry defined.** Common barratry is the practice of exciting groundless judicial proceedings.

**§ 321. Barratry a misdemeanor.** Common barratry is a misdemeanor.

**§ 322. Proof required to convict of barratry.** No person can be convicted of common barratry, except upon proof that he has excited actions or legal proceedings, in at least three instances, and with a corrupt or malicious intent to vex and annoy.

**§ 323. Interest no defense to prosecution for barratry.** Upon a prosecution for common barratry, the fact that the defendant was himself a party in interest or upon the record to any action or legal proceeding complained of, is not a defense.

**ARTICLE 30****Bigamy**

Section 340. Definition and punishment of bigamy.

341. Exceptions.

342. In what county indictment for bigamy may be found; place of trial.

343. Punishment of consort.

**§ 340. Definition and punishment of bigamy.** A person who, having a husband or wife living, marries another person, is guilty of bigamy and is punishable by imprisonment in a penitentiary or state prison for not more than five years.

**§ 341. Exceptions.** The last section does not extend:

1. To a person whose former husband or wife, has been absent for five years successively then last past, without being known to him or her within that time to be living, and believed by him or her to be dead; or,

2. To a person whose former marriage has been pronounced void, or annulled, or dissolved, by the judgment of a court of competent jurisdiction, for a cause other than his or her adultery; or,

3. To a person who, being divorced for his or her adultery, has received from the court which pronounced the divorce, permission to marry again; or,

4. To a person whose former husband or wife has been sentenced to imprisonment for life.

**§ 342. In what county indictment for bigamy may be found; place of trial.** An indictment for bigamy may be found in the county in which the defendant is arrested, and the like proceedings, including the trial, judgment, and conviction, may be had in that county, as if the offense were committed therein.

**§ 343. Punishment of consort.** A person who knowingly enters into a marriage with another, which is prohibited to the latter by the foregoing provisions of this article is punishable by imprisonment in a penitentiary or state prison, for not more than five years, or by a fine of not more than one thousand dollars, or both.

## ARTICLE 32

### Bills of Lading, Receipts and Vouchers

- Section 360. Fictitious bills of lading, receipts and vouchers.  
261. Offenses by pipe-line corporations.  
362. Erroneous bills of lading or receipts, issued in good faith, excepted.  
363. Duplicate receipts must be marked "duplicate."  
364. Selling, hypothecating or pledging property received for transportation or storage.  
365. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property.  
366. Property demanded by process of law.  
367. Penalty for failure to issue bill of lading.

**§ 360. Fictitious bills of lading, receipts and vouchers.** A person who:

Being the master, owner or agent of any vessel, or officer or agent of any railway, express or transportation company, or otherwise being or representing any carrier, delivers any bill of lading, receipt or other voucher, by which it appears that merchandise of any kind has been shipped on board a vessel, or delivered to a railway, express or transportation company, or other carrier, unless the same has been so shipped or delivered and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such

company, to be forwarded as expressed in such bill of lading, receipt or voucher,

Is guilty of a misdemeanor, punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

**§ 361. Offenses by pipe-line corporations.** A pipe-line corporation, or a person being the officer, agent, manager or representative thereof, who:

1. Accepts, makes or issues any receipt, certificate or order of any kind for any commodity, unless the commodity represented is actually at the time in the possession of the corporation; or,

2. Delivers to any person any petroleum or other commodity received for transportation by such corporation without the presentation and surrender of all vouchers, receipts, orders or certificates that have been issued or accepted for the same; or,

3. Having parted with the possession of any commodity and having received therefor an order, voucher, receipt or certificate, shall reissue the same, or shall not cause it to be canceled by the word "canceled" stamped or printed legibly across the face thereof, and to be filed and recorded by such corporation, as provided by law,

Is guilty of a misdemeanor.

**§ 362. Erroneous bills of lading or receipts, issued in good faith, excepted.** No person can be convicted of an offense under the last two sections, for the reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponds substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the defendant knew that such marks, labels or brands were untrue.

**§ 363. Duplicate receipts must be marked "duplicate."** A person mentioned in sections three hundred and sixty and three hundred and sixty-one, who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while a former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

**§ 364. Selling, hypothecating or pledging property received for transportation or storage.** A person mentioned in sections three hundred and sixty and three hundred and sixty-one, who sells or pledges any merchandise for which a bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

**§ 365. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property.** A person mentioned in section three hundred and sixty, who delivers to another any merchandise for which a bill of lading, receipt or voucher has been issued, unless such receipt or voucher bears upon its face the words, "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of such delivery, or unless, in the case of a partial delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

**§ 366. Property demanded by process of law.** The last two sections do not apply to any case where property is demanded by virtue of legal process.

**§ 367. Penalty for failure to issue bill of lading.** Any person who, being the owner, master or agent of any vessel transporting merchandise or property between ports of this state, departs with such vessel or causes such vessel to depart from the port where such merchandise or property is taken on board, without giving or tendering to the shipper of such merchandise or property, if a bill of lading be demanded by such shipper, a bill of lading or shipping document as provided by section three hundred and ninety-eight of the general business law, is guilty of a misdemeanor.

## ARTICLE 34

### Bribery and Corruption

- Section 370. Definition of jurors.  
371. Bribery of a judicial officer.  
372. Officer accepting bribe.  
373. Juror, arbitrator or referee promising verdict.  
374. Juror or person authorized to hear or determine accepting bribes.  
375. Liability of trial juror for taking gift or gratuity.

Section 376. Embracery.

377. Liability of embracoor procuring trial juror to take gain or profit.

378. Bribing certain public officers.

379. Bribery of witnesses.

380. Bribery of labor representatives.

381. Offender a competent witness.

**§ 370. Definition of jurors.** The word "juror" as used in this article includes a talesman, and extends to jurors in all courts, whether of record or not of record, and in special proceedings, and before any officer authorized to impanel a jury in any case or proceeding.

**§ 371. Bribery of a judicial officer.** A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a judicial officer, juror, referee, arbitrator, appraiser or assessor, or other person authorized by law to hear or determine any question, matter, case, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereupon, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

**§ 372. Officer accepting bribe.** A judicial officer, a person who executes any of the functions of a public office not designated in articles one hundred and twenty-four and one hundred and seventy and in section twenty-three hundred and twenty of this chapter, or a person employed by or acting for the state, or for any public officer in the business of the state, who asks, receives, or agrees to receive a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, judgment, action, decision or other official proceeding, shall be influenced thereby, or that he will do or omit any act or proceeding, or in any way neglect or violate any official duty, is punishable by imprisonment for not more than ten years, or by fine of not more than five thousand dollars, or both. A conviction also forfeits any office held by the offender, and forever disqualifies him from holding any public office under the state.

**§ 373. Juror, arbitrator or referee promising verdict.** A juror or a person drawn or summoned to attend as a juror, or a person chosen arbitrator, or appointed referee, who:

1. Makes any promise or agreement to give a verdict, judgment, report, award, or decision, for or against any party; or,

2. Wilfully receives any communication, book, paper instrument, or information, relating to a cause or matter pending before him, except according to the regular course of proceeding upon the trial or hearing of that cause or matter,

Is guilty of a misdemeanor.

**§ 374. Juror or person authorized to hear or determine accepting bribes.** A juror, referee, arbitrator, appraiser, or assessor, or other person authorized by law to hear or determine any question, matter, cause, controversy, or proceeding, who asks, receives, or agrees to receive, any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, action, judgment or decision, shall be influenced thereby, is punishable by imprisonment for not more than ten years, or by fine of not more than five thousand dollars, or both.

**§ 375. Liability of trial juror for taking gift or gratuity.** A person, drawn or notified to attend, as a trial juror, in an action in a court of record, or not of record, or in a special proceeding before an officer, who takes any thing to render his verdict, or receives, from a party to the action or special proceeding, a gift or gratuity, forfeits ten times the sum, or ten times the value of that, which he took or received, to the party to the action or special proceeding, aggrieved thereby; and is also liable to that party, for his damages sustained thereby; besides being subject to the punishment, prescribed by law.

**§ 376. Embracery.** A person who influences or attempts to influence improperly, a juror in a civil or criminal action or proceeding, or one drawn or summoned to attend as such a juror, or one chosen an arbitrator, or appointed a referee, in respect to his verdict, judgment, report, award or decision in any cause or matter pending, or about to be brought before him, in any case, or in any manner not included in sections three hundred and seventy-three or three hundred and seventy-four, is guilty of a misdemeanor.

**§ 377. Liability of embraceor procuring trial juror to take gain or profit.** An embraceor, who procures a person, drawn or notified to attend, as a trial juror, to take gain or profit, contrary to section three hundred and seventy-five, forfeits ten times the sum, or ten times the value of that, which was so taken, to the party aggrieved thereby; and is also liable to that party for his damages sustained thereby; besides being subject to the punishment, prescribed by law.

**§ 378. Bribing certain public officers.** A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a person executing any of the functions of a public office, other than one of the officers or persons designated in articles one hundred and twenty-four, one hundred and seventy, and in sections three hundred and seventy-one and twenty-three hundred and twenty of this chapter, with intent to influence him in respect to any act, decision, vote, or other proceeding, in the exercise of his powers or functions, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

**§ 379. Bribery of witnesses.** A person who is, or is about to be, a witness upon a trial, hearing, or other proceeding, before any court, or any officer authorized to hear evidence or take testimony, who receives, or agrees or offers to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, is guilty of a felony.

**§ 380. Bribery of labor representatives.** A person who gives or offers to give any money or other things of value to any duly appointed representative of a labor organization with intent to influence him in respect to any of his acts, decisions, or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person or corporation, is guilty of a misdemeanor; and no person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

**§ 381. Offender a competent witness.** A person offending against any provision of any section of this chapter relating to bribery and corruption, is a competent witness against another person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding, or investigation, in the same manner as any other person. But the

testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying to the giving of a bribe which has been accepted, shall not thereafter be liable to indictment, prosecution, or punishment for that bribery, and may plead or prove the giving of testimony accordingly, in bar of such an indictment or prosecution.

## ARTICLE 36

### Bucket Shops

Section 390. Acts prohibited; penalty for violation.

391. Exhibiting quotations; penalty for violation.

392. Written statement to be furnished; presumption.

393. Corporations; additional penalty for second offense.

394. Definitions.

**§ 390. Acts prohibited; penalty for violation.** Any person, copartnership, firm, association or corporation, whether acting in his, their or its own right, or as the officer, agent, servant, correspondent or representative of another, who shall,

1. Make or offer to make, or assist in making or offering to make any contract respecting the purchase or sale, either upon credit or margin, of any securities or commodities, including all evidences of debt or property and options for the purchase thereof, shares in any corporation or association, bonds, coupons, scrip, rights, choses in action and other evidences of debt or property and options for the purchase thereof or anything movable that is bought and sold, wherein both the parties thereto intend, that such contract shall be or may be terminated, closed or settled according to, or upon the basis of the public market quotations of prices made on any board of trade or exchange upon which such commodities or securities are dealt in, and without intending a bona fide purchase or sale of the same; or,

2. Makes or offers to make or assists in making or offering to make any contract respecting the purchase or sale, either upon credit or margin, of any such securities or commodities, wherein both parties intend, that such contract shall or may be deemed terminated, closed and settled when such market quotations of prices for such securities or commodities named in such contract shall reach a certain figure, without intending a bona fide purchase or sale of the same; or,

3. Makes or offers to make, or assists in making or offering to make any contract respecting the purchase or sale, either upon credit or margin of any such securities or commodities, wherein both parties do not intend, the actual bona fide receipt or delivery



of such securities or commodities, but do intend a settlement of such contract based upon the difference in such public market quotations of prices at which said securities or commodities are, or are asserted to be, bought or sold; or,

4. Shall, as owner, keeper, proprietor or person in charge of, or as officer, director, stockholder, agent, servant, correspondent or representative of such owner, keeper, proprietor or person in charge, or of any other person, keep, conduct or operate any bucket shop, as hereinafter defined; or knowingly permit or allow or induce any person, copartnership, firm, association or corporation whether acting in his, their or its own right, or as the officer, agent, servant, correspondent or representative of another to make or offer to make therein, or to assist in making therein, or in offering to make therein, any of the contracts specified in any of the three preceding subdivisions of this section,

Shall be guilty of a felony and on conviction thereof shall, if a corporation, be punished by a fine of not more than five thousand dollars for each offense and all other persons so convicted shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than five years, or by both such fine and imprisonment. The prosecution, conviction and punishment of a corporation hereunder shall not be deemed to be a prosecution, conviction or punishment of any of its officers, directors or stockholders.

**§ 391. Exhibiting quotations; penalty for violation.** Any person, firm, copartnership, association or corporation receiving, communicating, exhibiting or displaying in any manner any statement of quotations of prices of any such securities or commodities with an intent to make or offer to make or to assist in making or offering to make any contract prohibited in this article shall be guilty of a felony and on conviction thereof shall be punished as provided in section three hundred and ninety of this chapter.

**§ 392. Written statement to be furnished; presumption.** Every person, firm, association, copartnership or corporation shall furnish upon written demand to any customer, or principal for whom such person has executed an order for the actual purchase or sale of any such securities or commodities, either for immediate or future delivery, a written statement containing the names of the persons from whom such property was bought, or to whom it has been sold, as the case may be, the time when, place where, the amount of and the price at which the same was either bought or sold; and if such person, firm, association, copartnership or corporation shall refuse or neglect to furnish

such statement within forty-eight hours after such demand, such refusal shall be prima facie evidence that such purchase or sale was made in violation of this article.

**§ 393. Corporations; additional penalty for second offense.** If a domestic corporation shall be convicted of a second offense hereunder the supreme court shall have jurisdiction upon an action brought by the attorney-general, in the name of the people, for that purpose, to dissolve such corporation; and if a foreign corporation shall be convicted of a second offense, such court shall have jurisdiction in an action brought in like manner to restrain such corporation from doing business in this state.

**§ 394. Definitions.** "Bucket shop" shall mean any building, or any room, apartment, booth, office or store therein or any other place where any contract prohibited by this article is made or offered to be made.

## ARTICLE 38

### Burglary

Section 400. Definitions.

401. Dwelling-houses, when deemed separate.

402. Burglary in first degree.

403. Burglary in second degree.

404. Burglary in third degree.

405. Unlawfully entering building.

406. Punishment for separate crime committed in building by burglar.

407. Punishment for burglary.

408. Burglar's instruments.

**§ 400. Definitions.** Break. The word "break," as used in this article, means and includes:

1. Breaking or violently detaching any part, internal or external, of a building; or,

2. Opening, for the purpose of entering therein, by any means whatever, any outer door of a building, or of any apartment or set of apartments therein separately used or occupied, or any window, shutter, scuttle, or other thing, used for covering or closing an opening thereto or therein, or which gives passage from one part thereof to another; or,

3. Obtaining an entrance into such a building or apartment, by any threat or artifice used for that purpose, or by collusion with any person therein; or,

4. Entering such a building or apartment by or through any pipe, chimney, or other opening, or by excavating, digging, or breaking through or under the building, or the walls or foundation thereof.

**Building.** The term "building," as used in this article, includes a railway car, vessel, booth, tent, shop, inclosed ginseng garden, or other erection or inclosure.

**Dwelling-house.** A building, any part of which is usually occupied by a person lodging therein at night, is, for the purposes of this article deemed a dwelling-house.

**Enter.** The word "enter," as used in this article, includes the entrance of the offender into such building or apartment, or the insertion therein of any part of his body or of any instrument or weapon held in his hand, and used, or intended to be used, to threaten or intimidate the inmates, or to detach or remove property.

**§ 401. Dwelling-houses, when deemed separate.** If a building is so constructed as to consist of two or more parts, intended to be occupied by different tenants usually lodging therein at night, each part is deemed the separate dwelling-house of a tenant occupying the same. If a building is so constructed as to consist of two or more parts occupied by different tenants separately for any purpose, each part or apartment is considered a separate building within the meaning of this article.

**§ 402. Burglary in first degree.** A person, who, with intent to commit some crime therein, breaks and enters, in the night time, the dwelling-house of another, in which there is at the time a human being:

1. Being armed with a dangerous weapon; or,
2. Arming himself therein with such a weapon; or,
3. Being assisted by a confederate actually present; or,
4. Who, while engaged in the night time in effecting such entrance, or in committing any crime in such a building, or in escaping therefrom, assaults any person,

Is guilty of burglary in the first degree.

**§ 403. Burglary in second degree.** A person who, with intent to commit some crime therein, breaks and enters the dwelling-house of another in which there is a human being, under circumstances not amounting to burglary in the first degree, is guilty of burglary in the second degree.

**§ 404. Burglary in third degree.** A person who:

1. With intent to commit a crime therein, breaks and enters a building, or a room, or any part of a building; or,

2. Being in any building, commits a crime therein and breaks out of the same,

Is guilty of burglary in the third degree.

**§ 405. Unlawfully entering building.** A person who, under circumstances or in a manner not amounting to a burglary, enters a building, or any part thereof, with intent to commit a felony or a larceny, or any malicious mischief, is guilty of a misdemeanor.

**§ 406. Punishment for separate crime committed in building by burglar.** A person who, having entered a building under such circumstances as to constitute burglary in any degree, commits any crime therein, is punishable therefor, as well as for the burglary; and may be prosecuted for each crime, separately, or in the same indictment.

**§ 407. Punishment for burglary.** Burglary is punishable by imprisonment in a state prison as follows:

1. Burglary in the first degree, for not less than ten years.

2. Burglary in the second degree, for a term not exceeding ten years.

3. Burglary in the third degree, for a term not exceeding five years.

**§ 408. Burglar's instruments.** A person who makes or mends, or causes to be made or mended, or has in his possession in the day or night time, any engine, machine, tool, false key, pick-lock, bit, nippers or implements adapted, designed or commonly used for the commission of burglary, larceny or other crime, under circumstances evincing an intent to use or employ, or allow the same to be used or employed, in the commission of a crime, or knowing that the same are intended to be so used, shall be guilty of a misdemeanor, and if he has been previously convicted of any crime, he is guilty of a felony.

## ARTICLE 40

### Business and Trade

Section 420. Article of merchandise defined.

421. Untrue and misleading advertisements.

422. \*Making certain articles silver, sterling silver or solid silver.

423. Selling silverware marked coin or coin silver.

424. Marking soldered metal sterling or sterling silver.

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\* So in original.

- Section 425. Marking soldered metal coin or coin silver.
426. Marking metal placed on leather or other substances, sterling or sterling silver.
427. Marking metal placed on leather or other substances, coin or coin silver.
428. Marking watch cases sterling or sterling silver.
429. Marking watch cases coin or coin silver.
430. Marking articles made of linen.
431. Marking articles made of gold.
432. Illegal charges for elevating, receiving or discharging grain.
433. Sale of agricultural products on commission.
434. Concealing foreign matter in merchandise.
435. False labels.
436. Using false marks as to manufacture.
437. Penalty for selling half wine not labeled.
438. Skimmed milk.
439. Corrupt influencing of agents, employees or servants.
440. Conducting business under assumed name.
441. Producing unpublished, undedicated or copyrighted opera or dramatic composition, without consent of owner.
442. Provisions when property is purchased on credit by aid of written statement of purchaser's ability to pay.
443. Tickets issued by People's Institute not transferable.

**§ 420. Article of merchandise defined.** The expression "article of merchandise," as used in this article, signifies any goods, wares, work of art, commodity, compound, mixture or other preparation or thing, which may be lawfully kept or offered for sale.

**§ 421. Untrue and misleading advertisements.** Any person, firm, corporation or association, or any employee thereof, who, in a newspaper, circular or other publication published in this state, knowingly makes or disseminates any statement or assertion of fact concerning the quantity, the quality, the value, the method of production or manufacture, or the reason for the price of his or their merchandise, or the manner or source of purchase of such merchandise, or the possession of rewards, prizes or distinctions conferred on account of such merchandise or the motive or purpose of a sale, intended to give the appearance of an offer advantageous to the purchaser which is untrue or calculated to mislead, shall be guilty of a misdemeanor.

Any person, firm, corporation or association or any employee

thereof who violates any provision of this section shall be liable to a fine of not less than twenty-five nor more than one hundred dollars for each offense.

**§ 422. Marking certain articles silver, sterling silver or solid silver.** Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession, with intent to sell or dispose of, any article of merchandise marked, stamped or branded with the words "sterling" or "sterling silver," or incased or inclosed in any box, package, cover or wrapper, or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing that such article is silver, sterling silver or solid silver, unless nine hundred and twenty-five one-thousandths of the component parts of the metal of which the said article is manufactured is pure silver, is guilty of a misdemeanor.

**§ 423. Selling silverware marked coin or coin silver.** Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise marked, stamped or branded with the words "coin" or "coin silver," or incased or inclosed in any box, package, cover or wrapper, or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing that such article is coin or coin silver, unless nine hundred one-thousandths parts of the component parts of the metal of which the said article is manufactured is pure silver, is guilty of a misdemeanor.

**§ 424. Marking soldered metal sterling or sterling silver.** Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise, whose component parts are made of the same metal soldered together, which article is marked, stamped, or branded with the words "sterling" or "sterling silver," unless all of said component parts shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

**§ 425. Marking soldered metal coin or coin silver.**

Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise, whose component parts are made of the same metal soldered together, which article is marked, stamped, or branded with the words "coin" or "coin silver," unless all of said component parts shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

**§ 426. Marking metal placed on leather or other substances, sterling or sterling silver.** Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel, or wood to which is applied or attached a metal mounting marked, stamped or branded with the words "sterling" or "sterling silver," unless said applied or attached metal mounting shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

**§ 427. Marking metal placed on leather or other substances, coin or coin silver.** Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel, or wood to which is applied or attached a metal mounting marked, stamped or branded with the words "coin" or "coin silver," unless said applied or attached metal mounting shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

**§ 428. Marking watch cases sterling or sterling silver.** Any person, firm, corporation or association who makes or sells, or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of works or movements and a case or covering applied or attached thereto, wholly or partially concealing said works or movements marked, stamped or branded with the words "sterling" or "sterling silver," unless said case or covering shall contain not less than nine hundred and twenty-five one-thousandths parts of pure silver, is guilty of a misdemeanor.

**§ 429. Marking watch cases coin or coin silver.** Any person, firm, corporation or association who makes or sells, or

offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise comprised of works or movements and a case or covering applied or attached thereto, wholly or partially concealing said works or movements marked, stamped or branded with the words "coin" or "coin silver," unless said case or covering shall contain not less than nine hundred one-thousandths parts of pure silver, is guilty of a misdemeanor.

**§ 430. Marking articles made of linen.** Any person, firm, corporation or association who makes or sells or offers to sell or dispose of, or has in his or its possession, with intent to sell or dispose of, any collars or cuffs marked, stamped, or branded with the words "linen," "pure linen" or "all linen" or incased or inclosed in any box, package, cover or wrapper or other thing in, by or with which the said article is packed, inclosed or otherwise prepared for sale or disposition, having thereupon any engraving or printed label, stamp, imprint, mark, or trade-mark, indicating or denoting by such marking, stamping, branding, engraving or printing, that such article is "linen," "pure linen," or "all linen," unless the material of which the said collars or cuffs are manufactured contains at least one fold or ply which has a flax thread in both its warp and filling, is guilty of a misdemeanor.

**§ 431. Marking articles made of gold.** Any person, firm, corporation or association who or which makes or sells or offers to sell or dispose of, or has in his or its possession with intent to sell or dispose of, any article of merchandise, constructed in whole or in part of gold or of any alloy of gold and having stamped, branded, engraved or imprinted thereon any mark indicating or designed or intended to indicate that the gold or alloy of gold in such article is of a greater degree or karat of fineness by more than one karat than the actual quality or fineness of such gold or alloy, is guilty of a misdemeanor.

**§ 432. Illegal charges for elevating, receiving or discharging grain.** A person who charges for elevating, receiving or discharging grain by means of floating or stationary elevators a greater sum than is allowed by law is guilty of a misdemeanor.

**§ 433. Sale of agricultural products on commission.** A person who violates any provision of section three hundred and ninety-seven of the general business law is guilty of a misdemeanor.



**§ 434. Concealing foreign matter in merchandise.**

A person who, with intent to defraud, while putting up in a barrel, bag, bale, box, or other package, cotton, hops, hay, or any other article of merchandise whatever, usually sold by weight in such packages, places or conceals therein any other substance or thing whatever, in a case where special provision for the punishment thereof is not otherwise made by statute, is guilty of a misdemeanor.

**§ 435. False labels.** A person, who, with intent to defraud:

1. Puts upon an article of merchandise, or upon a cask, bottle, stopper, vessel, case, cover, wrapper, package, band, ticket, label, or other thing, containing or covering such an article, or with which such an article is intended to be sold, or is sold, any false description or other indication of or respecting the kind, number, quantity, weight or measure of such article, or any part thereof, or the place or country where it was manufactured or produced or the quality or grade of any such article, if the quality or grade thereof is required by law to be marked, branded or otherwise indicated on or with such article; or,

2. Sells or offers for sale an article, which to his knowledge is falsely described or indicated upon any such package, or vessel containing the same, or label thereupon, in any of the particulars specified; or,

3. Sells or exposes for sale any goods in bulk to which no name or trade-mark shall be attached, and orally or otherwise represents that such goods are the manufacture or production of some other than the actual manufacturer or producer, in a case where the punishment for such offense is not specially provided for otherwise by statute,

Is guilty of a misdemeanor.

**§ 436. Using false marks as to manufacture.** A person who, with intent to defraud or to enable another to defraud any person, manufactures or knowingly sells or causes to be manufactured or sold, any article, marked, stamped or branded or incased or inclosed in any box, bottle or wrapper, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark which article is not the manufacture, workmanship or production of the person named, indicated or denoted by such marking, stamping or branding, or by or upon such engraving, printed label, stamp, imprint, mark or trade-mark, is guilty of a misdemeanor.

**§ 437. Penalty for selling half wine not labeled**

A person who sells, offers for sale or manufactures with intent

to sell, any wine known as "half wine," which is not stamped, marked or labeled as required by law, is guilty of a misdemeanor.

**§ 438. Skimmed milk.** A person who sells or offers for sale, milk from which the whole or a part of the cream has been skimmed or removed, without disclosing the fact, or having a mark or label, plainly and legibly stating the fact, conspicuously affixed to every can or vessel containing the same, under circumstances not constituting an offense, for the punishment of which provision is otherwise specially made by statute, is guilty of a misdemeanor.

**§ 439. Corrupt influencing of agents, employees or servants.** Whoever gives, offers or promises to an agent, employee or servant, any gift or gratuity whatever, without the knowledge and consent of the principal, employer or master of such agent, employee or servant, with intent to influence his action in relation to his principal's, employer's or master's business; or an agent, employee or servant who without the knowledge and consent of his principal, employer or master, requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner to his principal's, employer's or master's business; or an agent, employee or servant, who, being authorized to procure materials, supplies or other articles either by purchase or contract for his principal, employer or master, or to employ service or labor for his principal, employer or master, receives directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor; and any person who gives or offers such an agent, employee or servant such commission, discount or bonus shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by such fine and by imprisonment for not more than one year.

**§ 440. Conducting business under assumed name.**

1. No person or persons shall hereafter carry on or conduct or transact business in this state under any assumed name or under any designation, name or style, corporate or otherwise, other than the real name or names of the individual or individuals conducting or transacting such business, unless such person or persons shall file in the office of the clerk of the county or counties in which such person or persons conduct, or transact or intend to conduct or transact such business, a certificate setting forth the name under

which such business is, or is to be, conducted or transacted, and the true or real full name or names of the person or persons conducting or transacting the same, with the post-office address or addresses of said person or persons. Said certificate shall be executed and duly acknowledged by the person or persons so conducting, or intending to conduct said business.

2. Persons conducting such business under an assumed name, or under any such designation referred to in subdivision one, on September first, nineteen hundred, shall file such certificate as hereinbefore prescribed, within thirty days after that date, and persons thereafter conducting or transacting business as aforesaid shall, before commencing said business, file such certificate in the manner hereinbefore prescribed.

3. The several county clerks of this state shall keep an alphabetical index of all persons filing certificates, provided for herein, and for the indexing and filing of such certificates, they shall receive a fee of twenty-five cents. A copy of such certificate duly certified to by the county clerk in whose office the same shall be filed shall be presumptive evidence in all courts of law in this state of the facts therein contained.

4. This section shall in no way affect or apply to any corporation duly organized under the laws of this state, or to any corporation organized under the laws of any other state and lawfully doing business in this state, nor shall this section be deemed or construed to prevent the lawful use of a partnership name or designation, provided that such partnership name or designation shall include the true or real name of at least one of such persons transacting such business.

5. Any person or persons carrying on, conducting or transacting business as aforesaid, who shall fail to comply with the provisions of this section shall be guilty of a misdemeanor.

**§ 441. Producing unpublished, undedicated or copyrighted opera or dramatic composition, without consent of owner.** Any person who causes to be publicly performed or represented for profit any unpublished, undedicated or copyrighted dramatic composition, or musical composition known as an opera, without the consent of its owner or proprietor, or who, knowing that such dramatic or musical composition is unpublished, undedicated or copyrighted and without the consent of its owner, or proprietor, permits, aids or takes part in such a performance or representation, shall be guilty of a misdemeanor.

**§ 442. Provisions when property is purchased on credit by aid of written statement of purchaser's ability to pay.** Whenever property shall be purchased by aid

of a statement relating to the purchaser's means or ability to pay, made in writing and signed by the party to be charged, and in said statement the party to be charged shall state that he conducts a specified kind of business and keeps books of account of said business, then, if at the expiration of any term of credit obtained by him in so purchasing said property he shall fail to pay for the same, he shall at all times during the period of ninety days subsequent to such failure to pay, upon the request of the persons from whom said property was purchased, or their agents duly accredited in writing, produce within ten days after such request is made his said books of account and each and every one of them mentioned or described in said statement and permit the persons from whom said property was purchased, or their agents duly accredited in writing, to fully examine such books of account and each and every one of them mentioned or described in said statement, and to make copies of any part thereof. Upon such request being made, failure to so produce within ten days said books of account and each and every one of them mentioned or described in said statement shall be presumptive evidence that each and every pretense relating to the purchaser's means or ability to pay in said statement contained were false at the time of making said statement and were known to the purchaser to be false.

**§ 443. Tickets issued by People's Institute not transferable.** It shall be unlawful for any person or corporation to buy, sell or otherwise transfer, or receive by transfer, for a consideration, any ticket, contract or memoranda issued by the corporation or association known as the People's Institute entitling a person or persons to a reduced fee for admission to any dramatic or other performance or entertainment. A person or corporation violating the provisions of this section is guilty of a misdemeanor. (*Added by L. 1909, ch. 424, in effect September 1, 1909.*)

## ARTICLE 42

### Canals

Section 460. Delivering false bill of lading to canal collector.

461. Weighmaster making false entry of weight of canal boat.

462. Canal officer concealing frauds upon the revenue.

463. Wilful injuries to the canals.

464. Drawing water from canals.

465. Canal officer accepting bribe to allow water to be drawn from canals.

**§ 460. Delivering false bill of lading to canal collector.** A person whose duty it is to deliver to any collector of tolls upon any of the canals belonging to this state, a bill of lading of any property transported upon such canal, who delivers

a false bill of lading as true, or makes or signs a false bill of lading, intending it to be delivered as true, knowing such bill to be false, is punishable by imprisonment in a state prison not exceeding two years, or by a fine not exceeding three times the value of the property omitted in such bill, or both.

**§ 461. Weighmaster making false entry of weight of canal boat.** A weighmaster upon any of the canals belonging to this state, and a clerk of such weighmaster, who makes a false entry of the weight of any boat, or cargo of any boat, navigating such canal, or who makes a false certificate of the light weight of any boat, knowing such entry or certificate to be false, is guilty of a misdemeanor.

**§ 462. Canal officer concealing frauds upon the revenue.** A public officer or agent employed by the people of this state in relation to the canals belonging to this state, who knows, or has good reason to believe that any fraud upon the revenues of the canals has been committed or attempted, and who omits to disclose the same, and enforce the penalties therefor, if within his power, is guilty of a misdemeanor.

**§ 463. Wilful injuries to the canals.** A person who, without authority of law, wilfully inflicts an injury upon any of the canals belonging to this state, or disturbs or injures any of the boats, locks, bridges, buildings, machinery or other works or erections connected with any such canal, and in which the people of this state have an interest, is guilty of felony.

**§ 464. Drawing water from canals.** A person who draws water from any canal in this state, or from a feeder or reservoir of any canal, during the season of navigation of the canal, and to the detriment or injury of the navigation thereof, without authority of law, is punishable by imprisonment in a county jail not less than one year, and by a fine not less than one thousand dollars.

**§ 465. Canal officer accepting bribe to allow water to be drawn from canals.** A public officer or agent employed by the people of this state in relation to the canals belonging to the state, or a contractor for canal repairs, or person having charge of any canal, or any part thereof, or of any lock, waste weir, feeder or other work belonging thereto, or being employed thereon, who asks, or accepts or promises to accept any bribe as an inducement to permit water to be drawn from a canal, feeder or reservoir in violation of the last section; and a person who gives, or offers or promises to give to any officer or person above mentioned, any bribe as an inducement to him to permit water to be drawn from any canal, feeder or reservoir in violation of this section, is guilty of a misdemeanor.

**ARTICLE 44****Children**

- Section 480. Abandonment of children.  
481. Abandonment of child under fourteen years.  
482. Unlawfully omitting to provide for child.  
483. Endangering life or health of child.  
484. Permitting children to attend certain resorts.  
485. Certain employment of children prohibited.  
486. Prohibited acts; destitute children.  
487. Children's courts.  
488. Sending messenger boys to certain places.  
489. Furnishing minors in reformatories with tobacco prohibited.  
490. Duty of officers.  
491. Fines to be paid to society for prevention of cruelty to children.  
492. Concealing birth of a child.  
493. Taking apprentice without consent of guardian.

**§ 480. Abandonment of children.** A parent or other person charged with the care or custody for nurture or education of a child under the age of sixteen years, who abandons the child in destitute circumstances and wilfully omits to furnish necessary and proper food, clothing or shelter for such child is guilty of felony, punishable by imprisonment for not more than two years, or by a fine not to exceed one thousand dollars, or by both. In case a fine is imposed the same may be applied in the discretion of the court to the support of such child. Proof of the abandonment of such child in destitute circumstances and omission to furnish necessary and proper food, clothing or shelter is prima facie evidence that such omission is wilful. The provisions of section twenty-four hundred and forty-five prohibiting the disclosure of confidential communications between husband and wife shall not apply to prosecutions for the offense here defined. A previous conviction of felony or misdemeanor shall not prevent the court from suspending sentence upon a conviction under this section, or from arbitrarily fixing the limit of imprisonment or fine, in case imprisonment or fine is imposed upon conviction herein.

Nothing in this section shall be deemed or construed to repeal, amend, impair or in any manner affect the provisions of sections four hundred and eighty-one, four hundred and eighty-two and four hundred and eighty-three of this chapter or any other exist-

ing provisions of law relating to abandonment or other acts of cruelty to children.

**§ 481. Abandonment of child under fourteen years.**

A parent, or other person having the care or custody, for nurture or education, of a child under the age of fourteen years, who deserts the child in any place, with intent wholly to abandon it, is punishable by imprisonment in a state prison for not more than seven years.

**§ 482. Unlawfully omitting to provide for child.**

A person who:

1. Wilfully omits, without lawful excuse, to perform a duty by law imposed upon him to furnish food, clothing, shelter or medical attendance to a minor, or to make such payment toward its maintenance as may have been required by the order of a court or magistrate when such minor has been committed to an institution; or,

2. Not being a superintendent of the poor, or a superintendent of alms-houses, or an institution duly incorporated for the purpose, without having first obtained a license in writing so to do from the board of health of the city or town wherein such females or children are received, boarded or kept, erects, conducts, establishes or maintains any maternity hospital, lying-in asylum where females may be received, cared for or treated during pregnancy, or during or after delivery; or receives, boards or keeps any nursing children, or any children under the age of twelve years not his relatives, apprentices, pupils or wards without legal commitment; or,

3. Being a midwife, nurse or other person having the care of an infant within the age of two weeks neglects or omits to report immediately to the health officer or to a legally qualified practitioner of medicine of the city, town or place where such child is being cared for, the fact that one or both eyes of such infant are inflamed or reddened whenever such shall be the case, or who applies any remedy therefor without the advice, or except by the direction of such officer or physician; or,

4. Neglects, refuses or omits to comply with any provisions of this section, or violates the provisions of such license,

Is guilty of a misdemeanor.

Every such license must specify the name and residence of the person so undertaking the care of such females or children, and the place and the number of females or children thereby allowed to be received, boarded and kept therein, and shall be revocable at will by the authority granting it. Every person so licensed must keep a register wherein he shall enter the names

and ages of all such children and of all children born on said premises, and the names and residences of their parents, as far as known, the time of the reception and discharge of such children and the reasons therefor, and also a correct register of the name and age of every child under the age of five years who is given out, adopted, taken away or indentured from such place to or by any one, together with the name and residence of the person so adopting, taking or indenturing such child; and shall cause a correct copy of such register to be sent to the authority issuing such license within forty-eight hours after such child is so given out, adopted, taken away or indentured. It shall be lawful for the officers of any incorporated society for the prevention of cruelty to children and of such board of health at all reasonable times to enter and inspect the premises wherein such females and children are so boarded, received or kept, and also such license, register and the children.

5. No institution shall be incorporated for any of the purposes mentioned in this section except with the written consent and approbation of a justice of the supreme court, upon the certificate in writing of the state board of charities approving of the organization and incorporation of such institution. The said board of charities may apply to the supreme court for the cancellation of any certificate of incorporation previously filed without its approval, and may institute and maintain an action in such court through the attorney-general to procure a judgment dissolving any such corporation not so incorporated and forfeiting its corporate rights, privileges and franchises.

**§ 483. Endangering life or health of child.** A person who:

1. Wilfully causes or permits the life or limb of any child actually or apparently under the age of sixteen years to be endangered, or its health to be injured, or its morals to become depraved; or,

2. Wilfully causes or permits such child to be placed in such a situation or to engage in such an occupation that its life or limb is endangered, or its health is likely to be injured, or its morals likely to be impaired,

Is guilty of a misdemeanor.

3. Any parent or guardian or other person having custody of a child under sixteen years of age, except in the city of New York who omits to exercise due diligence in the control of such child, to prevent such child from violating any of the provisions of this article and any such person or any other person responsible for or who by any act or omission causes, encourages



or contributes to the violation by any such child of said provisions shall be guilty of a misdemeanor and punishable accordingly.

**§ 484. Permitting children to attend certain resorts.** A person who:

1. Admits to or allows to remain in any dance-house, concert saloon, theatre, museum, skating rink, kinetoscope or moving picture performance, or in any place where wines or spirituous or malt liquors are sold or given away, or in any place of entertainment injurious to health or morals, owned, kept, leased, managed or controlled by him or by his employer, or where such person is employed or performs such services as doorkeeper or ticket seller or ticket collector, any child actually or apparently under the age of sixteen years, unless accompanied by its parent or guardian; or, (*Subd. thus amended by L. 1909, ch. 278, in effect September 1, 1909.*)

*Amendment of 1909 inserted "kinetoscope or moving picture performance" and the matter beginning with "leased" and ending with "collector,"; also struck out "or managed by him in whole or in part" after "kept".*

2. Suffers or permits any such child to play any game of skill or chance in any such place, or in any place adjacent thereto, or to be or remain therein, or admits to or allows to remain in any reputed house of prostitution or assignation, or in any place where opium or any preparation thereof is smoked, any child actually or apparently under the age of sixteen years; or,

3. Sells or gives away, or causes or permits or procures to be sold or given away to any child actually or apparently under the age of sixteen years any beer, ale, wine, or any strong or spirituous liquor; or,

4. Being a pawnbroker or person in the employ of a pawnbroker, makes any loan or advance or permits to be loaned or advanced to any child actually or apparently under the age of sixteen years any money, or in any manner directly or indirectly receives any goods, chattels, wares or merchandise from any such child in pledge for loans made or to be made to it or to any other person or otherwise howsoever; or,

5. Sells, pays for or furnishes any cigar, cigarette or tobacco in any of its forms to any child actually or apparently under the age of sixteen years; or,

6. Being the owner, keeper or proprietor of a junk shop, junk cart or other vehicle or boat or other vessel used for the collection of junk, or any collector of junk, receives or purchases any goods, chattels, wares or merchandise from any child under the age of sixteen years,

Is guilty of a misdemeanor.

It shall be no defense to a prosecution for a violation of subdivisions three, four, five or six of this section, that in the transaction upon which the prosecution is based the child acted

as the agent or representative of another, or that the defendant dealt with such child as the agent or representative of another.

**§ 485. Certain employment of children prohibited.**

A person who employs or causes to be employed, or who exhibits, uses, or has in custody, or trains for the purpose of the exhibition, use or employment of, any child actually or apparently under the age of sixteen years; or who having the care, custody or control of such a child as parent, relative, guardian, employer or otherwise, sells, lets out, gives away, so trains, or in any way procures or consents to the employment, or to such training, or use, or exhibition of such child; or who neglects or refuses to restrain such child from such training, or from engaging or acting:

1. As a rope or wire walker, gymnast, wrestler, contortionist, rider or acrobat; or upon any bicycle or similar mechanical vehicle or contrivance; or,

2. In begging or receiving or soliciting alms in any manner or under any pretense, or in any mendicant occupation; or in gathering or picking rags, or collecting cigar stumps, bones or refuse from markets; or in peddling; or,

3. In singing; or dancing; or playing upon a musical instrument; or in a theatrical exhibition; or in any wandering occupation; or,

4. In any illegal, indecent or immoral exhibition or practice; or in the exhibition of any such child when insane, idiotic, or when presenting the appearance of any deformity or unnatural physical formation or development; or,

5. In any practice or exhibition or place dangerous or injurious to the life, limb, health or morals of the child,

Is guilty of a misdemeanor.

But this section does not apply to the employment of any child as a singer or musician in a church, school or academy; or in teaching or learning the science or practice of music; or as a musician in any concert or in a theatrical exhibition, with the written consent of the mayor of the city, or the president of the board of trustees of the village where such concert or exhibition takes place. Such consent shall not be given unless forty-eight hours previous notice of the application shall have been served in writing upon the society mentioned in section four hundred and ninety one of this chapter, if there be one within the county, and a hearing had thereon if requested, and shall be revocable at the will of the authority giving it. It shall specify the name of the child, its age, the names and residence of its parents or guardians, the nature, time, duration and number of performances permitted, together with the place and character of the exhibition. But no such consent shall be deemed to authorize any violation of the first, second, fourth or fifth subdivisions of this section.

§ 486. **Prohibited acts; destitute children.** Any child actually or apparently under the age of sixteen years who is found:

1. Begging or receiving or soliciting alms, in any manner or under any pretense; or gathering or picking rags, or collecting cigar stumps, bones or refuse from markets; or,

2. Not having any home or other place of abode or proper guardianship; or who has been abandoned or improperly exposed or neglected, by its parents or other person or persons having it in charge, or being in a state of want or suffering; or,

3. Destitute of means of support, being an orphan, or living or having lived with or in custody of a parent or guardian who has been sentenced to imprisonment for crime, or who has been convicted of a crime against the person of such child, or has been adjudged an habitual criminal; or,

4. Frequenting or being in the company of reputed thieves or prostitutes, or in a reputed house of prostitution or assignation, or living in such a house either with or without its parent or guardian, or being in concert saloons, dance houses, theatres, museums or other places of entertainment, or places where wines, malt or spirituous liquors are sold, without being in charge of its parent or guardian; or playing any game of chance or skill in any place wherein or adjacent to which any beer, ale, wine or liquor is sold or given away, or being in any such place; or,

5. Coming within any of the descriptions of children mentioned in section four hundred and eighty-five,

Must be arrested and brought before a proper court or magistrate, who may commit the child to any incorporated charitable reformatory, or other institution, and when practicable, to such as is governed by persons of the same religious faith as the parents of the child, or may make any disposition of the child such as now is, or hereafter may be authorized in the cases of vagrants, truants, paupers or disorderly persons, but such commitment shall, so far as practicable, be made to such charitable or reformatory institutions.

Whenever any child shall be committed to an institution under this chapter, and the warrant or commitment shall so state, and it shall appear therefrom that either parent, or any guardian or custodian of such child, was present at the examination before such court or magistrate, or had such notice thereof as was by such court or magistrate deemed and adjudged sufficient, no further or other notice required by any local or special statute, in regard to the committal of children to such institution, shall be necessary, and such commitment shall in all respects be sufficient to authorize such institutions to receive and retain such child in its custody as therein directed.

Whenever any commitment of a child shall for any reason be adjudged or found defective, a new commitment of the child may be made or directed by the court or magistrate, as the welfare of the child may require. And no commitment of a child which shall recite therein the facts upon which it is based shall be deemed invalid by reason of any omission of the court or magistrate by whom such commitment is made to file any documents, papers or proceedings relating thereto, or by reason of any limitation as to the age of the child committed, contained in the act or articles of incorporation of the institution to which it may have been committed.

6. No child actually or apparently under sixteen years of age shall smoke or in any way use any cigar, cigarette or tobacco in any form whatsoever in any public street, place or resort. A violation of this subdivision shall be a misdemeanor, and shall be punished by a fine not exceeding ten dollars and not less than two dollars for each offense.

7. All children actually or apparently under the age of sixteen who desert their homes without good or sufficient cause, or keep company with dissolute, immoral or vicious persons, shall be deemed disorderly children. Those actually or apparently under the like age who are not susceptible of proper restraint or control by their parents, guardians, or lawful custodians, or who are habitually disobedient to their reasonable and lawful commands, shall be deemed ungovernable children. A disorderly or ungovernable child may be dealt with as provided in the fifth subdivision of this section.

8. Any magistrate having criminal jurisdiction may commit, temporarily, to an institution authorized by law to receive children on final commitment, and to have compensation therefor from the city or county authorities, any child under the age of sixteen years, who is held for trial on a criminal charge; and may, in like manner, so commit any such child held as a witness to appear on the trial of any criminal case; which institution shall thereupon receive the same, and be entitled to the like compensation proportionally therefor as on final commitment, but subject to the order of the court as to the time of detention and discharge of the child. Any such child convicted of any misdemeanor shall be finally committed to some such institution, and not to any prison or jail, or penitentiary, longer than is necessary for its transfer thereto. No child under restraint or conviction, actually or apparently under the age of sixteen years, shall be placed in any prison or place of confinement, or in any court-room, or in any vehicle for transportation in company with adults charged with or convicted of crime.

9. Whenever any child is brought before any court or magistrate, to be dealt with under any of the subdivisions of this section, instead of committing such child to confinement in any institution, the court or magistrate may place such child under the custody of a probation or parole officer, and at any time within one year thereafter such court or magistrate, may issue a warrant for such child, and after giving such child an opportunity to be heard, may make the commitment which could have been made in the first instance as aforesaid. The foregoing provision shall not apply to a children's court created by special enactment in cities of the first class but this exception shall not be construed as taking away or limiting any jurisdiction now possessed by such children's courts.

**§ 487. Children's courts.** All cases involving the commitment or trial of children, actually or apparently under the age of sixteen years, for any violation of law, in any court shall be heard and determined by such court, at suitable times to be designated therefor by it, separate and apart from the trial of other criminal cases, of which session a separate docket and record shall be kept. All such cases shall, so far as practicable, be heard and determined in a separate court room to be known as the children's court and to be used exclusively for the examination and trial of children, actually or apparently under the age of sixteen years, charged with any offense. And all such cases and cases of offenses by, or against the person of, a child under the age of sixteen years shall have preference over all other cases, before all magistrates and in all courts and tribunals in this state both civil and criminal; and where a child is committed or detained as a witness in any case such case shall be brought to trial or otherwise disposed of without delay, whether the defendant be in custody or enlarged on bail.

**§ 488. Sending messenger boys to certain places.** A corporation or person employing messenger boys who:

1. Knowingly places or permits to remain in a disorderly house, or in an unlicensed saloon, inn, tavern or other unlicensed place where malt or spirituous liquors or wines are sold, any instrument or device by which communication may be had between such disorderly house, saloon, inn, tavern or unlicensed place, and any office or place of business of such corporation or person; or,

2. Knowingly sends or permits any person to send any messenger boy to any disorderly house, unlicensed saloon, inn, tavern, or other unlicensed place, where malt or spirituous liquors or

wines are sold, on any errand or business whatsoever except to deliver telegrams at the door of such house,

Is guilty of a misdemeanor, and incurs a penalty of fifty dollars to be recovered by the district attorney.

**§ 489. Furnishing minors in reformatories with tobacco prohibited.** A person or officer who sells or gives any cigar, cigarette, snuff or tobacco in any of its forms to any minor undergoing confinement or sentence in any reformatory, penitentiary or house of refuge in this state is guilty of a misdemeanor.

**§ 490. Duty of officers.** A constable or police officer must, and any agent or officer of any incorporated society for the prevention of cruelty to children may arrest and bring before a court or magistrate having jurisdiction, any person offending against any of the provisions of this article and any minor coming within any of the descriptions of children mentioned in section four hundred and eighty-five, four hundred and eighty-six, or in four hundred and eighty-seven. Such constable, police officer or agent may interfere to prevent the perpetration in his presence of any act forbidden by this article.

A person who obstructs or interferes with any officer or agent of such society in the exercise of his authority under this article is guilty of a misdemeanor.

**§ 491. Fines to be paid to society for prevention of cruelty to children.** All fines, penalties and forfeitures imposed or collected for a violation of the provisions of this chapter, or of any act relating to, or affecting children, now in force or hereafter passed, must be paid on demand to the incorporated society for the prevention of cruelty to children in every case where the prosecution shall be instituted or conducted by such a society; and any such payment heretofore made to any such society may be retained by it.

**§ 492. Concealing birth of a child.** A person who endeavors to conceal the birth of a child, by any disposition of the dead body of the child, whether the child died before or after its birth, is guilty of a misdemeanor.

**§ 493. Taking apprentice without consent of guardian.** A person who takes an apprentice without having first obtained the consent of his legal guardian or unless a written agreement has been entered into as prescribed by law, is guilty of a misdemeanor.

**ARTICLE 46****Civil Rights**

- Section 510. Forfeiture of office and suspension of civil rights.
511. Consequence of sentence to imprisonment for life.
512. Forfeiture of property on conviction abolished.
513. Innkeepers and carriers refusing to receive guests and passengers.
514. Protecting civil and public rights.
515. Discrimination against person or class in price for admission.
516. Return of photographs of prisoners after unsuccessful prosecution of criminal action.

**§ 510. Forfeiture of office and suspension of civil rights.** A sentence of imprisonment in a state prison for any term less than for life, forfeits all the public offices, and suspends, during the term of the sentence, all the civil rights, and all private trusts, authority, or powers of, or held by, the person sentenced.

**§ 511. Consequence of sentence to imprisonment for life.** A person sentenced to imprisonment for life is thereafter deemed civilly dead.

**§ 512. Forfeiture of property on conviction abolished.** A conviction of a person for any crime does not work a forfeiture of any property, real or personal, or of any right or interest therein. All forfeitures to the people of the state, in the nature of deodands, or in a case of suicide, or where a person flees from justice, are abolished.

**§ 513. Innkeepers and carriers refusing to receive guests and passengers.** A person, who, either on his own account or as agent or officer of a corporation, carries on business as innkeeper, or as common carrier of passengers, and refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor.

**§ 514. Protecting civil and public rights.** A person who:

1. Excludes a citizen of this state, by reason of race, color or previous condition of servitude, from the equal enjoyment of any accommodation, facility or privilege furnished by innkeepers or common carriers, or by owners, managers or lessees of theatres or other places of amusement, or by teachers and officers of common

schools and public institutions of learning, or by cemetery associations; or,

2. Denies or aids or incites another to deny to any other person because of race, creed or color, full enjoyment of any of the accommodations, advantages, facilities and privileges of any hotel, inn, tavern, restaurant, public conveyance on land or water, theatre or other place of public resort or amusement,

Is guilty of a misdemeanor, punishable by fine of not less than fifty dollars nor more than five hundred dollars.

**§ 515. Discrimination against person or class in price for admission.** If a person who owns, occupies, manages or controls a building, park, inclosure or other place, opens the same to the public generally at stated periods or otherwise, he shall not discriminate against any person or class of persons in the price charged for admission thereto. A person violating the provisions of this section is guilty of a misdemeanor.

**§ 516. Return of photographs of prisoners after unsuccessful prosecution of criminal action.** Upon the determination of a criminal action or proceeding against a person, in favor of such person, every photograph of such person and photographic plate or proof taken or made of such person while such action or proceeding is pending by direction or authority of any police officer, peace officer or any member of any police department, and all duplicates and copies thereof shall be returned on demand to such person by the police officer, peace officer or member of any police department having any such photograph, photographic plate or proof, copy or duplicate in his possession or under his control; and such police officer, peace officer or member of any police department failing to comply with the requirements hereof, shall be guilty of a misdemeanor.

## ARTICLE 48

### Coercion

Section 530. Coercing another person a misdemeanor.

531. Coercion by employers.

\*432. Compelling woman to marry.

533. No conviction on certain testimony.

**§ 530. Coercing another person a misdemeanor.**

A person who with a view to compel another person to do or to abstain from doing an act which such other person has a legal right to do or to abstain from doing, wrongfully and unlawfully,

\* So in original.



1. Uses violence or inflicts injury upon such other person or his family, or a member thereof, or upon his property or threatens such violence or injury; or,

2. Deprives any such person of any tool, implement or clothing or hinders him in the use thereof; or,

3. Uses or attempts the intimidation of such person by threats or force,

Is guilty of a misdemeanor.

**§ 531. Coercion by employers.** Any person or employer of labor, and any person of any corporation on behalf of such corporation, who shall hereafter coerce or compel any person, employee, laborer or mechanic, to enter into an agreement, either written or verbal from such person, employee, laborer or mechanic, not to join or become a member of any labor organization, as a condition of such person securing employment, or continuing in the employment of any such person, employer or corporation, shall be deemed guilty of a misdemeanor.

The penalty for such misdemeanor shall be imprisonment in a penal institution for not more than six months, or by a fine of not more than two hundred dollars, or by both such fine and imprisonment.

**§ 532. Compelling woman to marry.** A person who by force, menace or duress, compels a woman against her will to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment for a term not exceeding ten years, or by a fine of not more than one thousand dollars, or by both.

**§ 533. No conviction on certain testimony.** No conviction can be had for compulsory marriage upon the testimony of the female compelled, unsupported by other evidence.

## ARTICLE 50

### Communication

Section 550. Sending letter, when deemed complete.

551. Sending threatening letters.

552. Divulging contents of telegraphic or telephonic messages.

553. Opening or publishing a letter, telegram or private paper.

**§ 550. Sending letter, when deemed complete.** In the various cases, in which the sending of a letter is made criminal by this chapter, the offense is deemed complete from the

time when such letter is deposited in any post-office or other place, or delivered to any person, with intent that it shall be forwarded. And the party may be indicted and tried in any county wherein such letter is so deposited or delivered, or in which it is received by the person to whom it is addressed.

**§ 551. Sending threatening letters.** A person who, knowing the contents thereof, sends, delivers, or in any manner causes to be sent or received any letter or other writing threatening to do any unlawful injury to the person or property of another, or any person who shall knowingly send or deliver or shall make and for the purpose of being delivered or sent, shall part with the possession of any letter, postal card or writing with or without a name subscribed thereto or signed with a fictitious name or with any letter, mark or other designation, with intent thereby to cause annoyance to any person, is guilty of misdemeanor.

**§ 552. Divulging contents of telegraphic or telephonic messages.** A person who:

1. Wrongfully obtains, or attempts to obtain, any knowledge of a telegraphic or a telephonic message by connivance with a clerk, operator, messenger, or other employee of a telegraph or telephone company; or,

2. Being such clerk, operator, messenger or other employee, wilfully divulges to anyone but the persons for whom it was intended, the contents or the nature thereof of a telegraphic or telephonic message or dispatch intrusted to him for the transmission or delivery, or of which contents he may in any manner become possessed, or occupying such position in a telegraph office shall wilfully refuse or neglect duly to transmit or deliver messages received at such office, except when such telegraphic or telephonic message or dispatch is in aid of or used to abet or carry on any unlawful business or traffic, or to perpetrate any criminal offense, and when it shall appear that any offense at law or unlawful business or traffic is being carried on or conducted in whole or in part by means of a telegraphic or telephonic message or dispatch, it shall be the duty of any corporation or employee having knowledge of the same, to withhold such dispatch from delivery, and to further furnish to any public officer whose duty it is to prosecute any offense at law so aided and abetted, all information in their possession, relating to said unlawful business or traffic; and to further assist in the identification of any person aiding or abetting in or conducting any such unlawful business or traffic; and any violation of this section, or refusal or neglect to furnish information as provided

hereinbefore, is punishable by a fine of not more than one thousand dollars or by imprisonment for not more than two years, or by both such fine and imprisonment.

**§ 553. Opening or publishing a letter, telegram or private paper.** A person who wilfully, and without authority:

1. Opens or reads, or causes to be opened or read, a sealed letter, telegram, or private paper; or,

2. Publishes the whole or any portion of such a letter, or telegram, or private paper, knowing it to have been opened or read without authority; or,

3. Takes a letter, telegram or private paper, belonging to another, or a copy thereof, and publishes the whole or any portion thereof; or,

4. Publishes the whole or any portion of such letter, telegram, or private paper, knowing it to have been taken or copied without authority; or,

5. Publishes or causes to be published, or connives at the publication of any letter, telegram, or private paper or of any portion of any letter, telegram, or private paper found on, or among the effects of, any person who has been dangerously wounded, or who has committed suicide, or who has died suddenly, or who has been found dead, unless such letter, telegram, or private paper shall have been produced pursuant to law before a coroner at an inquest, and the publication of such letter, telegram, or private paper, or of such portion of such letter, telegram, or private paper shall have been declared by that coroner in writing to be necessary to aid in the discovery of a crime, or of the identity of the wounded or deceased person; or,

6. Any person having or obtaining access, either with or without the consent of the lawful owner, to any original list, compilation or other collection of the names of customers or subscribers not less than five hundred in number, or to any other original list, compilation or other collection of names not less than five hundred in number, used in connection with any lawful business or occupation whatsoever, and who, without the consent of such lawful owner, shall take possession of any such original list, compilation, or other collection, or any part thereof, or shall make or cause to be made, or take possession of, a copy or duplication thereof, or of any part thereof, or who shall aid, abet or incite any other person to take or to copy or to cause to be copied or taken, any such list, compilation or collection, or any part thereof; or,

7. Any person who may have heretofore obtained or may hereafter obtain any such list, compilation or other collection specified

in subdivision six hereof, or any part thereof, or any copy or duplication of such list, compilation or collection or any part thereof, or the information contained in any such list, compilation, collection or any part thereof, and who, without the consent of the lawful owner of the original of any such list, compilation or collection, and with notice or knowledge of his rights, may at any time hereafter, make use of or attempt to make use of any such list, compilation or collection, or any part thereof, or of any copy or duplication of the whole or any part thereof, or of the information contained in any such list, compilation, collection or copy or duplication or any part thereof, for his own benefit or advantage, or that of any person other than said lawful owner,  
Is guilty of a misdemeanor.

## ARTICLE 52

### Compounding Crime

Section 570. Punishment for compounding crime.

571. Conviction of primary offender not necessary.

**§ 570. Punishment for compounding crime.** A person who takes money or other property, gratuity or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal a crime, or a violation of statute, or to abstain from, discontinue, or delay, a prosecution therefor, or to withhold any evidence thereof, except in a case where a compromise is allowed by law, is guilty:

1. Of a felony, punishable by imprisonment in a state prison for not more than five years, where the agreement or understanding relates to a felony punishable by death, or by imprisonment in a state prison for life;

2. Of a felony, punishable by imprisonment in a state prison for not more than three years, where the agreement or understanding relates to another felony;

3. Of a misdemeanor, punishable by imprisonment in a county jail for not more than one year, or by fine of not more than two hundred and fifty dollars, or both, where the agreement or understanding relates to a misdemeanor, or to a violation of a statute for which a pecuniary penalty or forfeiture is prescribed.

**§ 571. Conviction of primary offender not necessary.** Upon the trial of an indictment for compounding a crime, it is not necessary to prove that any person has been convicted of the crime or violation of statute, in relation to which an agreement or understanding herein prohibited was made.

**ARTICLE 54****Conspiracy**

Section 580. Definition and punishment of conspiracy.

581. Conspiracies against peace of the state.

582. Punishable conspiracies.

583. Overt act, when necessary.

**§ 580. Definition and punishment of conspiracy.**

If two or more persons conspire:

1. To commit a crime; or,
  2. Falsely and maliciously to indict another for a crime, or to procure another to be complained of or arrested for a crime; or,
  3. Falsely to institute or maintain an action or special proceeding; or,
  4. To cheat and defraud another out of property, by any means which are in themselves criminal, or which, if executed, would amount to a cheat, or to obtain money or any other property by false pretenses; or,
  5. To prevent another from exercising a lawful trade or calling, or doing any other lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements, or property belonging to or used by another, or with the use or employment thereof; or,
  6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws,
- Each of them is guilty of a misdemeanor.

**§ 581. Conspiracies against peace of the state.** If two or more persons, being out of this state, conspire to commit any act against the peace of this state, the commission or attempted commission of which, within this state, would be treason against the state, they are punishable by imprisonment in a state prison not exceeding ten years.

**§ 582. Punishable conspiracies.** No conspiracy is punishable criminally unless it is one of those enumerated in the last two sections, and the orderly and peaceable assembling or co-operation of persons employed in any calling, trade or handicraft for the purpose of obtaining an advance in the rate of wages or compensation, or of maintaining such rate, is not a conspiracy.

**§ 583. Overt act, when necessary.** No agreement except to commit a felony upon the person of another, or to commit arson or burglary, amounts to a conspiracy, unless some act beside

such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

## **ARTICLE 56**

### **Contempt of Court**

Section 600. Criminal contempt.

601. Punishment for criminal contempt.

602. Indictment for contempt.

**§ 600. Criminal contempt.** A person who commits a contempt of court, of any one of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior, committed during the sitting of the court, in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;

2. Behavior of the like character, committed in the presence of a referee or referees, while actually engaged in a trial or hearing, pursuant to the order of the court, or in the presence of a jury, while actually sitting for the trial of a cause, or upon an inquest or other proceeding authorized by law;

3. Breach of the peace, noise, or other disturbance, directly tending to interrupt the proceedings of a court, jury, or referee;

4. Wilful disobedience to the lawful process or other mandate of a court;

5. Resistance wilfully offered to its lawful process or other mandate;

6. Contumacious and unlawful refusal to be sworn as a witness, or, after being sworn, to answer any legal and proper interrogatory;

7. Publication of a false or grossly inaccurate report of its proceedings. But no person can be punished as provided in this section, for publishing a true, full, and fair report of a trial, argument, decision, or other proceeding had in court.

**§ 601. Punishment for criminal contempt.** A criminal act is not the less punishable as a crime, because it is also declared to be punishable as a contempt of court.

**§ 602. Indictment for contempt.** Punishment for a contempt, as prescribed in article nineteen of the judiciary law, does not bar an indictment for the same offense; but where a person who has been so punished is convicted on such an indictment, the court, in sentencing him, must take into consideration the previous punishment.

**ARTICLE 58****Conviction**

Section 610. Prisoner indicted may be convicted of lesser crime, or attempt.

611. No conviction on unsupported testimony in certain cases. (*Repealed by L. 1909, ch. 524, in effect May 27, 1909.*)

**§ 610. Prisoner indicted may be convicted of lesser crime, or attempt.** Upon the trial of an indictment, the prisoner may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime.

**§ 611. No conviction on unsupported testimony in certain cases.** (*Repealed by L. 1909, ch. 524, in effect May 27, 1909.*)

Section repealed has been partially incorporated in §§ 71 and 2177 and read as follows:

**§ 611. No conviction on unsupported testimony in certain cases.** No conviction can be had for the offense specified in section twenty-four hundred and sixty-one, upon the testimony of the female seduced, unsupported by other evidence.

No conviction can be had for abduction, compulsory marriage, rape or defilement, upon the testimony of the female abducted, compelled or defiled, unsupported by other evidence.

**ARTICLE 60****Convict Made Goods**

Section 620. Unlawful dealing in convict made goods.

**§ 620. Unlawful dealing in convict made goods.**

A person who:

1. Sells or exposes for sale convict made goods, wares or merchandise, without a license therefor, or having such license does not transmit to the secretary of state the statement required by article thirteen of the labor law; or,

2. Sells, offers for sale, or has in his possession for sale any such convict made goods, wares or merchandise without the brand, mark or label required by article thirteen of the labor law; or,

3. Removes or defaces or in any way alters such brand, mark or label,

Is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not more than one thousand nor less than one hundred dollars, or by imprisonment for not less than ten days or by both such fine and imprisonment.

**ARTICLE 62****Convicts**

Section 640. Convict protected by law.

641. Importing foreign convict.

642. Master of vessel bringing foreign convict.

643. Creditor of convict.

644. Convict voting.

**§ 640. Convict protected by law.** A convict sentenced to imprisonment is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he were not sentenced or convicted.

**§ 641. Importing foreign convict.** An owner, master or commander of any vessel arriving from a foreign country, who knowingly lands or permits to land at any port, city, harbor, or place within this state, any passenger, seaman or other person who is a foreign convict of any crime which, if committed within this state, would be punishable therein, without giving notice thereof to the mayor of such city, or other principal municipal officer of such port or place, is guilty of a misdemeanor.

**§ 642. Master of vessel bringing foreign convict.** A person, being the master or commander of any vessel, or boat, arriving from a foreign country, who knowingly brings into this state a person who has been, or is a foreign convict of any offense, which if committed in this state would be punishable therein, is guilty of a misdemeanor.

**§ 643. Creditor of convict.** A person injured by the commission of a felony, for which the offender is sentenced to imprisonment in a state prison, is deemed the creditor of the offender, and of his estate after his death, within the provisions of the statutes relating thereto.

The damages sustained by the person injured by the felonious act, may be ascertained in an action brought for that purpose by him against the trustees of the estate of the offender, appointed under the provisions of the statutes, or the executor or administrator of the offender's estate.

**§ 644. Convict voting.** The prohibition to vote at an election, contained in any statute of the state, shall not apply to a person heretofore or hereafter convicted of any crime, who has been sentenced or committed therefor to one of the houses of refuge, or other reformatories organized under the statutes of the state.



**ARTICLE 64**  
**Corporations**

- Section 660. Frauds in the organization of corporations.
661. Frauds in procuring organization of corporations.
662. Fraudulent issue of stocks and bonds.
663. Acting for foreign corporations not authorized to do business in this state.
664. Misconduct of officers and directors of stock corporations.
665. Misconduct of directors, officers, agents and employees of corporations.
666. Unlawful use of certain titles in connection with corporate name.
667. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions.
668. Misconduct at corporate elections.
669. Misconduct of officers and agents of pipe-line corporations.

**§ 660. Frauds in the organization of corporations.**

A person who:

1. Without authority subscribes the name of another to or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association; or,
  2. Signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation, existing or proposed; or,
  3. Signs to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement, that the terms of such subscription or agreement are not to be complied with or enforced,
- Is guilty of a misdemeanor.

**§ 661. Frauds in procuring organization of corporations.** An officer, agent or clerk of a corporation, or of persons proposing to organize a corporation, or to increase the capital stock of a corporation, who knowingly exhibits a false, forged or altered book, paper, voucher, security or other instru-

ment of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in a state prison not exceeding ten years.

**§ 662. Fraudulent issue of stocks and bonds.** An officer, agent or other person in the service of any joint-stock company or corporation formed or existing under the laws of this state, or of the United States or of any state or territory thereof, or of any foreign government or country, who wilfully and knowingly, with intent to defraud:

1. Sells, pledges or issues, or causes to be sold, pledged or issued, or signs or executes, or causes to be signed or executed with intent to sell, pledge or issue, or causes to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation or of the limit imposed by law or otherwise upon its power to create or issue stock or evidences of debt; or,

2. Reissues, sells, pledges or disposes of, or causes to be reissued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer or ownership of any such share or shares,

Is punishable by imprisonment for a term not exceeding seven years, or by a fine not exceeding three thousand dollars, or by both.

**§ 663. Acting for foreign corporations not authorized to do business in this state.** Any person, or corporation, who:

1. Acts as agent or representative of any mortgage, loan or investment corporation or building and mutual loan corporation or association or co-operative savings and loan association organized outside of this state, while such mortgage, loan or investment corporation or building and mutual loan corporation or association or co-operative savings and loan association shall not be authorized under a license of the superintendent of banks to do business in this state; or,

2. Acts as agent or representative in this state of a foreign corporation, other than a moneyed corporation, with the words

“trust,” “bank,” “banking,” “insurance,” “assurance,” “indemnity,” “guarantee,” “guaranty,” “savings,” “investment,” “loan,” “benefit,” or any other words or terms indicating, representing or holding out such company to be a moneyed corporation as a part of its name or corporate title, or who, in connection with such corporation or otherwise, shall put forth any sign containing said name, or who shall advertise or publish the said company as doing business in this state, directly or indirectly, through agents or otherwise, while such company shall not be authorized under a certificate procured from the secretary of state pursuant to section fifteen of the general corporation law to do business in this state,

Is guilty of a misdemeanor.

**§ 664. Misconduct of officers and directors of stock corporations.** A director of a stock corporation, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended:

1. To make a dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation; or to reduce such capital stock without the consent of the legislature; or,

3. To discount or receive any note or other evidence of debt in payment of an instalment of capital stock actually called in, and required to be paid, or with intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or,

5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of shares of its own stock,

Is guilty of a misdemeanor.

An officer or director of a stock corporation who:

6. Issues, participates in issuing, or concurs in a vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or,

7. Sells, or agrees to sell, or is directly or indirectly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share,

Is guilty of a misdemeanor, punishable by imprisonment for not less than six months, or by a fine not exceeding five thousand dollars, or by both.

**§ 665. Misconduct of directors, officers, agents and employees of corporations.** A director, officer, agent or employee of any corporation or joint-stock association who:

1. Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or,

2. Makes or concurs in making any false entry, or concurs in omitting to make any material entry in its books or accounts; or,

3. Knowingly (a), concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or (b), omits or concurs in omitting any statement required by law to be contained therein; or,

4. Having the custody or control of its books, wilfully refuse or neglects to make any proper entry in the stock book of such corporation as required by law, or to exhibit or allow the same to be inspected, and extracts to be taken therefrom by any person entitled by law to inspect the same, or take extracts therefrom; or,

5. If a notice of an application for an injunction affecting the property or business of such joint-stock association or corporation is served upon him, omits to disclose the fact of such service and the time and place of such application to the other directors, officers and managers thereof; or,

6. Refuses or neglects to make any report or statement lawfully required by a public officer,

Is guilty of a misdemeanor.

**§ 666. Unlawful use of certain titles in connection with corporate name.** Any person, association or corporation, other than a moneyed corporation, who shall within this state directly or indirectly, or through agents or representatives transact business under, or in anywise use a corporate name or a corporate title with the words "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," as a part of such name or title, is guilty of a misdemeanor; provided, however, that any domestic corporation, other than a moneyed corporation, heretofore duly organized and heretofore duly authorized by law to use and on April twenty-ninth, nineteen hundred and four, lawfully using either or any of such words as a part of its lawful corporate title, may lawfully continue to use

such corporate title, provided and if it, being a corporation other than a moneyed corporation, shall, wherever the name shall be printed, written, engraved or displayed, add, in legible English characters, of substantially the same size and style as the name, directly under the said name or immediately in connection therewith, wherever so used, the words "not a moneyed corporation."

**§ 667. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions.** It is no defense to a prosecution for a violation of the provisions of this article and article twenty-six, that the corporation is a foreign corporation, if it carries on business or keeps an office therefor in this state.

The term "director" as used in this article and article twenty-six includes any of the persons having, by law, the direction or management of the affairs of a corporation, by whatever name described.

A director of a corporation or joint-stock association is deemed to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this article and article twenty-six. If present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this article and article twenty-six occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the corporation for six months thereafter without causing or in writing requiring his dissent from such violation to be entered on such record of minutes.

**§ 668. Misconduct at corporate elections.** Any person who:

1. Being entitled to vote at any meeting of the stockholders or bondholders or both of a stock corporation, sells his vote, or who issues a proxy to vote to any person for any sum of money or thing of value, except as expressly authorized by law; or,

2. Acts as an inspector of election at any such meeting and violates an oath taken by him in pursuance of law as such inspector, or violates the provisions of an oath required by law to be taken by him as such inspector, or is guilty of any dishonest or corrupt conduct as such inspector,

Is guilty of a misdemeanor,

**§ 669. Misconduct of officers and agents of pipeline corporations.** Any officer, agent or manager of a pipeline corporation who:

1. Neglects or refuses to transport any product delivered for transportation, or to accept and allow a delivery thereof in the order of application, according to the general rules of the corporation, as provided by law; or,

2. Charges, accepts or agrees to accept for such receipt, transportation and delivery, a sum different from the amount fixed by such regulations; or,

3. Allows or pays, or agrees to allow or pay, or suffers to be allowed or paid or repaid, any draw-back, rebate or allowance, so that any person shall, by any device, have or procure any transportation of products over such pipe-line at a less rate or charge than is fixed in such regulations.

Is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months, or by both.

## ARTICLE 66

### Crime Against Nature

Section 690. Crime against nature; sodomy.

691. Penetration sufficient.

**§ 690. Crime against nature; sodomy.** A person who carnally knows in any manner any animal or bird; or carnally knows any male or female person by the anus or by or with the mouth; or voluntarily submits to such carnal knowledge; or attempts sexual intercourse with a dead body is guilty of sodomy and is punishable with imprisonment for not more than twenty years.

**§ 691. Penetration sufficient.** Any sexual penetration, however slight, is sufficient to complete the crime specified in the last section.

## ARTICLE 68

### Disguises

Section 710. Disguised and masked persons; masquerades.

711. Allowing masquerades to be held in places of public resort.

712. Leaving state with intent to elude provisions of this article.

713. Witnesses' privilege.

**§ 710. Disguised and masked persons; masquerades.** An assemblage in public houses or other places of three or more persons disguised by having their faces painted, discolored, colored or concealed, is unlawful, and every individual so disguised, present thereat, is guilty of a misdemeanor; but nothing contained in this section shall be construed as prohibiting any peaceful assemblage for a masquerade or fancy dress ball or entertainment, or any assemblage therefor of persons masked, or as prohibiting the wearing of masks, fancy dresses, or other disguise by persons on their way to or returning from such ball or other entertainment; if, when such masquerade, fancy dress ball or entertainment is held in any of the cities of this state, permission is first obtained from the police authorities in such cities respectively for the holding or giving thereof, under such regulations as may be prescribed by such police authorities.

**§ 711. Allowing masquerades to be held in places of public resort.** A person being a proprietor, manager or keeper of a theatre, circus, public garden, public hall, or other place of public meeting, resort or amusement, for admission to which any price or payment is demanded, who permits therein any assemblage of persons masked, prohibited in this article, is guilty of a misdemeanor, punishable by imprisonment in a state prison not exceeding two years, or in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars and not less than one thousand dollars, or by both such fine and imprisonment.

**§ 712. Leaving state with intent to elude provisions of this article.** A person who leaves the state, with intent to elude any provision of this article, or to commit any act without the state, which is prohibited by this article, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this article, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

**§ 713. Witnesses' privilege.** No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this article, upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

## ARTICLE 70

### Disorderly Conduct

Section 720. Disorderly conduct on public conveyances.

721. Eavesdropping.

**§ 720. Disorderly conduct on public conveyances.**

Any person who shall by any offensive or disorderly act or language, annoy or interfere with any person in any place or with the passengers of any public stage, railroad car, ferry boat, or other public conveyance, or who shall disturb or offend the occupants of such stage, car, boat or conveyance, by any disorderly act, language or display, although such act, conduct or display may not amount to an assault or battery, shall be deemed guilty of a misdemeanor.

**§ 721. Eavesdropping.** A person, who secretly loiters about a building, with intent to overhear discourse therein, and to repeat or publish the same to vex or annoy or injure others, is guilty of a misdemeanor.

## ARTICLE 72

### Duelling

Section 730. Challenge defined.

731. Duelling defined; punishment.

732. Challenger or abettor.

733. Attempts to induce a challenge.

734. Posting for not fighting.

735. Duel outside of state.

736. Where such person may be indicted and tried.

737. Witnesses.

**§ 730. Challenge defined.** Any word, spoken or written, or any sign, uttered or made to any person, expressing or implying, or intended to express or imply, a desire, request, invitation, or demand, to fight a duel, or to meet for the purpose of fighting a duel, is deemed a challenge.

**§ 731. Duelling defined; punishment.** A person who fights a duel, or engages in any combat with another, with deadly weapons, by previous agreement, or upon a previous quarrel, although no death or wound ensues, is punishable by imprisonment for a term not exceeding ten years. A person convicted under this section is thereafter incapable of holding, or of being elected or



appointed to any office or place of trust or emolument, civil or military, within the state.

**§ 732. Challenger or abettor.** A person who challenges another to fight a duel, or who sends a written or verbal message, purporting or intended to be a challenge to fight a duel, or an invitation to a combat with deadly weapons, or who accepts such a challenge or message, or who knowingly carries or delivers such a challenge or message, or who is present at the time appointed for such a duel or combat, or when such a duel or combat is fought, either as second, aid, or surgeon, or who advises or abets, or gives any countenance or assistance to such a duel or combat upon previous agreement, is punishable by imprisonment for not more than seven years.

**§ 733. Attempts to induce a challenge.** A person guilty of sending or using to another any word or sign whatever, with intent to provoke or induce such person to give or receive a challenge to fight a duel, is guilty of a misdemeanor.

**§ 734. Posting for not fighting.** A person who posts or advertises another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who, in writing or in print, uses reproachful or contemptuous language to or concerning any one, for not sending or accepting a challenge to fight a duel, or for not fighting a duel, is guilty of a misdemeanor.

**§ 735. Duel outside of state.** A person who leaves this state with intent to elude any provision of this article, or to commit any act without this state, which is prohibited by this article, or who, being a resident of this state, does any act without this state, which would be punishable by the provisions of this article, if committed within this state, is guilty of the same offense, and subject to the same punishment, as if the act had been committed, or was to have been consummated within this state.

**§ 736. Where such person may be indicted and tried.** A person offending against any provision of the last section may be indicted and tried in any county within this state; but the person so offending may plead a former conviction or acquittal in another state or country for the same offense, and if such plea is admitted or established, it shall be a bar to further proceedings against him, for such offense.

**§ 737. Witnesses.** A person offending against any provision of this article is a competent witness against any other person offending in the same transaction, and must not be excused

from testifying or answering any question, upon an investigation or trial for an offense under this article, upon the ground that his testimony might tend to convict him of a crime. But evidence given by a person so testifying, can not be received against him, in any criminal action or proceeding.

## ARTICLE 74

### Elective Franchise

#### Section 750. Definitions.

751. Misdemeanors at, or in connection with, political caucuses, primary elections, enrollment in political parties, committees, and conventions.
752. False registration.
753. Misconduct of registry officers.
754. Mutilation, destruction or loss of registry list.
755. Solicitation of money for newspaper support.
756. Misdemeanors concerning police commissioners or officers or members of any police force.
757. Failure of house-dweller to answer inquiries.
758. Removal, mutilation or destruction of election booths, supplies, poll-lists or cards of instruction.
759. Refusal to permit employees to attend election.
760. Misconduct in relation to certificates of nomination and official ballots.
761. Failure to deliver official ballots.
762. Misconduct of election officers and watchers.
763. Violation of election law by public officer.
764. Misdemeanors in relation to elections.
765. Illegal voting.
766. False returns.
767. Furnishing money or entertainment to induce attendance at polls.
768. Giving consideration for franchise.
769. Receiving consideration for franchise.
770. Testimony on prosecution.
771. Bribery or intimidation of elector in military service of United States.
772. Duress and intimidation of voters.
773. Conspiracy to promote or prevent election.
774. Political assessments.
775. Corrupt use of position or authority.
776. Failure to file candidate's statement of expenses.
777. Procuring fraudulent certificates in order to vote.

**Section 778.** Presenting fraudulent certificates to registry boards to procure registration.

779. Soliciting from candidates.

780. Judicial candidates not to contribute.

781. Limitation of amounts to be expended by candidates.

782. Penalty.

**§ 750. Definitions.** The words "election" or "town meeting," as used in any of the sections of this article excepting section seven hundred and fifty-one, shall be deemed to apply to and include all general and special elections, municipal elections and town meetings.

**§ 751. Misdemeanors at, or in connection with, political caucuses, primary elections, enrollment in political parties, committees, and conventions.** Any person who:

1. At a political caucus, or at a primary election of a party, wilfully votes, or attempts to vote, without being entitled to do so, or votes, or attempts to vote on any other name than his own, or on the same day more than once on his own name; or,

2. Votes, or offers to vote, at a political caucus, or primary election of a party, having voted at the political caucus or primary election of any other political party on the same day, or being at the time enrolled in a party other than the party at whose primary he votes or offers to vote; or, who causes his name to be placed upon the rolls of a party organization of one party while his name is by his consent or procurement upon the rolls of a party organization of another party; or,

3. At a political caucus, or at a primary election, for the purpose of affecting the result thereof, votes or attempts to vote two or more ballots, or adds, or attempts to add, any ballot to those lawfully cast, by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or who adds to or mixes with, or attempts to add to or mix with, the ballots lawfully cast, another ballot or other ballots before the votes have been counted or canvassed, or while the votes are being counted or canvassed; or at any time abstracts any ballots lawfully cast, with intent to change the result of such election or to change the count thereat in favor of or against any person voted for at such election, or to prevent the ballots being recounted or used as evidence; or carries away, destroys, loses, conceals, detains, secretes, mutilates, or attempts to carry away, destroy, conceal, detain, secrete, or mutilate, any tally lists, ballots, ballot boxes, enrollment books, certificates of return, or any official documents provided for by the election law or otherwise by law,

for the purpose of affecting or invalidating the result of such election, or of destroying evidence; or in any manner interferes with the officers holding any primary election or conducting the canvass of the votes cast thereat, or with voters lawfully exercising, or seeking to exercise, their right of voting at such primary election; or,

4. For the purpose of securing enrollment as a member of a political party, or for the purpose of being allowed to vote at a primary election as a member of a political party, makes and deposits or files, or makes or deposits or files with a board of primary inspectors, or with any public officer or board, a false declaration of party affiliation or wilfully makes a false declaration of residence, either by an enrollment blank or otherwise, or falsely answers any pertinent question asked him by the board of primary inspectors, or the board of election inspectors, or by a member thereof; or knowingly, on any day of registration or in the interval between any such day and the next ensuing day of general election, reveals or discloses the names or number of the enrolled electors of any party, or makes, publishes, or circulates a list of such names, or of any thereof, or does or permits any act by which the name of the party with which an elector has enrolled, or the number of electors enrolled with a party, may be disclosed; or,

5. Fraudulently or wrongfully does any act tending to affect the result of any election at a political caucus or of any primary election or convention; or,

6. Induces or attempts to induce any officer, teller, canvasser, poll clerk, primary election inspector, election inspector, custodian of primary records, or clerk or employee of or in the office of a custodian of primary records at a political caucus, or primary election, or convention, or while discharging any duty or performing any act required or made necessary by the election law, to do any act in violation of his duty, or in violation of the election law; or,

7. Directly or indirectly, by himself or through any other person, pays, or offers to pay, money or other valuable thing, or promises a place or position, or offers any other consideration or makes any other promise, to any person, to induce any voter to vote, or refrain from voting, at a political caucus, primary election, or convention, for or against any particular person; or does or offers to do, anything to hinder or delay any elector from taking part in, or voting at, a political caucus, or at a primary election; or,

8. By menace or other unlawful or corrupt means, directly or indirectly, influences or attempts to influence, the vote of any person entitled to vote at a political caucus, primary election, or con-

vention, or obstructs such person in voting, or prevents him from voting thereat; or,

9. Directly or indirectly, by himself or through any other person, receives money or other valuable thing, or a promise of a place or position, before, at, or after any political caucus, primary election, or convention, for voting or refraining from voting for or against any person, or for voting or refraining from voting at a political caucus, primary election, or convention; or,

10. Being an officer, teller, canvasser, primary inspector, at a political caucus, or at a primary election, knowingly permits any fraudulent vote to be cast, or knowingly receives and deposits in the ballot box any ballots offered by any person not qualified to vote; or permits the removal of ballots from the polling place before the close of the polls, or refuses to receive ballots intended for the electors of the district, or refuses to deliver to any elector ballots intended for the electors of the district which have been delivered to the board of inspectors, or permits electioneering within the polling place or within one hundred feet therefrom, or fails to keep order within the polling place, or permits any person other than the inspectors to accompany an elector into a voting booth, or enters the voting booth with any elector, except one entitled to receive assistance in the preparation of his ballot, or permits any person other than a voter, who has not voted, or watcher to come within the guard rail or removes or permits another to remove any mark placed upon a ballot for its identification; or,

11. Being an officer, custodian of primary records, clerk or employee of or in the office of a custodian of primary records, election inspector, primary inspector, or poll clerk, knowingly puts opposite the name of an elector in an enrollment book any enrollment number other than the number opposite such name on the registration books of such district, or knowingly delivers to or receives from any elector on any day of registration an enrollment blank or envelope on which is any other enrollment number than that so opposite his name on such books of registration, or knowingly transcribes from an enrollment blank to the enrollment books any refusal to enroll or enrollment not indicated on the enrollment blank of the elector of such district whose enrollment number appears on the same, or refuses or wilfully neglects to transcribe from any enrollment blank to the proper enrollment books any refusal to enroll or enrollment indicated on the enrollment blank of such an elector, enrolls or attempts to enroll as a member of a political party, upon any of the enrollment books, any person not qualified to enroll as such, or fraudulently enters thereupon the name of any person who has not enrolled as a member of any political party, or refuses or wilfully neglects to

enroll upon any of the enrollment books the name of any qualified person who has demanded to be enrolled as a member of a political party, or at any time strikes from any of the enrollment books the name of any person duly enrolled, or at any time adds to any of the enrollment books the name of any person not qualified to be enrolled as a member of a political party, or the name of any person who in fact has not enrolled as such; or makes marks upon, mutilates, carries away, conceals, alters, or destroys any enrollment blank or enrollment envelope used or deposited by an elector on a day of registration for the purpose of enrolling or refusing to enroll himself as a member of a political party; or mutilates, carries away, conceals, alters, or destroys, any statement or declaration made by a qualified voter for the purpose of enrolling as a member of a party; or, prior to the close of the last meeting for registration in any year, mutilates, carries away, conceals, alters, or destroys any enrollment blanks or enrollment envelopes not then delivered to electors; or,

12. Being an officer, teller, canvasser, election inspector, primary inspector, custodian of primary records, clerk or employee of or in the office of a custodian of primary records, or any officer of a political committee or a convention, wilfully omits, refuses or neglects to do any act required by the election law or otherwise by law, or violates any of the provisions of the election law, or makes or attempts to make any false canvass of the ballots cast at a political caucus, primary election, or convention, or a false statement of the result of a canvass of the ballots cast thereat; or,

13. Being a custodian of primary records, or an officer of a political committee, or of a convention, who is charged with, or assumes, the duty of making up the preliminary roll of any convention, wilfully includes in such roll the name of any person not certified to be elected thereto in accordance with the provisions of law, or who wilfully omits from such roll the name of any person who is so certified to be a delegate to such convention,

Is guilty of a misdemeanor.

**§ 752. False registration.** Any person who:

1. Registers or attempts to register as an elector in more than one election district for the same election, or more than once in the same election district; or,

2. Registers or attempts to register as an elector knowing that he will not be a qualified voter in the district at the election for which such registration is made; or,

3. Registers or attempts to register as an elector under any other name than his own; or,

4. Knowingly gives a false residence within the election district when registering as an elector; or,

5. Knowingly permits, aids, assists, abets, procures, commands or advises another to commit any such act,

Is guilty of a felony, punishable by imprisonment in a state prison for not more than five years. (*Thus amended by L. 1909, ch. 306, in effect September 1, 1909.*)

Amendment of 1909 made changes only in first and second subdivisions, which formerly read as follows:

"1. Causes or attempts to cause his name to be placed upon any list or register of voters in more than one election district for the same election, or more than once in the same election district; or,

"2. Causes or attempts to cause his name to be placed upon a list or register of voters knowing that he, will not be a qualified voter in the district at the election for which such list or register is made; or,"

**§ 753. Misconduct of registry officers.** Any member or clerk of a registry board who wilfully violates any provision of the election law relative to the registration of electors or wilfully neglects or refuses to perform any duty imposed on him by law, or is guilty of any fraud in the execution of the duties of his office, is guilty of a felony, punishable by imprisonment for not more than ten years.

**§ 754. Mutilation, destruction or loss of registry list.** Any person who wilfully loses, alters, destroys or mutilates the list or register of voters in any election district, or a certified copy thereof, or removes from the place of registration the public copy of such registration, after the making of the same and before the closing of the polls of the election for which the same is made, is guilty of a misdemeanor.

**§ 755. Solicitation of money for newspaper support.** Any person who solicits from a candidate for an elective office money or other property as a consideration for a newspaper or other publication supporting any candidate for an elective office, is guilty of a misdemeanor.

**§ 756. Misdemeanors concerning police commissioners or officers or members of any police force.** Any person who, being a police commissioner or an officer or member of any police force in this state:

1. Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen; or,

2. Appoints, promotes, transfers, retires or punishes an officer or member of a police force, or asks for or aids in the promotion, transfer, retirement or punishment of an officer or member of a police force, because of the party adherence or affiliation of such officer or member, or for or on the request, direct or

indirect, of any political party, organization, association or society, or of any officer, member of committee or representative official or otherwise of any political party, organization, association or society; or,

3. Contributes any money, directly or indirectly, to, or solicits, collects or receives any money for, any political fund, or joins or becomes a member of any political club, association, society or committee,

Is guilty of a misdemeanor.

**§ 757. Failure of house-dweller to answer inquiries.** Any person dwelling in a building in a city who wilfully refuses to truly answer any question or who shall give false answers to any questions asked by any elector of such city, between the first meeting of the boards of registry therein for any election and the closing of the polls at such election, relating to the residence and qualifications as a voter of any person dwelling in such building, or of any person who appears upon the list or registry of voters made by a board of registry as residing at such building, or who knowingly harbors or conceals any person who has falsely registered as a voter, or who shall rent any room or bed to any person to be used by such person for himself or any other person for the purpose of unlawfully registering or voting therefrom is guilty of a misdemeanor.

**§ 758. Removal, mutilation or destruction of election booths, supplies, poll-lists or cards of instruction.** Any person who:

1. During an election or town meeting, wilfully defaces or injures a voting booth or compartment, or wilfully removes or destroys any of the supplies or other conveniences placed in the voting booths or compartments in pursuance of law; or,

2. Before the closing of the polls, wilfully defaces or destroys any list of candidates to be voted for at such election or town meeting, posted in accordance with the election law; or,

3. During an election or town meeting, wilfully removes or defaces the cards for the instruction of voters, posted in accordance with the election law,

Is guilty of a misdemeanor.

**§ 759. Refusal to permit employees to attend election.** A person or corporation who refuses to an employee entitled to vote at an election or town meeting, the privilege of attending thereat, as provided by the election law, or subjects such employee to a penalty or reduction of wages because of the exercise of such privilege, is guilty of a misdemeanor.



**§ 760. Misconduct in relation to certificates of nomination and official ballots.** A person who:

1. Falsely makes or makes oath to, or fraudulently defaces or destroys, a certificate of nomination or any part thereof; or,
2. Files or receives for filing a certificate of nomination, knowing that any part thereof was falsely made; or,
3. Suppresses a certificate of nomination which has been duly filed, or any part thereof; or,
4. Forges or falsely makes the official indorsement of any ballot; or,
5. Having charge of official ballots, destroys, conceals or suppresses them, except as provided by law,

Is punishable by imprisonment for not more than five years.

**§ 761. Failure to deliver official ballots.** Any person who has undertaken to deliver official ballots to any city, town or village clerk, or inspector, as authorized by the election law, and neglects or refuses to do so, is guilty of a misdemeanor.

**§ 762. Misconduct of election officers and watchers.** Any election officer or watcher who:

1. Reveals to another person the name of any candidate for whom a voter has voted; or,
2. Communicates to another person his opinion, belief or impression as to how or for whom a voter has voted; or,
3. Places a mark upon a ballot, or does any other act by which one ballot can be distinguished from another, or can be identified; or,
4. Before the closing of the polls, unfolds a ballot which a voter has prepared for voting,

Is guilty of a misdemeanor.

**§ 763. Violation of election law by public officer.** A public officer who omits, refuses or neglects to perform any act required of him by the election law, or refuses to permit the doing of any act authorized thereby, is, if not otherwise provided by law, punishable by imprisonment for not more than three years, or by a fine of not more than three thousand dollars, or both.

**§ 764. Misdemeanor in relation to elections.** Any person who:

1. Acts as an inspector of election, poll clerk or ballot clerk, without being able to read and write the English language, or without being otherwise qualified to hold such office; or,
2. Being an inspector of election, knowingly and wilfully permits or suffers any person to vote who is not entitled to vote thereat; or,

3. Wilfully and unlawfully obstructs, hinders or delays, or aids or assists in obstructing or delaying any elector on his way to a registration or polling place, or while he is attempting to register or vote; or,

4. Electioneers on election day within a polling place, or in any public street or in a building or room, unless such building or room has been maintained for such purpose for at least six months previous to said election day, or in any public manner within one hundred feet of a polling place; or displays any political poster or placard, except those lawfully provided, in or upon any building used for registration or election purposes during any day for registration or election; or,

5. Removes any official ballot from a polling place before the closing of the polls; or,

6. Unlawfully goes within the guard-rail of any polling place or unlawfully remains within such guard-rail after having been commanded to remove therefrom by any inspector of election; or,

7. Enters a voting booth with any voter or remains in a voting booth while it is occupied by any voter, or opens the door of a voting booth when the same is occupied by a voter, with the intent to watch such voter while engaged in the preparation of his ballot, except as authorized by the election law; or,

8. Being or claiming to be a voter, permits any other person to be in a voting booth with him while engaged in the preparation of his ballot, except as authorized by the election law, without openly protesting against and asking that such person be ejected; or,

9. Having lawfully entered a voting booth with a voter, requests, persuades or induces such voter to vote any particular ballot or for any particular candidate, or, directly or indirectly, reveals to another the name of any candidate voted for by such voter, or anything occurring within such voting booth; or,

10. Shows his ballot after it is prepared for voting, to any person so as to reveal the contents, or solicits a voter to show the same; or,

11. Places any mark upon his ballot, or does any other act in connection with his ballot with the intent that it may be identified as the one voted by him; or,

12. Places any mark upon, or does any other act in connection with, a ballot or paster ballot, with the intent that it may afterwards be identified as having been voted by any particular person; or,

13. Receives an official ballot from any person other than one of the ballot clerks having charge of the ballots; or,

14. Not being a ballot clerk, delivers an official ballot to a voter; or,

15. Not being an inspector of election, receives from any voter a ballot prepared for voting; or,

16. Fails to return to the ballot clerks, before leaving the polling place or going outside the guard-rail, each ballot not voted by him; or,

17. Wilfully defaces, injures, mutilates, destroys or secretes any voting machine which belongs to any municipality for use at elections, and any person who commits or attempts to commit a fraud in the use of any such voting machine during an election; or,

18. Wilfully disobeys any lawful command of the board of inspectors, or any member thereof,

Is guilty of a misdemeanor.

This section shall apply to general and special elections, municipal elections and town meetings, but nothing therein shall prevent any person from receiving or delivering an unofficial sample ballot, or from receiving, delivering and voting an unofficial ballot as authorized by the election law.

**§ 765. Illegal voting.** Any person who:

1. Knowingly votes or offers or attempts to vote at any election, or town meeting, when not qualified; or,

2. Procures, aids, assists, counsels or advises any person to go or come into any town, ward or election district, for the purpose of voting at any election, or town meeting, knowing that such person is not qualified; or,

3. Votes or offers or attempts to vote at an election, or town meeting more than once; or votes or offers or attempts to vote at an election, or town meeting under any other name than his own; or votes or offers or attempts to vote at an election, or town meeting in an election district or from a place where he does not reside; or,

4. Procures, aids, assists, commands or advises another to vote or offer or attempt to vote at an election, or town meeting, knowing that such person is not qualified to vote thereat; or,

5. Being an inhabitant of another state or county, votes or offers or attempts to vote at an election, or town meeting in this state or permits, aids, assists, abets, procures, commands or advises another to commit or attempt any act named in this section,

Is guilty of felony, punishable by imprisonment in a state prison for not more than five years.

An offer or attempt under this section shall be deemed to be the doing of any act made necessary by the election law preliminary to the delivery of a ballot to an elector or the deposit of the ballot in the ballot box.

**§ 766. False returns.** An inspector or poll clerk of an election or town meeting, who intentionally makes, or attempts to make, a false canvass of the ballots cast thereat, or any false statement of the result of a canvass, though not signed by a majority of the inspectors, or any person who induces or attempts to induce any such inspector or clerk so to do, is guilty of a felony.

**§ 767. Furnishing money or entertainment to induce attendance at polls.** Any person who directly or indirectly by himself or through any other person in connection with or in respect of any election :

1. Gives or provides, or causes to be given or provided, or shall pay for wholly or in part, any meat, drink, tobacco, refreshment or provision, to or for any person, other than as part of the traveling expenses of candidates, political agents, committees and public speakers; or,

2. Pays, lends or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration, for any other purpose than the following matters and services at their reasonable, bona fide and customary value is guilty of a misdemeanor: Rent of halls and compensation of speakers, music and fireworks for public meetings, and expenses of advertising the same, together with the usual and minor expenses incident thereto; the preparation, printing and publication of posters, lithographs, banners, notices and literary material; the compensation of agents to supervise and prepare articles and advertisements in the newspapers, to examine questions of public interest bearing on the election, and report on the same; the pay of newspapers for advertisements, pictures, reading matter and additional circulation, the preparation and circulation of circular letters, pamphlets and literature bearing on the election; rent of offices and club rooms, compensation of such clerks and agents as shall be required to manage the necessary and reasonable business of the election and of attorneys at law for actual legal services rendered in connection with the election; the preparation of lists of voters, payment of necessary personal expenses by a candidate; the reasonable traveling expenses of the committeemen, agents, clerks and speakers, postage, express, telegrams and telephones; the expenses of preparing, circulating and filing a petition for nomination; compensation of poll workers or watchers, and food for the same, and election officers, hiring of carriages for conveying electors to the polls not exceeding three carriages for each election district in a city and not exceeding six carriages in any other election district; and the actual necessary railroad traveling expenses for transportation of voters to and from their places of residence for the purpose of voting.

**§ 768. Giving consideration for franchise.** Any person who directly or indirectly, by himself or through any other person:

1. Pays, lends or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration to or for any voter, or to or for any other person, to induce such voter or other person to vote or refrain from voting at any election, or to induce any voter or other person to vote or refrain from voting at such election for any particular person or persons, or for or against any particular proposition submitted to voters, or to induce such voter to come to the polls or remain away from the polls at such election, or to induce such voter or other person to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such voter or other person having voted or refrained from voting or having voted or refrained from voting for or against any particular person or for or against any proposition submitted to voters, or having come to the polls or remained away from the polls at such election, or having placed or caused to be placed or refrained from placing or causing to be placed his or any other name upon the registry of voters; or,

2. Gives, offers or promises any office, place or employment, or promises to procure or endeavor to procure any office, place or employment to or for any voter, or to or for any other person, in order to induce such voter or other person to vote or refrain from voting at any election, or to induce any voter or other person to vote or refrain from voting at such election, for or against any particular person or for or against any proposition submitted to voters, or to induce any voter or other person to place or cause to be placed or refrain from placing or causing to be placed his or any other name upon a registry of voters; or,

3. Gives, offers or promises any office, place, employment or valuable thing as an inducement for any voter or other person to procure or aid in procuring either a large or a small vote, plurality or majority at any election district or other political division of the state, for a candidate or candidates to be voted for at an election; or to cause a larger or smaller vote, plurality or majority to be cast or given for any candidate or candidates in one such district or political division than in another; or,

4. Makes any gift, loan, promise, offer, procurement or agreement as aforesaid to, for or with any person to induce such person to procure or endeavor to procure the election of any person or the vote of any voter at any election; or,

5. Procures or engages or promises or endeavors to procure, in consequence of any such gift, loan, offer, promise, procurement, or

agreement the election of any person, or the vote of any voter, at such election; or,

6. Advances or pays or causes to be paid, any money or other valuable thing, to or for the use of any other person with the intent that the same, or any part thereof, shall be used in bribery at any election, or knowingly pays or causes to be paid any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part expended in bribery at any election,

Is guilty of a felony, punishable by imprisonment for not more than five years, and in addition forfeits any office to which he may have been elected at the election with reference to which such offense was committed, and becomes incapable of holding any public office under the constitution and laws of the state for a period of five years after such conviction.

**§ 769. Receiving consideration for franchise.** Any person who, directly or indirectly, by himself or through any other person:

1. Receives, agrees or contracts for, before or during an election, any money, gift, loan or other valuable consideration, office, place or employment for himself or any other person, for voting or agreeing to vote, or for coming or agreeing to come to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from registering as a voter, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote, or for refraining or agreeing to refrain from voting for or against any particular person or persons at any election, or for or against any proposition submitted to voters at such election; or,

2. Receives any money or other valuable thing during or after an election on account of himself or any other person having voted or refrained from voting at such an election, or having registered or refrained from registering as a voter, or on account of himself or any other person having voted or refrained from voting for or against any particular person at such election, or for or against any proposition submitted to voters at such election, or on account of himself or any other person having come to the polls or remained away from the polls at such election, or having registered or refrained from registering as a voter, or on account of having induced any other person to vote or refrain from voting for or against any particular person at such election, or for or against any proposition submitted to voters at such election,

Is guilty of a felony, and in addition shall be excluded from the right of suffrage for five years after such conviction.

The county clerk of the county in which such person is convicted shall transmit a certified copy of the record of conviction to the clerk of each county of the state, within ten days thereafter, which copy shall be filed in his office by each of said clerks.

**§ 770. Testimony on prosecution.** A person offending against any section of this article is a competent witness against another person so offending and may be compelled to attend and testify on any trial, hearing or proceeding or investigation in the same manner as any other person. The testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person testifying. Any such person testifying shall not thereafter be liable to indictment, prosecution or punishment for the offense with reference to which his testimony was given, and may plead or prove the giving of testimony accordingly, in bar of such an indictment or prosecution.

**§ 771. Bribery or intimidation of elector in military service of United States.** Any person who, directly or indirectly, by bribery, menace or other corrupt means, controls or attempts to control an elector of this state enlisted in the military service of the United States, in the exercise of his rights under the election law, or annoys, injures or punishes him for the manner in which he exercises such right, is guilty of a misdemeanor for which he may be tried at any future time when he may be found within this state; and upon conviction thereof shall thereafter be ineligible to any office therein.

**§ 772. Duress and intimidation of voters.** Any person or corporation who directly or indirectly:

1. Uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting at any election or to vote or refrain from voting for or against any particular person or for or against any proposition submitted to voters at such election, or to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such person having voted or refrained from voting at such election, or having voted or refrained from voting for or against any particular person or persons, or for or against any proposition submitted to voters at such election, or having registered or refrained from registering as a voter; or,
2. By abduction, duress or any forcible or fraudulent device or contrivance whatever impedes, prevents or otherwise interferes

with the free exercise of the elective franchise by any voter, or compels, induces or prevails upon any voter to give or refrain from giving his vote for or against any particular person at any election; or,

3. Being an employer pays his employees the salary or wages due in "pay envelopes," upon which there is written or printed any political motto, device or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees, or within ninety days of a general election puts or otherwise exhibits in the establishment or place where his employees are engaged in labor, any handbill or placard containing any threat, notice or information, that if any particular ticket or candidate is elected or defeated, work in his place or establishment will cease, in whole or in part, his establishment be closed up, or the wages of his employees reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees,

Is guilty of a misdemeanor, and if a corporation shall in addition forfeit its charter.

**§ 773. Conspiracy to promote or prevent election.**

Any two or more persons who conspire to promote or prevent the election of any person to a public office by the use of any means which are prohibited by law, shall be punishable by imprisonment for not more than one year; provided any act besides such agreement be done to effect the object thereof by one or more of the parties to such conspiracy.

**§ 774. Political assessments.** Any person who:

1. Being an officer or employee of the state, or of a political subdivision thereof, directly or indirectly uses his authority or official influence to compel or induce any other officer or employee of the state or a political subdivision thereof, to pay or promise to pay any political assessments; or,

2. Being an officer or employee of the state, or of a political subdivision thereof, directly or indirectly, gives, pays or hands over to any other such officer or employee any money or other valuable thing on account of or to be applied to the promotion of his election, appointment or retention in office, or makes any promise, or gives any subscription to such officer or employee to pay or contribute any money or other valuable thing for any such purpose or object; or,

3. Being such an officer or employee and having charge or control of any building, office or room occupied for any purpose of the state or of a political subdivision thereof, consents that



any person enter the same for the purpose of making, collecting, receiving or giving notice of any political assessment; or,

4. Enters or remains in any such office, building or room, or sends or directs any letter or other writing thereto, for the purpose of giving notice of demanding or collecting, or being therein, gives notice of, demands, collects or receives, any political assessment; or,

5. Prepares or makes out, or takes any part in preparing or making out, any political assessment, subscription or contribution, with the intent that the same shall be sent or presented to or collected of any such officer or employee; or,

6. Sends or presents any political assessment, subscription, or contribution to, or requests its payment of, any such officer or employee,

Is guilty of a misdemeanor.

**§ 775. Corrupt use of position or authority.** Any person who:

1. While holding a public office, or being nominated or seeking a nomination or appointment therefor, corruptly uses or promises to use, directly or indirectly, any official authority or influence possessed or anticipated, in the way of conferring upon any person, or in order to secure, or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion or increase of salary, upon consideration that the vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate, officer or party or upon any other corrupt condition or consideration; or,

2. Being a public officer or employee of the state or a political subdivision having, or claiming to have, any authority or influence affecting the nomination, public employment, confirmation, promotion, removal, or increase or decrease of salary of any public officer or employee, or promises or threatens to use, any such authority or influence, directly or indirectly to affect the vote or political action of any such public officer or employee, or on account of the vote or political action of such officer or employee; or,

3. Makes, tenders or offers to procure, or cause any nomination or appointment for any public office or place, or accepts or requests any such nomination or appointment, upon the payment or contribution of any valuable consideration, or upon an understanding or promise thereof; or,

4. Makes any gift, promise or contribution to any person, upon the condition or consideration of receiving an appointment

or election to a public office or a position of public employment, or for receiving or retaining any such office or position, or promotion, privilege, increase of salary or compensation therein, or exemption from removal or discharge therefrom,

Is punishable by imprisonment for not more than two years or by a fine of not more than three thousand dollars or both.

**§ 776. Failure to file candidate's statement of expenses.** Every candidate who is voted for at any public election held within this state shall, within ten days after such election, file as hereinafter provided an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Such statement shall give the names of the various persons who received such moneys, the specific nature of each item, and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Candidates for offices to be filled by the electors of the entire state, or any division or district thereof greater than a county, shall file their statements in the office of the secretary of state. The candidates for town, village and city offices, excepting in the city of New York, shall file their statements in the office of the town, village or city clerk, respectively, and in cities wherein there is no city clerk, with the clerk of the common council of the city wherein the election occurs. Candidates for all other offices, including all officers in the city and county of New York, shall file their statements in the office of the clerk of the county wherein the election occurs.

Any candidate for office who refuses or neglects to file a statement as prescribed in this section shall be guilty of a misdemeanor, and shall also forfeit his office.

**§ 777. Procuring fraudulent certificates in order to vote.** Any person who knowingly and wilfully procures from any court, judge, clerk or other officer, a certificate of naturalization, which has been allowed, issued, signed or sealed in violation of the laws of the United States or of this state, with intent to enable himself or any other person to vote at any election when he or such person is not entitled by the laws of the United States to become a citizen or to exercise the elective franchise, is guilty of a felony.

**§ 778. Presenting fraudulent certificates to registry boards to procure registration.** A person who knowingly and wilfully presents to any board of officers, for the purpose of having himself or any other person placed upon any list or registry of voters, or to any board of officers for the purpose of enabling himself or any other person to vote at any election, any certificate of naturalization which has been allowed or issued by or procured from any judicial officer, clerk of a court, or other ministerial officer of a court, by any false statement, oath or representation, or in violation of the laws of the United States or of this state, with intent to enable any person to vote at any election, when such person is not entitled by the laws of the United States to become a citizen, or of this state, to exercise the elective franchise, is guilty of a felony.

**§ 779. Soliciting from candidates.** Any person who solicits from a candidate for an elective office money or other property, or who seeks to induce such candidate who has been placed in nomination to purchase any ticket, card or evidence of admission to any ball, picnic, fair or entertainment of any kind, is guilty of a misdemeanor; but this section shall not apply to a request for a contribution of money by an authorized representative of the political party, organization or association to which such candidate belongs.

**§ 780. Judicial candidates not to contribute.** No candidate for a judicial office shall, directly or indirectly, make any contribution of money or other thing of value, nor shall any contribution be solicited of him; but a candidate for a judicial office may make such legal expenditures other than contributions, as are authorized by section seven hundred and sixty-seven of this article.

**§ 781. Limitation of amounts to be expended by candidates.** The total amount expended by a candidate for a public office, voted for at an election, by the qualified electors of the state or any political subdivision thereof, for any of the purposes specified in section seven hundred and sixty-seven of this chapter, for contributions to political committees, as that term is defined in section five hundred and forty of the election law, or for any purpose tending in any way, directly or indirectly, to promote, or aid in securing, his nomination and election shall not exceed the amount specified herein. By a candidate for governor, the sum of ten thousand dollars; by a candidate for any other elective state office, other than a judicial office, the sum of six thousand dol-

lars; by a candidate for the office of representative in congress or presidential elector, the sum of four thousand dollars; by a candidate for the office of state senator, the sum of two thousand dollars; by a candidate for the office of member of assembly, the sum of one thousand dollars; by a candidate for any other public office to be voted for by the qualified electors of a county, city, town or village, or any part thereof, if the total number of votes cast therein for all candidates for the office of governor at the last preceding state election, shall be five thousand or less, the sum of five hundred dollars; if the total number of votes cast therein at such last preceding state election be in excess of five thousand, the sum of three dollars for each one hundred votes in excess of such number may be added to the amounts above specified. Any candidate for a public office who shall expend for the purposes above mentioned an amount in excess of the sum herein specified shall be guilty of a misdemeanor.

**§ 782. Penalty.** Any person convicted of a misdemeanor under this article shall for a first offense be punished by imprisonment for not more than one year, or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment. Any person convicted of a misdemeanor under this article for a second or subsequent offense shall be guilty of a felony.

## ARTICLE 76

### Evidence

- Section 810. Using forged or fraudulently altered evidence.  
811. Forging evidence.  
812. Destroying evidence.  
813. Inducing another to commit perjury.  
814. Suppressing evidence.  
815. Presumption of responsibility in general.  
816. Presumption as to child under seven years.  
817. Presumption of responsibility in general as to child of seven years or more.

**§ 810. Using forged or fraudulently altered evidence.** A person who, upon any trial, hearing, inquiry, investigation or other proceeding authorized by law, offers or procures to be offered in evidence, or to be used on a motion, as genuine, a book, paper, document, record or other instrument in writing, knowing the same to have been forged or fraudulently altered, is guilty of a felony.

**§ 811. Forging evidence.** A person who fraudulently makes or prepares any false record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced in evidence, or on a motion, as genuine, upon any trial, hearing, investigation, inquiry, or other proceeding, authorized by law, is guilty of a felony.

**§ 812. Destroying evidence.** A person who, knowing that a book, paper, record, instrument in writing, or other matter or thing, is or may be required in evidence, or on a motion, upon any trial, hearing, inquiry, investigation, or other proceeding, authorized by law, wilfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a misdemeanor.

**§ 813. Inducing another to commit perjury.** A person who without giving, offering or promising a bribe, incites or attempts to procure another to commit perjury, or to give false testimony as a witness, though no perjury is committed or false testimony given, or to withhold true testimony, is guilty of a misdemeanor.

**§ 814. Suppressing evidence.** A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper, or other thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper, or other thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor.

**§ 815. Presumption of responsibility in general.** A person is presumed to be responsible for his acts. The burden of proving that he is irresponsible is upon the accused person, except as otherwise prescribed in this chapter.

**§ 816. Presumption as to child under seven years.** A child under the age of seven years is not capable of committing crime.

**§ 817. Presumption of responsibility in general as to child of seven years or more.** A child of the age of seven years, and under the age of twelve years, is presumed to be incapable of crime, but the presumption may be removed by proof that he had sufficient capacity to understand the act or neglect charged against him and to know its wrongfulness.

Whenever in any legal proceedings it becomes necessary to determine the age of a child, the child may be produced for personal inspection, to enable the magistrate, court or jury, to determine the age thereby; and the court or magistrate may direct an examination by one or more physicians, whose opinion shall also be competent evidence upon the question of age. A copy of the record of baptism of any child in any parish register, or register kept in a church, or by a clergyman thereof, or a certificate of baptism duly authenticated by the person in charge of such register, or who administered said baptism, and also a transcript of the record of birth recorded in any bureau of vital statistics or board of health, duly authenticated by its secretary or under its seal, and the entries made in a family Bible, shall also be competent evidence upon the question of the age.

## ARTICLE 78

### Exhibitions

Section 830. Acrobatic exhibitions.

831. Knife throwing; shooting; life saving apparatus at bathing places.

832. Contests of skill, speed or endurance; time of riding limited.

833. Certain exhibitions prohibited.

834. Prohibiting certain exhibitions without permission of town authorities.

**§ 830. Acrobatic exhibitions.** The proprietor, occupant or lessee of any place where acrobatic exhibitions are held, who permits any person to perform on any trapeze, rope, pole or other acrobatic contrivance, without net-work or other sufficient means of protection from falling or other accident, and any person who makes or attempts to make an ascension by means of a balloon, with a trapeze or parachute attachment, or any other device for the purpose of making a descent from such balloon, is guilty of a misdemeanor punishable for the first offense by a fine of two hundred and fifty dollars, and for each subsequent offense by a fine of two hundred and fifty dollars and imprisonment not less than three months nor more than one year.

**§ 831. Knife throwing; shooting; life saving apparatus at bathing places.** A person who:

1. Being lessee or occupant of any place of amusement, or any plot of ground or building, uses it or allows it to be used for the exhibition of skill, in throwing any sharp instrument at or toward any human being; or,

2. Aims or discharges any bow-gun, pistol or fire-arm of any description whatever, or allows one to be aimed or discharged at or towards any human being; or,

3. Being owner, lessee, proprietor or manager of any surf-bathing place, neglects at any time during the bathing season to maintain surf or life-boats, or other life saving apparatus, duly equipped and manned in the manner and to the extent prescribed by law,

Is guilty of a misdemeanor.

**§ 832. Contests of skill, speed or endurance; time of riding limited.** In a bicycle race, or other contest of skill, speed or endurance, wherein one or more persons shall be a contestant or contestants, it shall be unlawful for any contestant to continue in such race or contest for a longer time than twelve hours during any twenty-four hours. The proprietor, occupant or lessee of the place where such race or contest takes place, consenting to, allowing or permitting any violation of the foregoing provisions of this section is guilty of a misdemeanor. The manager or superintendent of such race or contest consenting to, permitting or allowing any violation of the provisions of the first sentence of this section is guilty of a misdemeanor.

**§ 833. Certain exhibitions prohibited.** No person shall exhibit or perform for gain or profit, any puppet-show, any wire or rope-dance, or any other idle shows, acts or feats which common showmen, mountebanks or jugglers usually practice or perform; and no owner or occupant of any house, out-house yard, field, shed or other place, shall furnish or allow the same to be used for the accommodation of such exhibition or performance. Whoever shall offend against either of these provisions, shall forfeit twenty-five dollars for each offense, to be recovered by and in the name of the overseers of the poor of the town where the offense shall be committed.

**§ 834. Prohibiting certain exhibitions without permission of town authorities.** The penalties in the preceding section shall also apply to and be recovered of any person who shall exhibit for gain or profit any painting, any animal or other natural or artificial curiosity, or any other thing not prohibited in the foregoing section, in any town, without having first obtained permission in writing for that purpose, signed by two justices of the peace of the town, in which license the nature of such exhibition shall be described, and for the granting of which no fee or reward shall be taken.

**ARTICLE 80**  
**Extortion and Threats**

- Section 850. Extortion defined.  
 851. What threats may constitute extortion.  
 852. Punishment of extortion.  
 853. Compulsion to execute instrument.  
 854. Extortion committed under color of official right.  
 855. Public officer taking illegal fees commits extortion.  
 856. Blackmail.  
 857. Attempts to extort money or property by verbal threats.  
 858. Threat referring to act of third person.  
 859. Rule as to person acting under threats.  
 860. Intimidating public officer or a person authorized to determine a controversy.

**§ 850. Extortion defined.** Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.

**§ 851. What threats may constitute extortion.** Fear, such as will constitute extortion, may be induced by a threat:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or to any member of his family; or,
2. To accuse him, or any relative of his or any member of his family, of any crime; or,
3. To expose, or impute to him, or any of them, any deformity or disgrace; or,
4. To expose any secret affecting him or any of them.

**§ 852. Punishment of extortion.** A person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force or a threat mentioned in the last two sections, is punishable by imprisonment not exceeding fifteen years. (*Thus amended by L. 1909, ch. 368, in effect September 1, 1909.*)

Amendment of 1909 increased punishment from five years maximum imprisonment to fifteen.

**§ 853. Compulsion to execute instrument.** The compelling or inducing of another, by such force or threat, to make, subscribe, seal, execute, alter or destroy any valuable security, or instrument or writing affecting or intended to affect any cause of action or defense or any property is an extortion of property within the last two sections.



**§ 854. Extortion committed under color of official right.** A public officer, or a person pretending to be such, who, unlawfully and maliciously, under pretense or color of official authority:

1. Arrests another, or detains him against his will; or,
2. Seizes or levies upon another's property; or,
3. Dispossesses another of any lands or tenements; or,
4. Does any other act, whereby another person is injured in his person, property, or rights,

Commits oppression and is guilty of a misdemeanor.

**§ 855. Public officer taking illegal fees commits extortion.** A public officer who asks, or receives, or agrees to receive, a fee or other compensation for his official service:

1. In excess of the fee or compensation allowed to him by statute therefor; or,

2. Where no fee or compensation is allowed to him by statute therefor,

Commits extortion and is guilty of a misdemeanor.

**§ 856. Blackmail.** A person who, knowing the contents thereof, and with intent, by means thereof, to extort or gain any money or other property, or to do, abet, or procure any illegal or wrongful act, sends, delivers, or in any manner causes to be forwarded or received, or makes and parts with for the purpose that there may be sent or delivered, any letter or writing, threatening:

1. To accuse any person of a crime; or,
2. To do any injury to any person or to any property; or,
3. To publish or connive at publishing any libel; or,
4. To expose or impute to any person any deformity or disgrace,

Is punishable by imprisonment for not more than fifteen years. (*Thus amended by L. 1909, ch. 368, in effect September 1, 1909.*)

Amendment of 1909 increased punishment from five years maximum imprisonment to fifteen.

**§ 857. Attempts to extort money or property by verbal threats.** A person who, under circumstances not amounting to robbery, or an attempt at robbery, with intent to extort or gain any money or other property, verbally makes such a threat as would be criminal under any of the foregoing sections of this article or of section five hundred and fifty-one, if made or communicated in writing, is guilty of a misdemeanor.

**§ 858. Threat referring to act of third person.** It is immaterial whether a threat, made as specified in the foregoing sections of this article, and in section five hundred and fifty-one, is of things to be done or omitted by the offender, or by any other person.

**§ 859. Rule as to persons acting under threats.** Where a crime is committed or participated in by two or more persons, and is committed, aided, or participated in by any one of them, only because, during the time of its commission, he is compelled to do, or to aid or participate in the act, by threats of another person engaged in the act or omission, and reasonable apprehension on his part of instant death or grievous bodily harm, in case he refuses, the threats and apprehension constitute duress, and excuse him.

**§ 860. Intimidating public officer or a person authorized to determine a controversy.** A person who directly or indirectly addresses any threat or intimidation to a public officer, or to a juror, referee, arbitrator, appraiser, or assessor, or to any other person, authorized by law to hear or determine any controversy or matter, with intent to induce him, contrary to his duty, to do or make, or to omit or delay, any act, decision or determination, is guilty of a misdemeanor.

## ARTICLE 82

### Ferries

Section 870. Ferries.

871. Penalty for neglect to post schedule of ferry rates.

**§ 870. Ferries.** A person who:

1. Maintains a ferry for profit or hire upon any of the waters of this state without authority of law; or,
  2. Having entered into a recognizance to keep or maintain a ferry, violates the condition of such recognizance,
- Is guilty of a misdemeanor.

Where such ferry is upon waters dividing two counties, the offender may be prosecuted in either county.

**§ 871. Penalty for neglect to post schedule of ferry rates.** A person, corporation or association operating any ferry in this state, or between this state and any other state, operating from or to a city of five hundred thousand inhabitants or over, posting a false schedule of ferry rates, or neglecting to post in a conspicuous and accessible place in each of its ferry-houses, in plain view of the passengers, a schedule, plainly printed in the English language, of the rates of ferriage charged thereon and authorized by law to be charged for ferriage over such ferry, is guilty of a misdemeanor.

**ARTICLE 84****Forgery****Section 880. Definitions.**

- 881. Uttering forged instruments is forgery.
- 882. Falsely indicating person as corporate officer.
- 883. Uttering writing signed with wrong-doer's name.
- 884. Forgery in first degree.
- 885. False certificate to certain instruments is forgery.
- 886. Punishment for forgery in first degree.
- 887. Forgery in second degree.
- 888. Punishment for forgery in second degree.
- 889. Forgery in third degree.
- 890. Officer of corporation selling fraudulent shares.
- 891. Forging passage tickets.
- 892. Forging United States or state stamps.
- 893. Punishment for forgery in third degree.
- 894. Having possession of counterfeit coin.
- 895. Advertising counterfeit money and stamps.

**§ 880. Definitions.**

Terms forge, forged and forging.—The expressions “forge,” “forged” and “forging,” as used in this article, include false making, counterfeiting and the alteration, erasure, or obliteration of a genuine instrument, in whole or in part, the false making or counterfeiting of the signature, of a party or witness, and the placing or connecting together with intent to defraud different parts of several genuine instruments.

Definition of written instrument.—An instrument partly written and partly printed, or wholly printed with a written signature thereto, and any signature or writing purporting to be a signature of, or intended to bind an individual, a partnership, a corporation or association or an officer thereof, is a written instrument or a writing, within the provisions of this article.

**§ 881. Uttering forged instruments is forgery.** A person who, knowing the same to be forged or altered, and with intent to defraud, utters, offers, disposes of or puts off as true, or has in his possession, with intent so to utter, offer, dispose of, or put off:

1. A forged seal or plate, or any impression of either; or,
2. A forged coin; or,
3. A forged will, deed, certificate, indorsement, record, instrument or writing, or other thing, the false making, forging, or altering of which is punishable as forgery,

Is guilty of forgery in the same degree as if he had forged the same.

**§ 882. Falsely indicating person as corporate officer.** The false making or forging of an instrument or writing, purporting to have been issued by or in behalf of a corporation or association, state or government, and bearing the pretended signature of any person, therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree, as if that person were in truth such officer or agent of the corporation or association, state or government.

**§ 883. Uttering writing signed with wrong-doer's name.** Whenever the false making or uttering of any instrument or writing is forgery in any degree, a person is guilty of forgery in the same degree, who, with intent to defraud, offers, disposes of, or puts off such an instrument or writing subscribed or indorsed in his own name, or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or indorsement is the act of another person of the same name, or of a person not in existence.

**§ 884. Forgery in first degree.** A person is guilty of forgery in the first degree who with intent to defraud, forges:

1. A will or codicil of real or personal property, or the attestation thereof, or a deed or other instrument, being or purporting to be the act of another, by which any right or interest in <sup>real</sup> property is or purports to be transferred, conveyed, or in any way charged or affected; or,

2. A certificate of the acknowledgment or proof of a will, codicil, deed, or other instrument, which by law may be recorded or given in evidence when duly proved or acknowledged, made or purporting to have been made by a court or officer duly authorized to make such a certificate; or,

3. A certificate, bond, paper writing, or other public security, issued or purporting to have been issued by or under the authority of this state, or of the United States, or of any other state or territory of the United States, or of any foreign government, country or state, or by any officer thereof in his official capacity, by which the payment of money is promised absolutely or upon any contingency, or the receipt of any money or property is acknowledged, or being or purporting to be evidence of any debt or liability, either absolute or contingent, issued or purporting to have been issued by lawful authority; or,

4. An indorsement or other instrument, transferring or purporting to transfer the right or interest of any holder of such a certificate, obligation, public security, evidence of debt or liability, or of any person entitled to such right or interest; or,

5. A certificate of stock, bond or other writing, bank note, bill of exchange, draft, check, certificate of deposit, or other obligation or evidence of debt, issued or purporting to be issued by any bank, banking association or body corporate existing under the laws of this state, or of the United States, or of any other state, government, or country, declaring or purporting to declare any right, title or interest of any person in any portion of the capital stock, or property of such a body corporate, or promising or purporting to promise or agree to the payment of money, or the performance of any act, duty, or obligation; or,

6. An indorsement or other writing, transferring or purporting to transfer the right or interest of any holder of such a certificate, bond, or writing obligatory, or of any person entitled to such right or interest.

**§ 885. False certificate to certain instruments is forgery.** An officer authorized to take the proof or acknowledgment of an instrument which by law may be recorded, who wilfully certifies falsely that the execution of such an instrument was acknowledged by any party thereto, or that the execution of any such instrument was proved, is guilty of forgery in the first degree.

**§ 886. Punishment for forgery in first degree.** Forgery in the first degree is punishable by imprisonment for a term not exceeding twenty years.

**§ 887. Forgery in second degree.** A person is guilty of forgery in the second degree who, with intent to defraud:

1. Forges the great or privy seal of this state, the seal of any court of record, or of any public office or officer authorized by law, or of any body corporate created by or existing under the laws of this state, or of the United States, or of any other state or any territory of the United States, or of any other state, government, or country, or any impression of such a seal; or any gold or silver coin, whether of the United States, or of any foreign state, government or country; or,

2. Forges a record of a will, conveyance, or instrument of any kind, the record of which is by the law of this state made evidence, or of any judgment, order, or decree of any court or officer, or a certified or authenticated copy thereof; or,

A judgment roll, judgment, order, or decree of any court or officer, or an enrollment thereof, or a certified or authenticated copy thereof, or any document or writing purporting to be such judgment, order, decree, enrollment, or copy; or,

An entry made in any book of record or accounts, kept by or

in the office of any officer of this state, or of any village, city, town, or county of the state, by which any demand, claim, obligation, or interest, in favor of or against the people of the state, or any city, village, town or county, or any officer thereof, is or purports to be created, increased, diminished, discharged, or in any manner affected; or an entry made in any book of records or accounts kept by a corporation doing business within the state, or in any account kept by such a corporation, whereby any pecuniary obligation, claim, or credit is or purports to be created, increased, diminished, discharged, or in any manner affected; or,

An instrument, document, or writing, being or purporting to be, a process or mandate issued by a competent court, magistrate, or officer of the state, or the return of an officer, court or tribunal, to such a process or mandate; or a bond, recognizance, undertaking, pleading, or proceeding, filed or entered in any court of the state, or a certificate, order or allowance by a competent court, or officer, or a license or authority granted pursuant to any statute of the state or a certificate, document, instrument, or writing, made evidence by any law or statute; or,

An instrument or writing, being or purporting to be the act of another, by which a pecuniary demand or obligation is or purports to be or to have been created, increased, discharged, or diminished, or in any manner affected, or by which any rights or property whatever are or purport to be or to have been created, transferred, conveyed, discharged, increased, or diminished, or in any manner affected, the punishment for forging, altering, or counterfeiting which is not hereinbefore prescribed, by which false making, forging, altering, or counterfeiting, any person may be bound, affected or in any way injured in his person or property; or,

3. Makes or engraves a plate in the form or similitude of a promissory note, bill of exchange, bank note, draft, check, certificate of deposit, or other evidence of debt, issued by a banker, or by any banking corporation or association, incorporated or carrying on business under the laws of the state, or of the United States, or of any other state or territory of the United States, or of any foreign government, or country, without the authority of such banker, or banking corporation or association; or,

Without like authority, has in his possession or custody such a plate, with intent to use, or permit the same to be used, for the purpose of taking therefrom any impression to be uttered; or,

Without like authority, has in his possession or custody any impression taken from such a plate, with intent to have the same filled up and completed for the purpose of being uttered; or,

Makes or engraves, or causes to be made or engraved, upon

any plate, any figures or words, with intent that the same may be used for the purpose of falsely altering any evidence of debt hereinbefore mentioned.

A plate, specified in this section, is in the form and similitude of the genuine instrument imitated, if the finished parts of the engraving thereupon resemble and conform to similar parts of the genuine instruments.

**§ 888. Punishment for forgery in second degree.** Forgery in the second degree is punishable by imprisonment for a term not exceeding ten years.

**§ 889. Forgery in third degree.** A person who:

1. Being an officer or in the employment of a corporation, association, partnership or individuals falsifies, or unlawfully and corruptly alters, erases, obliterates or destroys any accounts, books of accounts, records, or other writing, belonging to or appertaining to the business of the corporation, association or partnership or individuals; or,

2. With intent to injure or defraud, shall falsely make, alter, forge or counterfeit, or shall cause, aid, abet, assist or otherwise connive at, or be a party to the making, altering, forging or counterfeiting of any letter, telegram, or other written communication, paper, or instrument by which making, altering, forging or counterfeiting, any other person shall be in any manner injured in his good name, standing, position or general reputation; or,

3. Shall alter, or shall cause, aid, abet, or otherwise connive at, or be a party to the uttering of any letter, telegram, report or other written communication, paper or instrument purporting to have been written or signed by another person, or any paper purporting to be a copy of any such paper or writing where no original existed, which said letter, telegram, report or other written communication, paper or instrument, or paper purporting to be a copy thereof, as aforesaid, the person uttering the same shall know to be false, forged or counterfeited, and by the uttering of which the sentiments, opinions, conduct, character, prospects, interests or rights of such other person shall be misrepresented or otherwise injuriously affected; or,

4. With intent to defraud, shall forge, counterfeit or falsely alter and wrongfully utter any ticket, contract or other paper, or writing entitling, or purporting to entitle, the person whose name appears therein, or the holder or bearer thereof, to entrance upon the grounds or premises of any membership corporation, or being thereupon, to remain upon such grounds or premises; or, with like intent, shall use any such ticket, contract or other paper or writing, to effect an entrance or as evidence of his right to remain

upon such grounds or premises; or, with like intent, shall sell, exchange or deliver, or keep or offer for sale, exchange or delivery, or receive upon any purchase, exchange or delivery, any such ticket, contract or other paper or writing, knowing the same to have been forged, counterfeited or falsely altered,

Is guilty of forgery in the third degree.

A person who, with intent to defraud or to conceal any larceny or misappropriation by any person of any money or property:

1. Alters, erases, obliterates, or destroys an account, book of accounts, record, or writing, belonging to, or appertaining to the business of, a corporation, association, public office or officer, partnership, or individual; or,

2. Makes a false entry in any such account or book of accounts; or,

3. Wilfully omits to make true entry of any material particular in any such account or book of accounts, made, written, or kept by him or under his direction,

Is guilty of forgery in the third degree.

**§ 890. Officer of corporation selling fraudulent shares.** An officer, agent or other person employed by any company or corporation existing under the laws of this state, or of any other state or territory of the United States, or of any foreign government, who wilfully and with a design to defraud, sells, pledges or issues, or causes to be sold, pledged or issued, or signs or procures to be signed with intent to sell, pledge or issue, or to be sold, pledged or issued, a false, forged or fraudulent paper, writing or instrument, being or purporting to be a scrip, certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation, or a bond or other evidence of debt of such company or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and upon conviction, in addition to the punishment prescribed in section eight hundred and ninety-three of this chapter for that offense, may also be sentenced to pay a fine not exceeding three thousand dollars.

**§ 891. Forging passage tickets.** A person who, with intent to defraud, forges, counterfeits, or falsely alters any ticket, check or other paper or writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railway or in any vessel or other public conveyance; and a person who, with like intent, sells, exchanges or delivers, or keeps or offers for sale, exchange or delivery, or receives upon any purchase, exchange or



delivery, any such ticket, knowing the same to have been forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

**§ 892. Forging United States or state stamps.** A person who forges, counterfeits or alters any postage or revenue stamp of the United States, or any tax or revenue stamp of the state of New York, or who sells, or offers, or keeps for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

**§ 893. Punishment for forgery in third degree.** Forgery in the third degree is punishable by imprisonment for not more than five years.

**§ 894. Having possession of counterfeit coin.** A person who has in his possession a counterfeit of any gold or silver coin, whether of the United States or of any foreign country or government, knowing the same to be counterfeited, with intent to sell, utter, use, circulate or export the same, as true or as false, or to cause the same to be so uttered or passed, is punishable by imprisonment not more than five years, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

**§ 895. Advertising counterfeit money and stamps.** A person who prints, writes, utters, publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet, hand bill or any other written or printed matter, advertising, offering or purporting to advertise or offer for sale, loan, exchange, gift or distribution, or to furnish, procure or distribute any counterfeit coin, paper money, internal revenue stamp, postage stamp or any other token of value, or what purports to be counterfeit coin, paper money, internal revenue stamp, postage stamp or any other token of value, or giving, or purporting to give, either directly or indirectly, information where, how, of whom or by what means any counterfeit coin, paper money, internal revenue stamp, postage stamp, or token of value, can be procured or had, or what purports to be counterfeit coin, paper money, internal revenue stamp, postage stamp or other token of value, can be procured or had, or whoever shall aid, assist or abet in any manner, in any scheme or device whatsoever, offering or purporting to offer, for sale, loan, gift, exchange or distribution, any counterfeit coin, paper money, internal revenue stamp, postage stamp or other token of value, whether called "green articles," "queer coin," "paper goods," "bills," "spurious treasury notes,"

“United States goods,” “green paper goods,” “business that is not legitimate,” “cigars,” “green cigars,” or by any other name or title, or any other device of a similar character, shall be guilty of a felony and on conviction shall be punished by imprisonment for not less than one year nor more than five years, and by a fine of not less than one hundred dollars nor more than one thousand dollars for each offense.

Whoever in and for executing, operating, promoting, carrying on, or in the aiding, assisting or abetting in the promoting, operating, carrying on, or executing of any scheme or device whatsoever to defraud, by use or means of, any papers, writings, letters, circulars or written or printed matters concerning the offering for sale, loan, gift, distribution, or exchange, of counterfeit coin, paper money, internal revenue stamps, postage stamps or other tokens of value as provided in this section, shall use any fictitious, false or assumed name or address, or name or address other than his own right, proper and lawful name; or whoever in the executing, operating, promoting, carrying on, aiding, assisting or abetting in the execution, promotion or carrying on of any scheme or device offering for sale, loan, gift, or distribution, or purporting to offer for sale, loan, gift or distribution, or giving or purporting to give information directly or indirectly, where, how, of whom, or by what means any counterfeit coin, paper money, internal revenue stamp, postage stamp, or other token of value, can be obtained or had, or who shall knowingly receive or take from the mails of the United States any letter or package addressed to any such fictitious, false or assumed name or address or name other than his own right, proper or lawful name shall be guilty of a felony, and on conviction shall be punished by imprisonment for not less than one year, nor more than five years, and by a fine of not less than one hundred dollars nor more than two thousand dollars. Any letter, circular, writing, or paper, offering or purporting to offer for sale, loan, gift, or distribution or giving, or purporting to give information directly or indirectly, where, how, of whom, or by what means any counterfeit coin, paper money, internal revenue stamp, postage stamp, or token of value, may be obtained or had, or concerning any similar scheme or device to defraud the public, whether such article, matter or thing is called “green articles,” “queer coins,” “paper goods,” “queer,” “articles,” “bills,” “business that is not legitimate,” “spurious treasury notes,” “United States goods,” “green paper goods,” “green articles,” “cigars,” “green cigars,” or by any other name device or title of a similar character, shall be deemed presumptive proof of the fraudulent character of such scheme.

**ARTICLE 86****Frauds and Cheats**

- Section 920. Fraud in affairs of limited partnership.
921. Intent to defraud.
922. Production of pretended heir.
- \* 923. Substituting one child for another.
924. Fictitious copartnership names.
925. Frauds on hotel-keepers.
926. False rumors as to stocks, bonds or public funds.
927. Entry into agricultural fair grounds.
928. Falsely personating another.
929. Limitations as to indictments for fraudulent marriages.
930. Receiving property in false character.
931. Personating officers, firemen, and other persons.
932. Obtaining property by false pretenses.
933. False pedigree of animals.
934. Fraudulently obtaining property for charitable purposes.
935. Obtaining by fraud or without authority signature to applications or property for degrees, secrets or membership in secret fraternities.
936. Fraudulent use of the name or title of secret fraternity.
937. Obtaining negotiable evidence of death by false pretenses.
938. Using false check or order for payment of money.
939. Fraudulently obtaining employment.
940. Fraudulently secreting personal property.
941. Pawning borrowed property.
942. Personating beneficiary of entrance ticket.
943. Mock auction.
944. Publishing false messages.
945. Unlawfully selling tickets for balls and entertainments.
946. Misrepresentation of circulation of newspapers or periodicals.
947. Verbal false pretense not criminal.
948. Unlawful use of name of benevolent, humane or charitable corporation.
949. Fraudulent appropriation of lost treasure or waived property.

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\* So in original.

**§ 920. Fraud in affairs of limited partnership.** A member of a limited partnership, who is guilty of any fraud in the affairs of the partnership, is guilty of a misdemeanor.

**§ 921. Intent to defraud.** Whenever, by any of the provisions of this chapter, an intent to defraud is required, in order to constitute an offense, it is sufficient if an intent appears to defraud any person, association or body politic or corporate, whatever.

**§ 922. Production of pretended heir.** A person who fraudulently produces an infant, falsely pretending it to have been born of a parent whose child is or would be entitled to inherit real property, or to receive a share of personal property, with intent to intercept the inheritance of such real property, or the distribution of such personal property, or to defraud any person out of the same, or any interest therein; or who, with intent fraudulently to obtain any property, falsely represents himself or another to be a person entitled to an interest or share in the estate of a deceased person, either as executor, administrator, husband, wife, heir, legatee, devisee, next of kin, or relative of such deceased person; is punishable by imprisonment in a state prison for not more than ten years.

**§ 923. Substituting one child for another.** A person, to whom a child has been confided for nursing, education, or any other purpose, who, with intent to deceive a parent, guardian or relative of the child, substitutes or produces to such parent, guardian or relative, another child or person, in place of the child so confided, is punishable by imprisonment in a state prison for not more than seven years.

**§ 924. Fictitious copartnership names.** A person who transacts business, using the name, as partner, of one not interested with him as partner, or using the designation "and company," or "& Co." when no actual partner is represented thereby is guilty of a misdemeanor. But this section does not apply to any case, where it is specially prescribed by statute that a partnership name may be continued in use by a successor, survivor, or other person.

**§ 925. Frauds on hotel-keepers.** A person who obtains any lodging, food or accommodation at a hotel, inn, boarding-house or lodging-house, except an immigrant lodging-house, without paying therefor, with intent to defraud the proprietor thereof or his agent or servant; or who obtains credit at such hotel, inn, boarding-house or lodging-house, by the use of any

false pretense; or who, after obtaining credit or accommodation at such hotel, inn, boarding-house or lodging-house, causes to be removed from such hotel, inn, boarding-house or lodging-house his baggage without the permission or consent of the proprietor, manager or authorized employee thereof before paying for his lodging, food or accommodation, and with the intention of not paying therefor, is guilty of a misdemeanor.

**§ 926. False rumors as to stocks, bonds or public funds.** A person, who, with intent to affect the market price of the public funds of this state or of the United States, or of any state or territory thereof, or of a foreign country or government, or of the stocks, bonds, or other evidences of debt of a corporation or association, or the market price of gold or silver coin or bullion, or any merchandise or commodity whatever:

1. Without lawful authority, falsely signs the name of an officer of a corporation, or of any other person to a letter, message, or other paper; or,

2. Utters or circulates such a letter, message, or paper, knowing that the same has been so falsely signed; or,

3. Knowingly circulates any false statement, rumor, or intelligence,

Is punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than three years, or both.

**§ 927. Entry into agricultural fair grounds.** A person who wrongfully and fraudulently enters any agricultural fair grounds, without paying the entrance fee, is guilty of a misdemeanor.

**§ 928. Falsely personating another.** A person who falsely personates another, and, in such assumed character:

1. Marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of the latter; or,

2. Becomes bail or surety for a party in an action or special proceeding, civil or criminal, before a court or officer authorized to take such bail or surety; or,

3. Confesses a judgment; or,

4. Subscribes, verifies, publishes, acknowledges, or proves a written instrument, which by law may be recorded, with intent that the same may be delivered or used as true; or,

5. Does any other act, in the course of any action or proceeding, whereby, if it were done by the person falsely personated, such person might in any event become liable to an action or special proceeding, civil or criminal, or to pay a sum of money, or to incur

a charge, forfeiture, or penalty, or whereby any benefit might accrue to the offender, or to another person,

Is punishable by imprisonment in a state prison for not more than ten years.

**§ 929. Limitations as to indictments for fraudulent marriages.** An indictment can not be found, for the crime specified in subdivision first of the last section, except upon the complaint of the person injured, if there be any such person living, and within two years after the perpetration of the crime.

**§ 930. Receiving property in false character.** A person who falsely personates another, or the officer or agent of any legally organized or incorporated society or institution, or falsely represents himself to be such an officer or agent, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual, or society, or institution or its officers or agents, so personated, or whose officer or agent he falsely claims to be, with the intent to convert the same to his own use or to that of another person who is not entitled thereto, is punishable in the same manner and to the same extent as for larceny, of the money or property so received.

**§ 931. Personating officers, firemen, and other persons.** A person who falsely personates a public officer, civil or military, or a policeman, or a private individual having special authority by law to perform an act affecting the rights or interests of another, or who assumes, without authority, any uniform or badge by which such an officer or person is lawfully distinguished, and in such assumed character does an act, purporting to be official, whereby another is injured or defrauded, is guilty of a misdemeanor.

**§ 932. Obtaining property by false pretenses.** A person who, with intent to cheat or defraud another, designedly, by color or aid of a false token or writing, or other false pretense, obtains the signature of any person to a written instrument, is punishable by imprisonment in a state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than three times the value of the money or property affected or obtained thereby, or by both such fine and imprisonment.

**§ 933. False pedigree of animals.** Every person who by any false pretense shall obtain from any club, association, society or company for improving the breed of cattle, horses, sheep, swine or other domestic animals the registration of any animal in

the herd register or other register of any such club, association, society or company or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any animal, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

**§ 934. Fraudulently obtaining property for charitable purposes.** A person, who wilfully, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or any money or property, for any alleged or pretended charitable or benevolent purpose, is punishable by imprisonment for not less than one nor more than three years, or by a fine to an amount not exceeding the value of the money or property obtained, or by both.

**§ 935. Obtaining by fraud or without authority signature to applications or property for degrees, secrets or membership in secret fraternities.** A person who wilfully by color or aid of any false token or writing, or other false pretense or false statement verbal or written, or without authority of the grand lodge hereinafter mentioned, obtains the signature of any person to any written application, or any money or property for any alleged or pretended degree, or for any alleged or pretended secret work or for any alleged or pretended secrets of, or membership in any secret fraternal association, society, order or organization having a grand lodge in this state, or in any subordinate lodge or body thereof is punishable by imprisonment for not more than three years or by a fine to an amount not exceeding the value of the money or property obtained or by both.

**§ 936. Fraudulent use of the name or title of secret fraternity.** Any person, firm, association, society, order or organization, or any officer, agent, representative or employee thereof, or person acting or pretending to act on behalf thereof who in a newspaper or other publication published in this state, or in any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device without authority of the grand lodge hereinafter mentioned fraudulently uses, or in any manner directly or indirectly aids in the use of the name or title of any secret fraternal association, society, order or organization which has had a grand lodge in this state for ten years, or any imitation of such name or title or any name or title so nearly resembling it as to be calculated to deceive, or who without such authority pub-

lishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device directly or indirectly advertising for or soliciting members or applications for membership in such secret fraternal association, society, order or organization, or in any alleged or pretended association, society, order or organization using or designated or claimed to be known by such title or imitation or resemblance thereof or who therein or thereby offers to sell, or to confer or to communicate or to give information directly or indirectly where, how, of whom, or by what means any alleged or pretended degree or any alleged or pretended secret work or any alleged or pretended secrets of such secret fraternal association, society, order or organization or of any alleged or pretended association, society, order or organization designated or claimed to be known by such title or imitation or resemblance thereof can or may be obtained, conferred or communicated, is punishable by imprisonment for not more than three years or by a fine of not more than one thousand dollars for each offense.

**§ 937. Obtaining negotiable evidence of debt by false pretenses.** If the false token, by which money or property is obtained in violation of sections nine hundred and thirty-two and nine hundred and thirty-four, is a promissory note or other negotiable evidence of debt purporting to be issued by or under the authority of any banking company or corporation not in existence, the person guilty of such cheat is punishable by imprisonment in a state prison not exceeding seven years, instead of by the punishments prescribed by those sections.

**§ 938. Using false check or order for payment of money.** The use of a matured check, or other order for the payment of money, as a means of obtaining a signature, or money or property, such as is specified in sections nine hundred and thirty-two and nine hundred and thirty-four, by a person who knows that the drawer thereof is not entitled to draw for the sum specified therein, upon the drawee, is the use of a false token within the meaning of those sections, although no representation is made in respect thereto.

**§ 939. Fraudulently obtaining employment.** A person who obtains employment or appointment to any office or place of trust by color or aid of any false or forged letter or certificate of recommendation, or of any false statement in writing, as to his name, residence, previous employment or qualification; or any person who shall wilfully and intentionally fraudulently represent himself, or herself, to be a deaf and dumb person, in order



to collect, receive or otherwise obtain moneys, food, clothing, or anything of value whatsoever, is guilty of a misdemeanor.

**§ 940. Fraudulently secreting personal property.**

A person who, having theretofore executed a mortgage of personal property, or any instrument intended to operate as such, sells, assigns, exchanges, secretes or otherwise disposes of any part of the property, upon which the mortgage or other instrument is at the time a lien, with intent thereby to defraud the mortgagee or a purchaser thereof, is guilty of a misdemeanor.

**§ 941. Pawning borrowed property.** A person who without the consent of the owner thereof, sells, pledges, pawns, or otherwise disposes of any property which he has borrowed or hired from the owner, is guilty of a misdemeanor; but this section does not apply to a person leasing or lending property, for a time not exceeding that for which the same was leased or lent to himself.

**§ 942. Personating beneficiary of entrance ticket.**

A person who, with intent to wrongfully convert to his own use the benefits secured by any ticket, contract, or other paper or writing, appearing upon its face not negotiable, and which entitles, or purports to entitle the person whose name appears therein, to entrance upon the grounds or premises of a membership corporation, or being thereupon, to remain upon such grounds or premises, falsely personates or attempts to so personate any individual named in such ticket, contract or other paper or writing, as the grantee or beneficiary thereof, is guilty of a misdemeanor.

**§ 943. Mock auction.** A person who buys or sells, or pretends to buy or sell, any goods, wares, or merchandise, or any species of property, except ships, vessels, or real or leasehold estate, exposed for sale by auction, if an actual sale, purchase, and change of ownership therein does not thereupon take place, is guilty of a misdemeanor, punishable by imprisonment for thirty days, or by fine not exceeding one hundred dollars, or both.

A person, who obtains money or property from another, or obtains the signature of another to any writing, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in a state prison not exceeding three years, or in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment; and in addition thereto he forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this state.

**§ 944. Publishing false messages.** A person who prints, publishes, or circulates as true, any message, order or proclamation, purporting to be the message, order or proclamation of the executive of the United States or of this state, or of any other state of the United States now or hereafter admitted, or of any territory of the United States, knowing the same not to be genuine, is punishable by imprisonment in a state prison not exceeding five years, or by fine not exceeding one thousand dollars, or by both. An indictment for this offense may be found in any county in which the message, address or proclamation is printed, published or circulated, but not in more than one county of the State.

**§ 945. Unlawfully selling tickets for balls and entertainments.** Any person who shall collect money or attempt to collect money or any valuable article, or to sell tickets for any ball or entertainment for the benefit of any pretended benevolent, humane, or charitable organization, which has no corporate existence, or for any benevolent, humane, or charitable institution, that has been duly incorporated or recognized by the authorities of the state of New York, without first having obtained written authority of the officers of the said institution or organization, attested under the seal of the said institution, according to its rules, shall be guilty of a misdemeanor.

**§ 946. Misrepresentation of circulation of newspapers or periodicals.** Every proprietor or publisher of any newspaper or periodical who shall wilfully or knowingly misrepresent the circulation of such newspaper or periodical for the purpose of securing advertising or other patronage shall be deemed guilty of a misdemeanor.

**§ 947. Verbal false pretense not criminal.** A purchase of property by means of a false pretense is not criminal, where the false pretense relates to the purchaser's means or ability to pay, unless the pretense is made in writing and signed by the party to be charged.

**§ 948. Unlawful use of name of benevolent, humane or charitable corporation.** No person, society or corporation shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use the name of a benevolent, humane or charitable organization incorporated under the laws of this state, or a name so nearly resembling it as to be calculated to deceive the public with respect to any such corporation. A violation of this section shall be a misdemeanor. Whenever there shall be an actual or threatened viola-

tion of this section, an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, for an injunction to enjoin and restrain said actual or threatened violation; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact using the name of a benevolent, humane or charitable organization, incorporated as aforesaid, or a name so nearly resembling it as to be calculated to deceive the public, an injunction may be issued by said court or justice, enjoining and restraining such actual or threatened violation, without requiring proof that any person has in fact been misled or deceived thereby.

**§ 949. Fraudulent appropriation of lost treasure or waived property.** A person who fraudulently conceals or appropriates to his own use any lost treasure or any waived property belonging to this state by virtue of its sovereignty, is guilty of a misdemeanor.

## ARTICLE 88

### Gambling

Section 970. Common gambler.

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**§ 970. Common gambler.** A person who is the owner, agent, or superintendent of a place, or of any device, or apparatus, for gambling; or who hires, or allows to be used a room, table, establishment or apparatus for such a purpose; or who engages as dealer, game-keeper, or player in any gambling or banking game, where money or property is dependent upon the result; or who sells or offers to sell what are commonly called lottery policies, or any writing, paper, or document in the nature of a bet, wager, or insurance upon the drawing or drawn numbers of any public or private lottery; or who indorses or uses a book, or other document, for the purpose of enabling others to sell, or offer to sell, lottery policies, or other such writings, papers, or documents, is a common gambler, and punishable by imprisonment for not more than two years, or by a fine not exceeding one thousand dollars, or both.

**§ 971. Keeping gambling apparatus in certain places.** It is unlawful to keep or use any table, cards, dice or any other article or apparatus whatever, commonly used or intended to be used in playing any game of cards or faro, or other game of chance, upon which money is usually wagered, at any of the following places:

1. Within a building, or the appurtenances or grounds connected with any building, in which a court of justice usually holds its sessions; or a building, any part of which is usually occupied by a religious corporation, or an incorporated benevolent, charitable, scientific or missionary society, or an incorporated academy, high school, college or other institution of learning, a library company, or building and mutual loan company; or,

2. Within any building, or the appurtenances or grounds connected with any building, while votes are received or canvassed therein at any election for an officer of this state, or of the United States; or while any public meeting is held therein; or,

3. Within the distance of one mile from the grounds upon which any training, review, drill or exercise of a military organization, created or permitted by the laws of this state, is proceeding, or upon which any public fair, exhibition, exercise or meeting is held in the open air; or,

4. Within any vessel lying in, or navigating, any of the waters of this state; or owned, or navigated by, or for account of any corporation created by the laws of this state.

A person who knowingly violates this section is guilty of a misdemeanor.

**§ 972. Gambling apparatus declared a nuisance.**

An article or apparatus maintained or kept in violation of section nine hundred and seventy-one, is a public nuisance.

**§ 973. Keeping gaming and betting establishments.** Any corporation or association or the officers thereof or any copartnership or individual, who keeps a room, shed, tent, tenement, booth, building, float or vessel, or any part thereof, to be used for gambling or for any purpose or in any manner forbidden by this article, or for making any wagers or bets made to depend upon any lot, chance, casualty, unknown or contingent event or on the future price of stocks, bonds, securities, commodities or property of any description whatever or for making any contract for or on account of any money, property or thing in action, so bet or wagered, or being the owner or agent, knowingly lets or permits the same to be so used, is guilty of a misdemeanor. This section shall not be extended so as to prohibit or in any manner affect any insurance made in good faith for the security or indemnity of the party insured and which is not otherwise prohibited by law, nor to any contract on bottomry or respondentia.

**§ 974. Keeping of place for game of policy.** A person who keeps, occupies or uses, or permits to be kept, occupied or used, a place, building, room, table, establishment or apparatus for policy playing or for the sale of what are commonly called "lottery policies," or who delivers or receives money or other valuable consideration in playing policy, or in aiding in the playing thereof, or for what is commonly called a "lottery policy," or for any writing, paper or document in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery; or who shall have in his possession, knowingly, any writing, paper or document, representing or being a record of any chance, share or interest in numbers sold, drawn or to be drawn, or in what is commonly called "policy," or in

the nature of a bet, wager or insurance, upon the drawing or drawn numbers of any public or private lottery; or any paper, print, writing, numbers, device, policy slip, or article of any kind such as is commonly used in carrying on, promoting or playing the game commonly called "policy"; or who is the owner, agent, superintendent, janitor or caretaker of any place, building, or room where policy playing or the sale of what are commonly called "lottery policies" is carried on with his knowledge or after notification that the premises are so used, permits such use to be continued, or who aids, assists, or abets in any manner, in any of the offenses, acts or matters herein named, is a common gambler, and punishable by imprisonment for not more than two years, and in the discretion of the court, by a fine not exceeding one thousand dollars or both.

**§ 975. Possession of policy slips.** The possession, by any person other than a public officer, of any writing, paper, or document representing or being a record of any chance, share or interest in numbers sold, drawn or to be drawn, or in what is commonly called "policy," or in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery, or any paper, print, writing, numbers or device, policy slip, or article of any kind, such as is commonly used in carrying on, promoting or playing the game commonly called "policy," is presumptive evidence of possession thereof knowingly and in violation of the provisions of section nine hundred and seventy-four.

**§ 976. Removal of tenants using premises for game of policy.** Any person having information of any place, building or room where policy playing or the sale of what are commonly called "lottery policies" is carried on, may serve personally upon the owner, landlord, agent, superintendent, janitor or caretaker of the premises, so used or occupied, a written notice, requiring the owner, landlord, agent, superintendent, janitor or caretaker, to make an application for the removal of the person so using or occupying the same. If the owner, landlord, agent, superintendent, janitor or caretaker, does not make such an application within five days thereafter, or, having made it, does not in good faith diligently prosecute it, the person giving the notice may make such an application, stating in his petition, the facts so entitling him to make it. Such an application has the same effect, as if the applicant was the landlord or lessor of the premises. The omission, or neglect of the owner, landlord, agent, superintendent, janitor or caretaker, to make such an application, or, having made it, the omission or neglect to in good faith

diligently prosecute it, shall be presumptive evidence against the person on whom such notice shall be served of a violation of the provisions of section nine hundred and seventy-four. And in case the person giving said notice shall make an application as hereinbefore provided, and a final order shall be made as specified in section twenty-two hundred and forty-nine of the code of civil procedure, such order shall be evidence of a violation of the provisions of section nine hundred and seventy-four by the occupant of said premises and by the person on whom the notice herein provided for shall have been served. For the purpose of such applications, summary proceedings to recover possession of the premises so used or occupied may be maintained under the provisions of chapter seventeen, title two, of the code of civil procedure.

**§ 977. Seizure of gambling implements authorized.**

A person, who is required or authorized to arrest any person for a violation of the provisions of this article, is also authorized and required to seize any table, cards, dice or other apparatus or article, suitable for gambling purposes, found in the possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person arrested is required to be taken.

**§ 978. Gambling implements to be destroyed or delivered to district attorney.** The magistrate, to whom any thing suitable for gambling purposes is delivered pursuant to the last section, must, upon the examination of the defendant, or if such examination is delayed or prevented, without awaiting such examination, determine the character of the thing so delivered to him, and whether it was actually employed by the defendant in violation of the provisions of this article; and if he finds that it is of a character suitable for gambling purposes, and that it has been used by the defendant in violation of this article, he must cause it to be destroyed, or to be delivered to the district attorney of the county in which the defendant is liable to indictment or trial, as the interests of justice may, in his opinion, require.

**§ 979. Gambling implements to be destroyed upon conviction.** Upon the conviction of the defendant, the district attorney must cause to be destroyed every thing suitable for gambling purposes, in respect whereof the defendant stands convicted, and which remains in the possession or under the control of the district attorney.

**§ 980. Persuading person to visit gambling places.**

A person, who persuades another to visit any building or part of a building, or any vessel or float, occupied or used for the purpose of gambling, in consequence whereof such other person gambles therein, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, is liable to such other person in an amount equal to any money or property there lost by him at play, to be recovered in a civil action.

**§ 981. Duty of masters to suppress gambling on board their vessels.** If the commander, owner or hirer of any vessel or float, knowingly permits any gambling for money or property on board such vessel or float, or if he does not, upon his knowledge of the fact, immediately prevent the same, he is punishable by a fine not exceeding five hundred dollars; and in addition thereto is liable to any party losing money or property by means of gambling in violation of this section, in a sum equal to the money or property, to be recovered in a civil action.

**§ 982. Keeping slot machines.** Any person who has in his possession, or under his control, or who permits to be placed, maintained or kept in any room, space, inclosure or building, owned, leased or occupied by him, or under his management or control, any machine, apparatus or device, into which may be, or might have been, inserted any piece of money or other object, and from which, as a result of such insertion, or as a result of such insertion and the application of physical or mechanical force, may issue, or might have issued, any piece or pieces of money, or any check or memoranda calling for any money, and which machine, apparatus or device is commonly known as a slot machine, is guilty of a misdemeanor.

**§ 983. Seizures of slot machines and arrest of person in possession.** It shall be the duty of every officer authorized to make arrests to seize every machine, apparatus or device answering to the description contained in the last section and to arrest the person actually or apparently in possession or control thereof or of the premises in which the same may be found, if any such person be present at the time of the seizure, and to bring the machine, apparatus or device, and the prisoner, if there be one, before a committing magistrate.

**§ 984. Destruction of slot machines by magistrates.** The magistrate before whom any machine, apparatus or device is brought pursuant to the last section must, if there be a prisoner, and if he shall hold such prisoner, cause the machine, apparatus



or device to be delivered to the district attorney of the county to be used as evidence on the trial of the said prisoner. If there be no prisoner or if the magistrate does not hold the prisoner, he must cause the immediate destruction of the machine, apparatus or device.

**§ 985. Destruction of slot machines by the trial court.** It shall be the duty of the district attorney of the county to see that every person held in pursuance of the last section shall be brought to trial within thirty days from the date of his final examination before the magistrate; and the machine, apparatus or device shall be produced in court on the trial. It shall be the duty of the trial court, after the disposition of the case, and whether the defendant be convicted, acquitted or fails to appear for trial, to cause the immediate destruction of the machine, apparatus or device.

**§ 986. Pool-selling, book-making, bets and wagers.** Any person who engages in pool-selling, or book-making at any time or place; or any person who keeps or occupies any room, shed, tenement, tent, booth, or building, float or vessel, or any part thereof, or who occupies any place or stand of any kind, upon any public or private grounds, within this state, with books, papers, apparatus or paraphernalia, for the purpose of recording or registering bets or wagers, or of selling pools, and any person who records or registers bets or wagers, or sells pools upon the result of any trial or contest of skill, speed or power of endurance, of man or beast, or upon the result of any political nomination, appointment or election; or upon the result of any lot, chance, casualty, unknown or contingent event whatsoever; or any person who receives, registers, records or forwards, or purports or pretends to receive, register, record or forward, in any manner whatsoever, any money, thing or consideration of value, bet or wagered, or offered for the purpose of being bet or wagered, by or for any other person, or sells pools, upon any such result; or any person who, being the owner, lessee or occupant of any room, shed, tenement, tent, booth or building, float or vessel, or part thereof, or of any grounds within this state, knowingly permits the same to be used or occupied for any of these purposes, or therein keeps, exhibits or employs any device or apparatus for the purpose of recording or registering such bets or wagers, or the selling of such pools, or becomes the custodian or depositary for gain, hire or reward, of any money, property or thing of value, staked, wagered or pledged, or to be wagered or pledged upon any such result; or any person who aids, assists or abets in any manner in any of the said acts, which are hereby forbidden,

is guilty of a misdemeanor, and upon conviction is punishable by imprisonment in a penitentiary or county jail for a period of not more than one year.

**§ 987. Racing animals for stake.** All racing or trial of speed between horses or other animals for any bet, stake or reward, except such as is allowed by special laws, is a public nuisance; and every person acting or aiding therein, or making or being interested in any such bet, stake or reward is guilty of a misdemeanor; and in addition to the penalty prescribed therefor, he forfeits to the people of this state, all title or interest in any animal used with his privity in such race or trial of speed, and in any sum of money or other property betted or staked upon the result thereof.

**§ 988. Cheating at gambling.** A person who, by any fraud, or false pretense whatsoever, while playing at any game, or while having a share in any wager played for, or while betting on the sides or hands of such as play, wins, or acquires to himself, or to any other, a sum of money or other valuable thing, is guilty of a misdemeanor.

**§ 989. Forfeiture for exacting payment of money won at gambling.** A person who exacts or receives from another, directly or indirectly, any money or other valuable thing, by reason of the same having been won by playing at cards, faro, or any other game of chance, or any bet or wager whatever upon the hands or sides of players, forfeits five times the value of the money or thing so exacted or received, to be recovered in a civil action, by the persons charged with the support of the poor in the place where the offense was committed, for the benefit of the poor.

**§ 990. Penalty for winning or losing twenty-five dollars or upwards.** A person who wins or loses at play or by betting, at any time, the sum or value of twenty-five dollars or upwards, within the space of twenty-four hours, is punishable by a fine not less than five times the value or sum so lost or won, to be recovered in a civil action, by the persons charged with the support of the poor in the place where the offense was committed, for the benefit of the poor.

**§ 991. Illegal wagers, bets and stakes.** All wagers, bets or stakes, made to depend upon any race, or upon any gaming by lot or chance, or upon any lot, chance, casualty, or unknown or contingent event whatever, shall be unlawful.

**§ 992. Contracts on account of money or property wagered, bet or staked are void.** All contracts for or on account of any money or property, or thing in action wagered, bet or staked, as provided in the preceding section, shall be void.

**§ 993. Securities for money lost at gaming void.** All things in action, judgments, mortgages, conveyances, and every other security whatsoever, given or executed, by any person, where the whole or any part of the consideration of the same shall be for any money or other valuable thing won by playing at any game whatsoever, or won by betting on the hands or sides of such as do play at any game, or where the same shall be made for the repaying any money knowingly lent or advanced for the purpose of such gaming or betting aforesaid, or lent or advanced at the time and place of such play, to any person so gaming or betting aforesaid, or to any person who, during such play, shall play or bet, shall be utterly void, except where such securities, conveyances or mortgages shall affect any real estate, when the same shall be void as to the grantee therein, so far only as hereinafter declared.

When any securities, mortgages or other conveyances, executed for the whole or part of any consideration specified in the preceding paragraph shall affect any real estate, they shall inure for the sole benefit of such person as would be entitled to the said real estate, if the grantor or person incumbering the same, had died, immediately upon the execution of such instrument, and shall be deemed to be taken and held to and for the use of the person who would be so entitled. All grants, covenants and conveyances, for preventing such real estate from coming to, or devolving upon, the person hereby intended to enjoy the same as aforesaid, or in any way incumbering or charging the same, so as to prevent such person from enjoying the same fully and entirely, shall be deemed fraudulent and void.

**§ 994. Property staked may be recovered.** Any person who shall pay, deliver or deposit any money, property or thing in action, upon the event of any wager or bet prohibited, may sue for and recover the same of the winner or person to whom the same shall be paid or delivered, and of the stakeholder or other person in whose hands shall be deposited any such wager, bet or stake, or any part thereof, whether the same shall have been paid over by such stakeholder or not, and whether any such wager be lost or not.

**§ 995. Losers of certain sums may recover them.** Every person who shall, by playing at any game, or by betting

on the sides or hands of such as do play, lose at any time or sitting, the sum or value of twenty-five dollars or upwards, and shall pay or deliver the same or any part thereof, may, within three calendar months after such payment or delivery, sue for and recover the money or value of the things so lost and paid or delivered, from the winner thereof.

In case the person losing such sum or value shall not, within the time aforesaid, in good faith and without collusion, sue for the sum or value so by him lost and paid or delivered, and prosecute such suit to effect without unreasonable delay, the overseers of the poor of the town where the offense was committed, may sue for and recover the sum or value so lost and paid, together with treble the said sum or value, from the winner thereof, for the benefit of the poor.

**§ 996. Witnesses' privileges.** 1. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

2. Any person offending against any of the provisions contained in section nine hundred and ninety-one of this article, who shall be admitted and examined as a witness, in any court of record, to sustain any suit or prosecution authorized by sections nine hundred and ninety-four and nine hundred and ninety-five, may be discharged by the court from all penalties by reason of such offense, if such person has not before been convicted thereof, or of a similar offense, and if it appear to the court satisfactorily, that such person was duped or enticed into the commission of the offense, by those against whom he shall testify.

**§ 997. Officers directed to prosecute offenses.** It is the duty of all sheriffs, constables, police officers, and prosecuting or district attorneys to inform against, and prosecute, all persons whom they have reason to believe offenders against the provisions of this article; and any omission so to do is punishable by a fine not exceeding five hundred dollars.

**ARTICLE 90****Habitual Criminals**

Section 1020. When a person may be adjudged an habitual criminal.

1021. Person of habitual criminal subject to supervision.

1022. Effect of pardon of habitual criminal.

**§ 1020. When a person may be adjudged an habitual criminal.** Where a person is hereafter convicted of a felony, who has been, before that conviction, convicted in this state, of any other crime, or where a person is hereafter convicted of a misdemeanor who has been already five times convicted in this state of a misdemeanor, he may be adjudged by the court, in addition to any other punishment inflicted upon him, to be an habitual criminal.

**§ 1021. Person of habitual criminal subject to supervision.** The person of an habitual criminal shall be at all times subject to the supervision of every judicial magistrate of the county, and of the supervisors and overseers of the poor of the town where the criminal may be found, to the same extent that a minor is subject to the control of his parent or guardian.

**§ 1022. Effect of pardon of habitual criminal.** The governor may grant a pardon which shall relieve from judgment of habitual criminality as from any other sentence; but upon a subsequent conviction for felony of a person so pardoned, a judgment of habitual criminality may be again pronounced on account of the first conviction, notwithstanding such pardon.

**ARTICLE 92****Hazing**

Section 1030. Hazing prohibited.

**§ 1030. Hazing prohibited.** It shall be unlawful for any person to engage in or aid or abet what is commonly called hazing, in or while attending any of the colleges, public schools or other institutions of learning in this state, and whoever participates in the same shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than one hundred dollars, or imprisonment not less than thirty days nor more than one year, or both, at the discretion of the court.

Whenever any tattooing or permanent disfigurement of the body, limbs or features of any person may result from such hazing, by the use of nitrate of silver or any like substance, it shall be held to be a crime of the degree of mayhem, and any person guilty of the same shall, upon conviction, be punished by imprisonment for not less than three nor more than fifteen years.

## ARTICLE 94

### Homicide

- Section 1040. Common law petit treason is homicide.  
1041. What proof of death is required.  
1042. Homicide defined.  
1043. Different kinds of homicide.  
1044. Murder in first degree defined.  
1045. Punishment for murder in first degree.  
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1048. Punishment for murder in the second degree.  
1049. Manslaughter defined.  
1050. Manslaughter in first degree.  
1051. Punishment for manslaughter in first degree.  
1052. Manslaughter in second degree defined.  
1053. Punishment for manslaughter in second degree.  
1054. Excusable homicide.  
1055. Justifiable homicide.

**§ 1040. Common law petit treason is homicide.**

The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished; and those homicides are punishable, when not justifiable or excusable, as prescribed by this chapter.

**§ 1041. What proof of death is required.** No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of killing by the defendant, as alleged, are each established as independent facts; the former by direct proof, and the latter beyond a reasonable doubt.

**§ 1042. Homicide defined.** Homicide is the killing of one human being by the act, procurement or omission of another.

**§ 1043. Different kinds of homicide.** Homicide is:

1. Murder; or,
2. Manslaughter; or,
3. Excusable homicide; or,
4. Justifiable homicide.

**§ 1044. Murder in first degree defined.** The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed :

1. From a deliberate and premeditated design to effect the death of the person killed, or of another; or,

2. By an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect the death of any individual; or without a design to effect death, by a person engaged in the commission of, or in an attempt to commit a felony, either upon or affecting the person killed or otherwise; or,

3. When perpetrated in committing the crime of arson in the first degree.

4. A person who wilfully, by loosening, removing or displacing a rail, or by any other interference, wrecks, destroys or so injures any car, tender, locomotive or railway train, or part thereof, while moving upon any railway in this state, whether operated by steam, electricity or other motive power, as to thereby cause the death of a human being, is guilty of murder in the first degree, and punishable accordingly.

**§ 1045. Punishment for murder in first degree.** Murder in the first degree is punishable by death.

**§ 1046. Murder in second degree defined.** Such killing of a human being is murder in the second degree, when committed with a design to effect the death of the person killed, or of another, but without deliberation and premeditation.

**§ 1047. Duel fought out of this state.** A person who, by previous appointment made within the state, fights a duel without the state, and in so doing inflicts a wound upon his antagonist, whereof the person injured dies; or who engages or participates in such a duel, as a second or assistant to either party, is guilty of murder in the second degree, and may be indicted, tried and convicted in any county of this state.

**§ 1048. Punishment for murder in the second degree.** Murder in the second degree is punishable by imprisonment under an indeterminate sentence, the minimum of which shall be twenty years and the maximum of which shall be for the offender's natural life; and any person serving a term of imprisonment for life, under an original sentence for murder in the second degree, on the first day of September, nineteen hundred and seven, shall be deemed to be thereafter serving under such an indeterminate sentence.

**§ 1049. Manslaughter defined.** In a case other than one of those specified in sections ten hundred and forty-four, ten hundred and forty-six and ten hundred and forty-seven, homicide, not being justifiable or excusable, is manslaughter.

**§ 1050. Manslaughter in first degree.** Such homicide is manslaughter in the first degree, when committed without a design to effect death:

1. By a person engaged in committing, or attempting to commit, a misdemeanor, affecting the person or property, either of the person killed, or of another; or,

2. In the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon.

The wilful killing of an unborn quick child, by any injury committed upon the person of the mother of such child, is manslaughter in the first degree.

A person who provides, supplies, or administers to a woman, whether pregnant or not, or who prescribes for, or advises or procures a woman to take any medicine, drug, or substance, or who uses or employs, or causes to be used or employed, any instrument or other means, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve her life, in case the death of the woman, or of any quick child of which she is pregnant, is thereby produced, is guilty of manslaughter in the first degree.

**§ 1051. Punishment for manslaughter in first degree.** Manslaughter in the first degree is punishable by imprisonment for a term not exceeding twenty years.

**§ 1052. Manslaughter in second degree defined.** Such homicide is manslaughter in the second degree, when committed without a design to effect death:

1. By a person committing or attempting to commit a trespass, or other invasion of a private right, either of the person killed, or of another, not amounting to a crime; or,

2. In the heat of passion, but not by a dangerous weapon or by the use of means either cruel or unusual; or,

3. By any act, procurement or culpable negligence of any person, which, according to the provisions of this article, does not constitute the crime of murder in the first or second degree, nor manslaughter in the first degree.

Woman producing miscarriage.—A woman quick with child, who takes or uses, or submits to the use of any drug, medicine, or substance, or any instrument or other means with intent to produce her own miscarriage, unless the same is necessary to preserve her



own life, or that of the child whereof she is pregnant, if the death of such child is thereby produced, is guilty of manslaughter in the second degree.

**Negligent use of machinery.**—A person who, by any act of negligence or misconduct in a business or employment in which he is engaged, or in the use or management of any machinery, animals, or property of any kind, intrusted to his care, or under his control, or by any unlawful, negligent or reckless act, not specified by or coming within the foregoing provisions of this article, or the provisions of some other statute, occasions the death of a human being, is guilty of manslaughter in the second degree.

**Mischievous animals.**—If the owner of a mischievous animal, knowing its propensities, wilfully suffers it to go at large, or keeps it without ordinary care, and the animal, while so at large, and not confined, kills a human being, who has taken all the precautions which the circumstances permitted, to avoid the animal, the owner is guilty of manslaughter in the second degree.

**Overloading passenger vessel.**—A person navigating a vessel for gain, who wilfully or negligently receives so many passengers or such a quantity of other lading on board the vessel, that, by means thereof, the vessel sinks, or is upset or injured, and thereby a human being is drowned, or otherwise killed, is guilty of manslaughter in the second degree.

**Persons in charge of steamboats.**—A person having charge of a steamboat used for the conveyance of passengers, or of a boiler or engine thereof, who, from ignorance, recklessness, or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst the boiler, or other apparatus in which it is generated or contained, or to break any apparatus or machinery connected therewith, whereby the death of a human being is occasioned, is guilty of manslaughter in the second degree.

**Persons in charge of steam engines.**—An engineer or other person, having charge of a steam boiler, steam engine, or other apparatus for generating or applying steam, employed in a boat or railway, or in a manufactory, or in any mechanical works, who wilfully, or from ignorance or gross neglect, creates or allows to be created, such an undue quantity of steam as to burst the boiler, engine, or apparatus, or to cause any other accident, whereby the death of a human being is produced, is guilty of manslaughter in the second degree.

**Acts of physicians while intoxicated.**—A physician or surgeon, or person practicing as such, who, being in a state of intoxication, without a design to effect death, administers a poisonous drug or medicine, or does any other act as a physician or surgeon, to an-

other person, which produces the death of the latter, is guilty of manslaughter in the second degree.

Persons making or keeping gunpowder contrary to law.—A person who makes or keeps gunpowder or any other explosive substance within a city or village, in any quantity or manner prohibited by law, or by ordinance of the city or village, if any explosion thereof occurs, whereby the death of a human being is occasioned, is guilty of manslaughter in the second degree.

**§ 1053. Punishment for manslaughter in second degree.** Manslaughter in the second degree is punishable by imprisonment for a term not exceeding fifteen years, or by a fine of not more than one thousand dollars, or by both.

**§ 1054. Excusable homicide.** Homicide is excusable when committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act, by lawful means, with ordinary caution, and without any unlawful intent.

**§ 1055. Justifiable homicide.** Homicide is justifiable when committed by a public officer, or a person acting by his command and in his aid and assistance:

1. In obedience to the judgment of a competent court; or,
2. Necessarily, in overcoming actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty; or,
3. Necessarily, in retaking a prisoner who has committed, or has been arrested for, or convicted of a felony, and who has escaped or has been rescued, or in arresting a person who has committed a felony and is fleeing from justice; or in attempting by lawful ways and means to apprehend a person for a felony actually committed, or in lawfully suppressing a riot, or in lawfully preserving the peace.

Homicide is also justifiable when committed:

1. In the lawful defense of the slayer, or of his or her husband, wife, parent, child, brother, sister, master or servant, or of any other person in his presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony, or to do some great personal injury to the slayer, or to any such person, and there is imminent danger of such design being accomplished; or,
2. In the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling or other place of abode in which he is.

## ARTICLE 96

### Horse Racing

Section 1080. Racing near a court-house.

1081. Fraudulent entries and practices in contests of speed.

1082. Fraudulent entries and practices in contests of speed.

**§ 1080. Racing near a court-house.** A person concerned in any racing, running or other trial of speed between horses or other animals, within one mile of the place where a court is actually sitting, is guilty of a misdemeanor; and it shall not be lawful for any person, association, corporation or copartnership to build, maintain or operate any race track within four miles of any court-house situated in a county adjoining a city of the first class which by the last state enumeration contained not more than seventy-two thousand inhabitants and not less than sixty-eight thousand inhabitants; but nothing in this section shall apply to or affect trials of speed between horses or other animals upon the grounds of a county agricultural society during the days on which the fairs of such society are held, nor apply to or affect the maintenance and operation of any race track upon which races were conducted in the year nineteen hundred and five under the license of the state racing commission.

**§ 1081. Fraudulent entries and practices in contests of speed.** Any person who:

1. Knowingly enters for competition, or furnishes to another person for entry or competition, or brings into this state for entry or competition for any purse, prize, premium, stake or sweepstakes offered or established by any person, association or corporation, any running, trotting or pacing horse, mare, gelding, colt or filly under an assumed name, or out of its proper class, or that has been painted or disguised or represented to be any other or different horse, mare, gelding, colt or filly from the one which is purported to be entered where such prize, purse, premium, stake or sweepstakes is to be decided by a contest of speed; or,

2. Being the owner, trainer, or other person having the control of the racing qualities of any running, trotting or pacing horse, mare, gelding, colt or filly, knowingly allows the same to compete for any such prize, purse, premium, stake or sweepstakes under an assumed name, or out of its proper class, or as any other or different horse, mare, gelding, colt or filly than the one it actually is; or,

3. In any competition for any such purse, prize, premium, stake or sweepstakes, knowingly drives any trotting or pacing horse, mare, gelding, colt or filly which has been entered under an assumed name, or out of its proper class or which has been painted or disguised, or represented to be any other or different horse, mare, gelding, colt or filly than the one it actually is,

Shall be guilty of a misdemeanor, punishable by a fine of not less than five hundred nor more than fifteen hundred dollars, or by imprisonment for not more than one year, or both.

The true name and age, and also the pedigree, unless such pedigree is unknown, of every such animal shall be registered with the jockey club before it shall be eligible to compete in any such race conducted under the license of the state racing commission; and such name shall continue to be its true name unless and until the same shall be changed according to the rules and regulations of such jockey club. Any person who shall knowingly cause or procure or aid in any false registration under this section shall be guilty of a misdemeanor, and upon conviction shall be punished as hereinabove provided. The class to which any such animal belongs for the purpose of the entry or competition in any other race shall be determined by the public performance thereof in former contests or trials of speed, as provided by the printed rules of the person, association or corporation under which the proposed contest is advertised to be conducted.

**§ 1082. Fraudulent entries and practices in contests of speed.** 1. It is hereby made unlawful for any person or persons knowingly to enter or cause to be entered for competition or to compete for any purse, prize, premium, stake or sweepstakes offered or given by any agricultural or other society, association, or person or persons in the state of New York or to drive any horse, mare or gelding, colt or filly under an assumed name, or out of its proper class, where such prize, purse, premium, stake or sweepstakes is to be decided by a contest of speed.

2. Any person or persons found guilty of a violation of subdivision one of this section shall upon conviction thereof be imprisoned in the state prison for a period of not more than three years, or by imprisonment in the county jail of the county in which he is convicted for a definite period of not more than one year or shall be fined in a sum not exceeding one thousand dollars, and one-half of such fine shall be paid to the society or association upon whose grounds such offense shall be committed.

3. The name of any horse for the purpose of entry for competition in any contest of speed shall not be changed after

once having contested for a prize, purse, premium, stake or sweepstakes, except as provided by the code of printed rules of the society or association under which the contest is advertised to be conducted.

4. The class to which a horse belongs for the purpose of an entry in any such contest of speed shall be determined by the public performance of said horse in any former contest or trial of speed, as provided by the printed rules of the society or association under which the proposed contest is advertised to be conducted, and any person or persons knowingly misrepresenting or fraudulently concealing the result of the public performance in any former contest of speed of any horse which he or they propose to enter for competition in any such contest, shall, upon conviction thereof, be liable to the same punishment as is provided in subdivision two of this section, whether he or they shall succeed in making such entry or not.

## ARTICLE 98

### Husband and Wife

Section 1090. Compulsory prostitution of wife.

1091. Wife a competent witness.

1092. Presence of husband no defense.

**§ 1090. Compulsory prostitution of wife.** Any man who by force, fraud, intimidation or threats, places or leaves, or procures any other person to place or leave, his wife in a house of prostitution, or to lead a life of prostitution, shall be guilty of a felony and upon conviction thereof shall be imprisoned for not more than ten years.

**§ 1091. Wife a competent witness.** In all prosecutions under the previous section, the wife shall be a competent witness against the husband, but no conviction under this article shall be had upon the testimony of the wife unsupported by other evidence.

**§ 1092. Presence of husband no defense.** It is not a defense, to a married woman charged with crime, that the alleged criminal act was committed by her in the presence of her husband. (*Former § 1460 thus renumbered and inserted in art. 98 by L. 1909, ch. 524, in effect May 27, 1909.*)

**ARTICLE 100****Ice**

Section 1100. Cutting ice in front of premises of another.

**§ 1100. Cutting ice in front of premises of another.**

1. A person who takes possession of or cuts ice in front of the lands of another on any water except lakes, ponds, the Hudson and Mohawk rivers and the tide waters of Rondout and Catskill creeks, between the center of such body of water and such lands, after the owner or occupant has posted in a conspicuous manner upon such lands near the banks of such waters a written or printed notice of his desire to cut ice in front of such lands; or,

2. Trespasses upon or takes such ice or any part thereof for commercial purposes; or,

3. Wilfully removes any such notice,  
Is guilty of a misdemeanor.

**ARTICLE 102****Incest**

Section 1110. Incest.

**§ 1110. Incest.** When persons, within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void, intermarry or commit adultery or fornication with each other, each of them is punishable by imprisonment for not more than ten years.

**ARTICLE 104****Incompetent Persons**

Section 1120. Irresponsibility of idiot or lunatic.

1121. Unlawful confinement of idiots, lunatics and insane persons.

1122. Maintaining private insane asylums.

**§ 1120. Irresponsibility of idiot or lunatic.** An act done by a person who is an idiot, imbecile, lunatic or insane is not a crime. A person can not be tried, sentenced to any punishment or punished for a crime while he is in a state of idiocy, imbecility, lunacy or insanity so as to be incapable of understanding the proceeding or making his defense.

A person is not excused from criminal liability as an idiot, imbecile, lunatic, or insane person, except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason as:

1. Not to know the nature and quality of the act he was doing ;  
or,
2. Not to know that the act was wrong.

**§ 1121. Unlawful confinement of idiots, lunatics and insane persons.** A person, who confines an idiot, lunatic or insane person, in any other manner or in any other place than as authorized by law, and a person guilty of harsh, cruel or unkind treatment of, or any neglect of duty towards, any idiot, lunatic or insane person under confinement, whether lawfully or unlawfully confined, is guilty of a misdemeanor.

**§ 1122. Maintaining private insane asylums.** A person who conducts or maintains a private insane asylum, or institution for the care or treatment of persons of unsound mind, without a license issued and granted to such person according to law, is guilty of a misdemeanor.

## ARTICLE 106

### Indecency

- Section 1140. Exposure of person.
- 1140-a. Immoral shows and exhibitions. (*Title as inserted by the editors.*)
1141. Obscene prints and articles.
- 1141-a. Indecent posters. (*Title as inserted by the editors.*)
1142. Indecent articles.
1143. Mailing or carrying obscene prints and articles.
1144. Warrant to sheriff to search.
1145. Physicians' instruments.
1146. Keeping disorderly houses.
1147. Who may arrest persons violating provisions of this article.

**§ 1140. Exposure of person.** A person who wilfully and lewdly exposes his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another so to expose himself, is guilty of a misdemeanor.

**§ 1140-a. Immoral shows and exhibitions.\*** Any person who as owner, manager, director or agent or in any other

\* Title of section inserted by editors.

capacity prepares, advertises, gives, presents or participates in, any obscene, indecent, immoral or impure drama, play, exhibition, show or entertainment, which would tend to the corruption of the morals of youth or others, and every person aiding or abetting such act, and every owner or lessee or manager of any garden, building, room, place or structure, who leases or lets the same or permits the same to be used for the purposes of any such drama, play, exhibition, show or entertainment, knowingly, or who assents to the use of the same for any such purpose, shall be guilty of a misdemeanor. (*Added by L. 1909, ch. 279, in effect September 1, 1909.*)

**§ 1141. Obscene prints and articles.** 1. A person who sells, lends, gives away or shows, or offers to sell, lend, give away, or show, or has in his possession with intent to sell, lend or give away, or to show, or advertises in any manner, or who otherwise offers for loan, gift, sale or distribution, any obscene, lewd, lascivious, filthy, indecent or disgusting book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, drawing, photograph, figure or image, or any written or printed matter of an indecent character; or any article or instrument of indecent or immoral use, or purporting to be for indecent or immoral use or purpose, or who designs, copies, draws, photographs, prints, utters, publishes, or in any manner manufactures, or prepares any such book, picture, drawing, magazine, pamphlet, newspaper, story paper, writing, paper, figure, image, matter, article or thing, or who writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting so to do, where, how, of whom, or by what means any, or what purports to be any, obscene, lewd, lascivious, filthy, disgusting or indecent book, picture, writing, paper, figure, image, matter, article or thing, named in this section can be purchased, obtained or had or who has in his possession, any slot machine or other mechanical contrivance with moving pictures of nude or partly denuded female figures which pictures are lewd, obscene, indecent or immoral, or other lewd, obscene, indecent or immoral drawing, image, article or object, or who shows, advertises or exhibits the same, or causes the same to be shown, advertised, or exhibited, or who buys, owns or holds any such machine with the intent to show, advertise or in any manner exhibit the same; or who,

2. Prints, utters, publishes, sells, lends, gives away or shows, or has in his possession with intent to sell, lend, give away or show, or otherwise offers for sale, loan, gift or distribution, any



book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime; or who,

3. In any manner, hires, employs, uses or permits any minor or child to do or assist in doing any act or thing mentioned in this section, or any of them,

Is guilty of a misdemeanor, and, upon conviction, shall be sentenced to not less than ten days nor more than one year imprisonment or be fined not less than fifty dollars nor more than one thousand dollars or both fine and imprisonment for each offense.

**§ 1141-a. Indecent posters.\*** Any person who shall expose, place, display, post up, exhibit or paint, print or mark, or cause to be exposed, placed, displayed, posted, exhibited or painted, printed or marked in or on any building, structure, billboard, wall or fence, or on the street, or in or upon any public place, any placard, poster, bill or picture, or shall knowingly permit the same to be displayed on property belonging to or controlled by him, which placard, poster, bill or picture shall tend to demoralize the morals of youth or others or which shall be lewd, indecent, or immoral, shall be guilty of a misdemeanor. (*Added by L. 1909, ch. 280, in effect September 1, 1909.*)

**§ 1142. Indecent articles.** A person who sells, lends, gives away, or in any manner exhibits or offers to sell, lend or give away, or has in his possession with intent to sell, lend or give away, or advertises, or offers for sale, loan or distribution, any instrument or article, or any recipe, drug or medicine for the prevention of conception, or for causing unlawful abortion, or purporting to be for the prevention of conception, or for causing unlawful abortion, or advertises, or holds out representations that it can be so used or applied, or any such description as will be calculated to lead another to so use or apply any such article, recipe, drug, medicine or instrument, or who writes or prints, or causes to be written or printed, a card, circular, pamphlet, advertisement or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means such an instrument, article, recipe, drug or medicine can be purchased or obtained, or who manufactures any such instrument, article, recipe, drug or medicine, is guilty of a misdemeanor, and shall be liable to the same penalties as provided in section eleven hundred and forty-one of this chapter.

\* Title of section inserted by editors.

**§ 1143. Mailing or carrying obscene prints and articles.** A person who deposits, or causes to be deposited, in any post-office within the state, or places in charge of an express company, or of a common carrier, or other person, for transportation, any of the articles or things specified in the last two sections, or any circular, book, pamphlet, advertisement, or notice relating thereto, with the intent of having the same conveyed by mail or express, or in any other manner, or who knowingly or wilfully receives the same, with intent to carry or convey, or knowingly or wilfully carries or conveys the same, by express, or in any other manner except in the United States mail, is guilty of a misdemeanor.

**§ 1144. Warrant to sheriff to search.** A magistrate having jurisdiction to issue warrants in criminal cases, upon complaint that any person within his jurisdiction is offending against the provisions of this article, supported by oath or affirmation, must issue a warrant, directed to the sheriff or to any constable, marshal, or police officer within the county, directing him to search for, seize, and take possession of any of the articles specified in this article, in the possession of the person against whom complaint is made. The magistrate must immediately transmit every article seized by virtue of the warrant, to the district attorney of the county, who must, upon the conviction of the person from whose possession the same was taken, cause it to be destroyed, and the fact of such destruction to be entered upon the records of the court in which the conviction is had.

**§ 1145. Physicians' instruments.** An article or instrument, used or applied by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease, is not an article of indecent or immoral nature or use, within this article. The supplying of such articles to such physicians or by their direction or prescription, is not an offense under this article.

**§ 1146. Keeping disorderly houses.** A person who keeps a house of ill-fame or assignation of any description, or a house or place for persons to visit for unlawful sexual intercourse, or for any lewd, obscene or indecent purpose, or disorderly house, or a house commonly known as a stale beer dive, or any place of public resort by which the peace, comfort, or decency of a neighborhood is habitually disturbed, or who requests, advises or procures any female to become an inmate of any such house or place, or who as agent or owner, lets a building or any portion of a building, knowing that it is intended to be used for any purpose specified in this section, or who permits a building

or a portion of a building to be so used, is guilty of a misdemeanor. This section shall be construed to apply to any part or parts of a house used for any of the purposes herein specified.

**§ 1147. Who may arrest persons violating provisions of this article.** Any agent of the New York society for the suppression of vice, upon being designated thereto by the sheriff of any county in this state, may within such county make arrests and bring before any court or magistrate thereof having jurisdiction, offenders found violating the provisions of any law for the suppression of the trade in, and circulation of obscene literature and illustrations, advertisements and articles of indecent and immoral use, as it is or may be forbidden by the laws of this state, or of the United States.

## ARTICLE 108

### Indians

Section 1160. Trespasses on Indian land.

1161. Trespasses on Onondaga reservation.

**§ 1160. Trespasses on Indian land.** A person who cuts, removes, causes to be removed or aids or assists in removing from the Allegany, Cattaraugus, Tonawanda or Onondaga reservations any wood, trees, timber, bark or poles, except as authorized by law, is guilty of a misdemeanor.

**§ 1161. Trespasses on Onondaga reservation.** A person, other than an Onondaga Indian, who cuts or removes from the Onondaga reservation any tree, timber, wood, bark or poles; or an Indian who cuts for the purpose of sale or removal from such reservation, or who removes, causes to be removed or aids in the removal from such reservation of any tree, timber, wood, bark or poles, except on the written permission of a majority of the chiefs of the Onondaga tribe, particularly specifying the quantity and kind of trees, timber, wood, bark or poles to be cut or removed, is guilty of a misdemeanor.

## ARTICLE 110

### Insolvency

Section 1170. Fraudulent conveyances of property.

1171. Fraudulent removal of property to prevent levy.

1172. Knowingly receiving property removed to defraud creditors.

1173. Concealment of effects of insolvent debtor.

**§ 1170. Fraudulent conveyances of property.** A person who:

1. Becomes a party to a conveyance or assignment of real or personal property, or of an interest therein, with intent to defraud prior or subsequent purchasers, or to hinder, delay, or defraud creditors or other persons; or,

2. Being a party or privy to, or knowing of, such a conveyance or assignment so made, wilfully puts the same in use as having been made in good faith,

Is guilty of a misdemeanor.

**§ 1171. Fraudulent removal of property to prevent levy.** A person who with intent to defraud a creditor, or to prevent any of his property from being made liable for the payment of any of his debts, or levied upon by an execution or warrant of attachment, removes any of his property or secretes, assigns, conveys or otherwise disposes of the same; or with intent to defraud a creditor, removes, secretes, assigns, conveys or otherwise disposes of any of his books of account, accounts, vouchers or writings in any way relating to his business affairs, or destroys, obliterates, alters or erases any of such books of account, accounts, vouchers or writings, or any entry, memorandum or minute therein contained, is guilty of a misdemeanor.

**§ 1172. Knowingly receiving property removed to defraud creditors.** A person who receives any property from another knowing that the same is transferred or delivered to him in violation of, or with intent to violate, the last section, is guilty of a misdemeanor.

**§ 1173. Concealment of effects of insolvent debtor.** A person who being an applicant, as an insolvent debtor, for a discharge from his debts, or for exoneration or discharge from imprisonment, or having made a general assignment of his property for the payment of his debts, wilfully:

1. Conceals any part of his estate or effects, or any book, account, or other writing relative thereto; or,

2. Omits to disclose, to the court before which his application is pending, any debt or demand which he has collected, or any transfer of property which he has made, since the presentation of his application; or,

3. Fraudulently presents, or authorizes to be presented in his behalf, such an application, in a case where it is not authorized by law; or,

4. Makes or presents to the court or officer in support of such an application, a petition, schedule, book, account, voucher, or other

paper or document, knowing the same to contain a false statement; or,

5. Fraudulently makes and exhibits, or alters, obliterates, or destroys an account or voucher, relating to the condition of his affairs, or an entry or statement in such an account or voucher; or,

6. Commits any fraud upon a creditor, to induce him to petition for, or consent to such a discharge; or,

7. Conspires with, or induces another fraudulently to consent as creditor to a petition for such discharge, or to practice any fraud in aid thereof,

Is guilty of a misdemeanor.

## ARTICLE 112

### Insurance

- Section 1190. False statements in applications for membership in fraternal benefit associations.
1191. Discriminations and rebates by life insurance corporations prohibited.
1192. Acting as agent of life insurance corporation without certificate of authority.
1193. Fire insurance corporations to use standard policy only.
1194. Over-charges by marine insurance agents.
1195. Misconduct of officers and agents of corporations for the insurance of domestic animals.
1196. Transfers to and reinsurance of risks in unauthorized foreign corporations prohibited to co-operative associations.
1197. Misconduct of officers and agents of co-operative insurance companies.
1198. Acts of agents of fire or marine insurance corporation, organized in other countries, after revocation of certificate.
1199. Acting for foreign insurance corporation which has not designated superintendent of insurance as attorney.
1200. Receiving rebates on life insurance; privileges of witnesses in investigations relating thereto.
1201. Destroying property insured.
1202. Presenting false proofs of loss in support of claim upon policy of insurance.

**§ 1190. False statements in applications for membership in fraternal benefit associations.** Any appli-

cant, officer, agent, solicitor, examining physician, surgeon or other person, who knowingly or wilfully makes any false or fraudulent statements or representations in or with reference to any application for membership or reinstatement or any other documentary or other proof for the purpose of obtaining or reinstating membership in or benefit from any fraternal beneficiary society, order or association, any corporation, association or society transacting the business of life or casualty insurance or both, upon the co-operative or assessment plan, or a corporation for the insurance of domestic animals, is guilty of a misdemeanor.

**§ 1191. Discriminations and rebates by life insurance corporations prohibited.** Any life insurance corporation doing business in this state, or any officer or agent thereof, who:

1. Makes any discrimination in favor of individuals of the same class or of the same expectation of life either in the amount of the premium charged or in any return of premiums, dividends or other advantages; or,

2. Makes any contract for insurance or agreement as to such contract other than that which is plainly expressed in the policy issued; or,

3. Pays or allows, or offers to pay or allow as an inducement to any person to insure, any rebate or premium, or any special favor or advantage whatever, in the dividends to accrue thereon or any inducement whatever not specified in the policy; or,

4. Makes any distinction or discrimination between white persons and colored persons, wholly or partially of African descent, as to the premiums or rates charged for policies upon the lives of such persons, or in any other manner whatever; or demands or requires a greater premium from such colored persons than is at that time required by such company from white persons of the same age, sex, general condition of health and prospect of longevity; or makes or requires any rebate, diminution or discount upon the amount to be paid on such policy in case of the death of such colored persons insured, or inserts in the policy any condition, or makes any stipulation whereby such person insured shall bind himself, or his heirs, executors, administrators and assigns to accept any sum less than the full value or amount of such policy in case of a claim accruing thereon by reason of the death of such person insured, other than such as are imposed upon white persons in similar cases,

Is guilty of a misdemeanor.

**§ 1192. Acting as agent of life insurance corporation without certificate of authority.** Any person act-

ing as agent, subagent or broker of a life insurance corporation doing business in this state, except as agent operating solely on the weekly payment plan of insurance, who solicits or procures applications for insurance without first procuring a certificate of authority from the superintendent of insurance, is guilty of a misdemeanor.

**§ 1193. Fire insurance corporations to use standard policy only.** Any fire insurance corporation, or any officer or agent thereof, who makes, issues, delivers, or offers to deliver any policy of insurance on property in this state, which does not conform in all particulars as to blanks, size of type, context, provisions, agreements and conditions with the printed form of contract or policy filed in the office of the secretary of state, known and designated as the "Standard fire insurance policy of the state of New York," except as to such exceptions as are specially provided and allowed by law, is guilty of a misdemeanor, punishable by a fine of not less than twenty-five nor more than one hundred dollars for the first offense, and of not less than one hundred or more than two hundred and fifty dollars for each subsequent offense.

**§ 1194. Over-charges by marine insurance agents.** Any agent, shipper or other person, representing or acting for a marine insurance corporation doing business in this state who:

1. Charges or receives, directly or indirectly from any person for insurance of any property in transit upon the canals of the state, any greater sum than the regular rates of premium fixed by the corporation for the insurance of such property; or,

2. Demands or receives upon any policy of insurance issued upon any such property, for the business of obtaining such insurance, a sum of money, as compensation or remuneration by way of salary, commission or in any other capacity, which includes in any case, over fifteen per centum of the premium,

Is guilty of a misdemeanor.

**§ 1195. Misconduct of officers and agents of corporations for the insurance of domestic animals.** Any officer or agent of a corporation organized for the insurance of domestic animals who:

1. Refuses to make any report or perform any duty required by law; or,

2. Intentionally makes any false or fraudulent statement or report,

Is guilty of a misdemeanor punishable by a fine of not less than one hundred or more than five hundred dollars.

**§ 1196. Transfers to and reinsurance of risks in unauthorized foreign corporations prohibited to co-operative associations.** Any officer, manager, director or agent of a casualty insurance corporation upon the co-operative or assessment plan, organized under the laws of this state, who transfers its risks or assets or any part thereof to or reinsures its risks or any part thereof, in any insurance corporation or association of another state or country which is not, at the time of such transfer or reinsurance authorized by law to do insurance business in this state, is guilty of a misdemeanor.

**§ 1197. Misconduct of officers and agents of co-operative insurance companies.** Any officer, agent or representative of a corporation, association, or society doing a life or casualty insurance business or both, upon the co-operative or assessment plan, who:

1. Neglects or refuses to perform any duty required of him by law; or,

2. Intentionally makes any false or fraudulent statement or report; or,

3. Refuses to permit the superintendent of insurance or any examiner duly authorized by him for the purpose, to make an examination of the condition and business, books, papers and vouchers of any such corporation, association or society; or,

4. Thirty days after any such corporation has been notified by the superintendent of insurance to designate some person residing in the same city, village or town where the principal business office within the state of such corporation is located, as a person upon whom service of legal process and papers may be made, as provided by law, collects any money or issues any certificate in carrying on such business, during the failure of such corporation to designate such person; or,

5. Being within this state the agent or representative of any such corporation, association or society, which has neglected or refused to comply with any duty imposed upon it by law, or which has failed or neglected to procure from the superintendent of insurance the certificate of authority to transact business within this state as provided by law, acts as such agent, during such period of default,

Is guilty of a misdemeanor.

**§ 1198. Acts of agents of fire or marine insurance corporation, organized in other countries, after revocation of certificate.** Any agent of a fire or marine insurance corporation, incorporated by or existing under the government or laws of another country than the United States, and



doing business in this state, who issues any new policy of insurance after having been notified by the superintendent of insurance that the certificate of such corporation to do business within this state has been revoked, is guilty of a misdemeanor.

**§ 1199. Acting for foreign insurance corporation which has not designated superintendent of insurance as attorney.** Any person acting for himself or for others not having been specially licensed, as provided by law, by the superintendent of insurance, who solicits or procures, or aids in the solicitation or procurement of policies or certificates of insurance from, or adjusts losses or in any manner aids the transaction of any business for, any foreign insurance corporation, which has not executed and filed in the office of the superintendent of insurance, a written appointment of the superintendent to be the true and lawful attorney of such corporation in and for this state, upon whom all lawful process in any action or proceeding against the corporation may be served, is guilty of a misdemeanor.

**§ 1200. Receiving rebates on life insurance; privileges of witnesses in investigations relating thereto.** Any person knowingly receiving any rebate or allowance or deduction from any premium, or any valuable thing, special favor or advantage whatever, as an inducement to take any policy of life insurance, not specified in the policy is guilty of a misdemeanor.

No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

**§ 1201. Destroying property insured.** A person who, with intent to defraud or prejudice the insurer thereof, wilfully burns, or in any manner injures or destroys property not included or described in section fifteen hundred and six, which is insured at the time against loss or damage by fire or by any other casualty, under such circumstances that the offense is not arson

in any of its degrees, is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

**§ 1202. Presenting false proofs of loss in support of claim upon policy of insurance.** A person who knowing it to be such:

1. Presents, or causes to be presented, a false or fraudulent claim, or any proof in support of such a claim, for the payment of a loss upon a contract of insurance; or,

2. Prepares, makes or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim,

Is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

## ARTICLE 114

### Intoxication

Section 1220. Intoxication as a defense.

1221. Intoxication in a public place.

**§ 1220. Intoxication as a defense.** No act committed by a person while in a state of voluntary intoxication, shall be deemed less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act.

**§ 1221. Intoxication in a public place.** Any person intoxicated in a public place is guilty of a misdemeanor, and may be arrested without warrant while so intoxicated, and shall be punished by a fine of not less than three nor more than ten dollars, or by imprisonment not exceeding six months or by both such fine and imprisonment.

## ARTICLE 116

### Juries and Jurors

Section 1230. Definition of juror.

1231. Misconduct of officers at drawing of jurors and the formation of a jury.

- Section 1232. False certificate as to jurors in New York city or Kings county.
1233. False swearing perjury in New York county.
1234. Misconduct as to trial jurors in Kings county.
1235. Misconduct by trial jurors in New York county.
1236. Punishment for giving false information as to juror or suppressing notice to attend, in Kings county.
1237. Grand juror acting after challenge has been allowed.

**§ 1230. Definition of juror.** The word "juror" as used in section twelve hundred and thirty-one of this article, includes a talesman, and extends to jurors in all courts, whether of record or not of record, and in special proceedings, and before any officer authorized to impanel a jury in any case or proceeding.

**§ 1231. Misconduct of officers at drawing of jurors and the formation of a jury.** A person authorized by law to assist at the drawing or impaneling of grand or trial jurors to attend a court, or a term of a court, or to try any cause or issue, or to assist in the formation of a jury, who:

1. Designedly puts, or consents to the putting, upon a list of jurors as having been drawn, any name which was not lawfully drawn for that purpose; or,

2. Designedly omits to place on such a list any name which was lawfully drawn; or,

3. Designedly signs or certifies a list of such jurors as having been drawn which was not lawfully drawn; or,

4. Designedly withdraws from the box, or other receptacle for the ballots containing the names of such jurors, any paper or ballot lawfully placed or belonging there and containing the name of a juror, or omits to place in such box or receptacle any name lawfully drawn or designated, or places in such box or receptacle a paper or ballot containing the name of a person not lawfully drawn and designated as a juror; or,

5. In the drawing of such jurors, does any act which is unfair, partial or improper in any other respect; or,

6. Violates any of the provisions of sections eleven hundred and sixty-three, eleven hundred and sixty-four, or eleven hundred and sixty-five of the code of civil procedure,

Is guilty of a misdemeanor.

**§ 1232. False certificate as to jurors in New York city or Kings county.** A physician, who knowingly gives a false certificate, or makes a false representation, for the purpose

of enabling or assisting a person, to be discharged, excused or exempted from service, as a trial juror in the city and county of New York, or in the county of Kings, is guilty of a misdemeanor.

**§ 1233. False swearing, perjury in New York county.** In New York county a person, who swears falsely in an affidavit, or testifies falsely upon an inquiry, made as prescribed in article seventeen of the judiciary law, is guilty of perjury, in a case where falsely swearing, in an affidavit, used upon a motion in a civil action, or falsely testifying, upon the trial of an issue of fact in such an action, would constitute that crime.

**§ 1234. Misconduct as to trial jurors in Kings county.** If the commissioner of jurors in Kings county, or either of his assistants, or a clerk or other person, employed by him, corruptly and without sufficient cause, omits the name of a person, duly drawn, from a panel of trial jurors, or the ballot, containing the name of such a person, from either of the boxes prescribed in article eighteen of the judiciary law; or, directly or indirectly, receives a fee, reward, compensation, or advantage, in consideration of, or as an inducement to such an omission; he is guilty of a felony, and shall, on conviction, be punished by imprisonment in a state prison, for a term not less than two, nor more than five years.

A wilful omission, by the commissioner of jurors in Kings county, of a duty required of him by article eighteen of the judiciary law, other than that specified in this section, is a misdemeanor.

**§ 1235. Misconduct by trial jurors in New York county.**

1. A person who gives, pays, promises, or offers, money, or any other thing, to the commissioner of jurors, the sheriff, the county clerk, or other clerk of a court; or to the deputy of, or a person employed by, the county clerk or other clerk of a court; or to an officer, messenger, or other person, employed by the sheriff, or the commissioner of jurors; for the purpose of enabling or assisting himself, or any other person, named or drawn as a trial juror, to evade, or to be discharged, exempted, or excused from service; or who knowingly makes a false statement or representation, to a judge, the commissioner of jurors, or a member of the board of enforcement of jury fines, for such a purpose; or who knowingly retains, conceals, suppresses, or wilfully destroys, a notice to attend, before the commissioner of jurors, or at a term of a court, or any other paper, relating to the liability to serve, or service, as a trial juror, left at the residence or place of business of another, who has been named or drawn as a trial juror, is guilty of a mis-

demeanor. The district attorney must prosecute for each offense, specified in this section, which comes to his knowledge.

2. In New York county any person who takes money, or any other thing, as a gift, bribe, or payment, for the purpose of enabling or assisting a person, named or drawn as a trial juror, to evade, or to be discharged, exempted or excused from jury duty; or who wilfully and knowingly prevents or hinders the execution of any provision of article seventeen of the judiciary law, is guilty of a misdemeanor.

3. A person, named or drawn as a trial juror in New York county, to whom an offer or suggestion to procure his discharge, exemption, or excuse from jury duty, for or in consideration of a corrupt inducement or reward, is made by any person, and who fails, within twenty-four hours thereafter, to inform the commissioner of jurors thereof, is guilty of a misdemeanor.

**§ 1236. Punishment for giving false information as to juror or suppressing notice to attend, in Kings county.** A person, to whom application is made, within the county of Kings, by an assessor, or by the commissioner of jurors, or either of his assistants, for information, as to a fact, upon which the liability of himself, or any other person, to serve as a trial juror, depends, and who refuses to give information relating thereto, which he can give, or knowingly gives false information relating thereto; or a person who knowingly makes to an assessor, or to the commissioner of jurors, or a person acting by his authority, a false representation as to the identity, residence, or any other matter, relating to a juror, duly drawn, and placed on a panel to be notified; or who knowingly retains, conceals, suppresses, or wilfully destroys, a notice to attend, left at the residence or place of business of another, who has been drawn as a trial juror, is guilty of a misdemeanor.

**§ 1237. Grand juror acting after challenge has been allowed.** A grand juror who, with knowledge that a challenge, interposed against him by a defendant, has been allowed, is present at or takes part or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

## ARTICLE 118

### Kidnapping

Section 1250. Kidnapping defined.

1251. Indictment for kidnapping, where triable.

Section 1252. Consent of kidnapped person.

1253. Selling services of person kidnapped.

1254. Removing from this state persons held to service in another state.

1255. Penalty imposed on judicial officers.

**§ 1250. Kidnapping defined.** A person who wilfully:

1. Seizes, confines, inveigles, or kidnaps another, with intent to cause him, without authority of law, to be secretly confined or imprisoned within this state, or to be sent out of the state, or to be sold as a slave, or in any way held to service or kept or detained, against his will; or,

2. Leads, takes, entices away, or detains a child under the age of sixteen years, with intent to keep or conceal it from its parents, guardian, or other person having the lawful care or control thereof, or to extort or obtain money or reward for the return or disposition of the child, or with intent to steal any article about or on the person of the child; or,

3. Abducts, entices, or by force or fraud unlawfully takes, or carries away another, at or from a place without the state, or procures, advises, aids or abets such an abduction, enticing, taking, or carrying away, and afterwards sends, brings, has or keeps such person, or causes him to be kept or secreted within this state,

Is guilty of kidnapping, and is punishable by imprisonment for not less than five years nor more than fifty years. (*Thus amended by L. 1909, ch. 246, in effect September 1, 1909.*)

Amendment of 1909 changed punishment from imprisonment for not more than twenty-five years to not less than five years nor more than fifty.

**§ 1251. Indictment for kidnapping, where triable.**

An indictment for kidnapping may be tried either in the county in which the offense was committed, or in any county through or in which the person kidnapped or confined was taken or kept, while under confinement or restraint.

**§ 1252. Consent of kidnapped person.** Upon a trial for a violation of this article, the consent thereto of the person kidnapped or confined shall not be a defense, unless it appear satisfactorily to the jury that such person was above the age of twelve years, and that the consent was not extorted by threats or duress.

**§ 1253. Selling services of person kidnapped.** A person who, within this state or elsewhere, sells or in any manner transfers, for any term, the services or labor of any person who has been forcibly taken, inveigled, or kidnapped in or from this state, is punishable by imprisonment in a state prison not exceeding ten years.

**§ 1254. Removing from this state persons held to service in another state.** A person claiming that he or another is entitled to the services of a person alleged to be held to labor or service in a state or territory of the United States who, except as authorized by special statute, takes, or removes, or willfully does any act tending towards removing from this state any such person, is guilty of felony, punishable by imprisonment in the state prison not exceeding ten years, and by a penalty of five hundred dollars, recoverable in a civil action by the party aggrieved.

**§ 1255. Penalty imposed on judicial officers.** A judge, or other public officer of this state who grants or issues any warrant, certificate or other process, in any proceeding for the removal from this state of any person claimed as held to labor or service in a state or territory of the United States, except in pursuance of the statutes of this state, is guilty of a misdemeanor; and in addition to the punishment therefor prescribed by law, he forfeits five hundred dollars to the party aggrieved, recoverable in a civil action.

## ARTICLE 120

### Labor

- Section 1270. Refusal to admit inspector to mines, tunnels, and quarries; failure to comply with requirements of inspector.
- 1271. Hours of labor to be required.
  - 1272. Payment of wages.
  - 1273. Failure to furnish seats for female employees.
  - 1274. No fees to be charged for services rendered by free public employment bureaus.
  - 1275. Violations of provisions of labor law.
  - 1276. Negligently furnishing insecure scaffolding.
  - 1277. Neglect to complete or plank floors of buildings constructed in cities.
  - 1278. Fraudulent representation in labor organizations.

**§ 1270. Refusal to admit inspector to mines, tunnels, and quarries; failure to comply with requirements of inspector.** A person:

1. Refusing to admit the commissioner of labor, or any person authorized by him, to a mine, tunnel or quarry, and to each and every part thereof, for the purpose of examination and inspection; or,

2. Neglecting or refusing to comply with the provisions of article nine of the labor law upon written notice of the commissioner of labor,

Is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not less than fifty dollars, or by imprisonment for not less than thirty days.

**§ 1271. Hours of labor to be required.** Any person or corporation:

1. Who, contracting with the state or a municipal corporation, shall require more than eight hours work for a day's labor; or,

2. Who shall require more than ten hours labor, including one-half hour for dinner, to be performed within twelve consecutive hours, by the employees of a street surface and elevated railway owned or operated by corporations whose main line of travel or routes lie principally within the corporate limits of cities of more than one hundred thousand inhabitants; or,

3. Who shall require the employees of a corporation owning or operating a brickyard to work contrary to the requirements of section five of the labor law; or,

4. Who shall require or permit any employee engaged in or connected with the movement of any train of a corporation operating a line of railroad of thirty miles in length, or over, in whole or in part within this state, to remain on duty more than sixteen consecutive hours; or to require or permit any such employee who has been on duty sixteen consecutive hours to go on duty without having had at least ten hours off duty; or to require or permit any such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period, to continue on duty or to go on duty without having had at least eight hours off duty within such twenty-four hour period; except when by casualty occurring after such employee has started on his trip, or by unknown casualty occurring before he started on his trip, and except when by accident or unexpected delay of trains scheduled to make connection with the train on which such employee is serving, he is prevented from reaching his terminal;

Is guilty of a misdemeanor, and on conviction therefor shall be punished by a fine of not less than five hundred nor more than one thousand dollars for each offense.

If any contractor with the state or a municipal corporation shall require more than eight hours for a day's labor, upon conviction therefor in addition to such fine, the contract shall be forfeited at the option of the municipal corporation.



**§ 1272. Payment of wages.** A corporation or joint stock association or person carrying on the business thereof, by lease or otherwise, who does not pay the wages of all its employees in accordance with the provisions of the labor law, is guilty of a misdemeanor, and upon conviction therefor, shall be fined not less than one hundred nor more than ten thousand dollars for each offense. An indictment of a person or corporation operating a steam surface railroad for an offense specified in this section may be found and tried in any county within the state in which such railroad ran at the time of such offense. (*Thus amended by L. 1909, ch. 205, in effect April 17, 1909.*)

Amendment of 1909 materially changed former section, which read as follows:

§ 1272. Payment of wages. A corporation or joint-stock association or a person carrying on the business thereof, by lease or otherwise, who does not pay the wages of its employees in cash, weekly or monthly as provided in article two of the labor law, is guilty of a misdemeanor, and upon conviction therefor, shall be fined not less than twenty-five nor more than fifty dollars for each offense.

**§ 1273. Failure to furnish seats for female employees.** Any person employing females in a factory or mercantile establishment who does not provide and maintain suitable seats for the use of such employees and permit the use thereof by such employees to such an extent as may be reasonable for the preservation of their health, is guilty of a misdemeanor.

**§ 1274. No fees to be charged for services rendered by free public employment bureaus.** A person connected with or employed in a free public employment bureau, who shall charge or receive directly or indirectly, any fee or compensation from any person applying to such bureau for help or employment, is guilty of a misdemeanor.

**§ 1275. Violations of provisions of labor law.** Any person who violates or does not comply with:

1. The provisions of article three of the labor law, relating to the department of labor;
2. The provisions of article four of the labor law, relating to the bureau of labor statistics;
3. The provisions of article five of the labor law, relating to the bureau of factory inspection;
4. The provisions of article six of the labor law, relating to factories;
5. The provisions of article seven of the labor law, relating to the manufacture of articles in tenements;
6. The provisions of article eight of the labor law, relating to bakeries and confectioneries;
7. The provisions of article eleven of the labor law, relating to mercantile establishments, and the employment of women and children therein;

8. And any person who knowingly makes a false statement in or in relation to any application made for an employment certificate as to any matter required by articles six and eleven of the labor law to appear in any affidavit, record, transcript or certificate therein provided for,

Is guilty of a misdemeanor and upon conviction shall be punished for a first offense by a fine of not less than twenty nor more than fifty dollars; for a second offense by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

**§ 1276. Negligently furnishing insecure scaffolding.** A person or corporation employing or directing another to do or perform any labor in the erection, repairing, altering or painting, any house, building or structure within this state, who knowingly or negligently furnishes or erects or causes to be furnished or erected for the performance of such labor, unsafe, unsuitable or improper scaffolding, hoists, stays, ladders or other mechanical contrivances; or who hinders or obstructs any officer detailed to inspect the same, destroys or defaces any notice posted thereon, or permits the use thereof after the same has been declared unsafe by such officer contrary to the provisions of article two of the labor law, is guilty of a misdemeanor.

**§ 1277. Neglect to complete or plank floors of buildings constructed in cities.** A person, constructing a building in a city, as owner or contractor, who violates the provisions of article two of the labor law, relating to the completing or laying of floors, or the planking of such floors or tiers of beams as the work of construction progresses, is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine for each offense of not less than twenty-five nor more than two hundred dollars.

**§ 1278. Fraudulent representation in labor organizations.** Any person who represents himself or herself to be a member of, or who claims to represent a labor organization which does not exist within the state, at the time of such representation, or who has in his or her possession a credential, certificate or letter of introduction bearing a fraudulent seal, or bearing the seal of a labor organization which has ceased to exist, and does not exist at the time of such representation, and attempts to gain admission by the use of said credential, certificate or letter of introduction, as a member of any convention, or meeting of representatives of labor organizations of the state, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a

fine of not less than twenty dollars nor more than fifty dollars, and imprisonment for not less than ten days nor more than thirty days in the jail of the county wherein such conviction is had, or by both such fine and imprisonment.

## ARTICLE 122

### Larceny

- Section 1290. Larceny defined.
1291. Severance of fixture from realty, larceny.
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- 1293-a. Unauthorized use of vehicles.
1294. Grand larceny in first degree.
1295. Grand larceny in first degree; how punished.
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1298. Petit larceny defined.
1299. Petit larceny a misdemeanor.
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1302. Conversion of property held in trust or by virtue of office, larceny; how punished.
1303. Value of stolen evidence of debt, how ascertained.
1304. Value of stolen passage ticket, how ascertained.
1305. Value of other stolen articles, how ascertained.
1306. Claim of title a ground of defense.
1307. Intent to restore property no defense.
1308. Buying or receiving stolen or wrongfully acquired property.
1309. Averment and proof of conviction of principal not necessary.
1310. Conversion of materials furnished to a person for purpose of being manufactured.

**§ 1290. Larceny defined.** A person who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person:

1. Takes from the possession of the true owner, or of any other person; or obtains from such possession by color or aid of fraudulent or false representation or pretense, or of any false token or writing; or secretes, withholds, or appropriates to his own use, or that of any person other than the true owner, any money, personal property, thing in action, evidence of debt or contract, or article of value of any kind; or,

2. Having in his possession, custody, or control, as a bailee, servant, attorney, agent, clerk, trustee, or officer of any person,

association, or corporation, or as a public officer, or as a person authorized by agreement, or by competent authority, to hold or take such possession, custody, or control, any money, property, evidence of debt or contract, article of value of any nature, or thing in action or possession, appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof,

Steals such property, and is guilty of larceny.

Hereafter it shall not be a defense to a prosecution for larceny, or for an attempt or for conspiracy to commit the same, or for being accessory thereto, that the purpose for which the owner was induced by color or aid of fraudulent or false representation or pretense, or of any false token or writing, to part with his property or the possession thereof was illegal, immoral or unworthy.

**§ 1291. Severance of fixture from realty, larceny.**

All the provisions of this article apply to cases where the thing taken is a fixture or part of the realty, or any growing tree, plant, or produce, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at a previous time.

**§ 1292. Completed unissued instruments, property.**

All the provisions of this article, and sections four hundred and forty-two and nine hundred and forty-seven of this chapter apply to cases where the property taken is an instrument for the payment of money, an evidence of debt, a public security, or a passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the maker thereof to any person as a purchaser or owner.

**§ 1293. Obtaining money or property by fraudulent draft.** A person who wilfully, with intent to defraud, by color or aid of a check or draft, or order for the payment of money or the delivery of property, when such person knows that the drawer or maker thereof is not entitled to draw on the drawee for the sum specified therein, or to order the payment of the amount, or delivery of the property, although no express representation is made in reference thereto, obtains from another any money or property, is guilty of stealing the same and punishable accordingly.

**§ 1293-a. Unauthorized use of vehicles.** Any chauffeur or other person who without the consent of the owner shall take, or cause to be taken from a garage, stable, or other building or place an automobile or motor vehicle, and operate or drive or cause the same to be operated or driven for his own profit, use or purpose, steals the same and is guilty of larceny and shall be punishable accordingly. (*Added by L. 1909, ch. 514, in effect September 1, 1909.*)

**§ 1294. Grand larceny in first degree.** A person is guilty of grand larceny in the first degree, who steals, or unlawfully obtains or appropriates, in any manner specified in this article:

1. Property of any value, by taking the same from the person of another in the night time; or,

2. Property of the value of more than twenty-five dollars, by taking the same in the night time from any dwelling-house, vessel, or railway car; or,

3. Property of the value of more than five hundred dollars, in any manner whatever.

**§ 1295. Grand larceny in first degree; how punished.** Grand larceny in the first degree is punishable by imprisonment for a term not exceeding ten years.

**§ 1296. Grand larceny in second degree.** A person is guilty of grand larceny in the second degree who, under circumstances not amounting to grand larceny in the first degree, in any manner specified in this article, steals or unlawfully obtains or appropriates:

1. Property of the value of more than twenty-five dollars, but not exceeding five hundred dollars, in any manner whatever; or,

2. Property of any value, by taking the same from the person of another; or,

3. A record of a court or officer, or a writing, instrument or record kept filed or deposited according to law, with, or in keeping of any, public office or officer.

**§ 1297. Grand larceny in second degree; how punished.** Grand larceny in the second degree is punishable by imprisonment for a term not exceeding five years.

**§ 1298. Petit larceny defined.** Every other larceny is petit larceny.

**§ 1299. Petit larceny a misdemeanor.** Petit larceny is a misdemeanor.

**§ 1300. Appropriating lost property.** A person, who finds lost property under circumstances which give him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made every reasonable effort to find the owner and restore the property to him, is guilty of larceny.

**§ 1301. Bringing stolen goods into state, larceny.** A person, who having, at any place without the state, stolen the property of another, or received such property, knowing it to have been stolen, brings the same into this state, may be convicted and punished in the same manner as if such larceny or receiving had been committed within the state. Complaint may be made and

the indictment found and tried, and the offense may be charged to have been committed, in any county into or through which the stolen property is brought.

**§ 1302. Conversion of property held in trust or by virtue of office, larceny; how punished.** A person acting as executor, administrator, committee, guardian, receiver, collector or trustee of any description, appointed by a deed, will, or other instrument, or by an order or judgment of a court or officer, who secretes, withholds, or otherwise appropriates to his own use, or that of any person other than the true owner, or person entitled thereto, any money, goods, thing in action, security, evidence of debt or of property, or other valuable thing, or any proceeds thereof, in his possession or custody by virtue of his office, employment, or appointment, is guilty of grand or petit larceny in such degree as is herein prescribed, with reference to the amount of such property; and upon conviction, in addition to the punishment in this article prescribed for such larceny, may be adjudged to pay a fine, not exceeding the value of the property so misappropriated or stolen, with interest thereon from the time of the misappropriation, withholding, or concealment, and twenty per centum thereupon, in addition, and to be imprisoned for not more than five years in addition to the term of his sentence for larceny, according to this article, unless the fine is sooner paid.

So much of the fine authorized in this section to be imposed, as does not exceed the amount or value of the property taken, appropriated, or stolen, with interest thereupon from the time of the commission of the offense, and a reasonable sum to defray the expense of collecting the same, to be fixed by the supreme court, must, when received or collected, be paid to the county treasurer of the county where the conviction was had, for the benefit of the person injured or defrauded, or whose property the offender took, misappropriated, or concealed, or his representative or assignee; and must be paid over to him by the county treasurer, upon the order of the supreme court, made after notice to the district attorney of the county.

In case of the payment of the value of the property stolen or taken, with interest, by the person convicted, or of the collection of the same by civil action, the court may, in its discretion, upon the application by such person, and such notice to other persons interested, and to the district attorney of the county, as the court may direct, remit the fine imposed, pursuant to this section, except the additional allowance for expenses.

**§ 1303. Value of stolen evidence of debt, how ascertained.** If the thing stolen consists of a written instrument, being an evidence of debt, other than a public or corporate certificate, scrip, bond, or security having a market value, or being the

transfer of or evidence of title to any property, or of the creating, releasing, or discharging, of any demand, right, or obligation, the amount of money due thereupon or secured to be paid thereby, and remaining unsatisfied, or which, in any contingency, might be collected thereupon or thereby, or the value of the property transferred or affected, or the title to which is shown thereby, or the sum which might be recovered for the want thereof, as the case may be, is deemed the value of the thing stolen.

**§ 1304. Value of stolen passage ticket, how ascertained.** If the thing stolen is a ticket, paper or other writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon a railway car, vessel, or other public conveyance, the price at which a ticket, entitling a person to a like passage, is usually sold, is deemed the value thereof.

**§ 1305. Value of other stolen articles, how ascertained.** In every case not otherwise regulated by statute, the market value of the thing stolen is deemed its value.

**§ 1306. Claim of title a ground of defense.** Upon an indictment for larceny it is a sufficient defense that the property was appropriated openly and avowedly, under a claim of title preferred in good faith, even though such claim is untenable. But this section shall not excuse the retention of the property of another, to offset or pay demands held against him.

**§ 1307. Intent to restore property no defense.** The fact that the defendant intended to restore the property stolen or embezzled, is no ground of defense, or of mitigation of punishment, if it has not been restored before complaint to a magistrate, charging the commission of the crime.

**§ 1308. Buying or receiving stolen or wrongfully acquired property.** A person, who buys or receives any stolen property, or any property which has been wrongfully appropriated in such a manner as to constitute larceny according to this article, knowing the same to have been stolen or so dealt with, or who corruptly, for any money, property, reward, or promise or agreement for the same, conceals, withholds, or aids in concealing or withholding any property, knowing the same to have been stolen, or appropriated wrongfully in such a manner as to constitute larceny under the provisions of this article, if such misappropriation has been committed within the state, whether such property were so stolen or misappropriated within or without the state, or who being a dealer in or collector of junk, metals or second hand materials, or the agent, employee or repre-

representative of such dealer or collector, buys or receives any wire, cable, copper, lead, solder, iron or brass used by or belonging to a railroad, telephone, telegraph, gas or electric light company without ascertaining by diligent inquiry, that the person selling or delivering the same has a legal right to do so, is guilty of criminally receiving such property, and is punishable, by imprisonment in a state prison for not more than five years, or in a county jail for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

**§ 1309. Averment and proof of conviction of principal not necessary.** It is not necessary to aver, in an indictment for an offense specified in the last section or to prove upon the trial thereof, that the principal who stole the property has been convicted, or is amenable to justice.

**§ 1310. Conversion of materials furnished to a person for purpose of being manufactured.** Any person who shall wilfully pawn, pledge, sell or convert to his or her own use any material furnished to him or her for the purpose of being manufactured, if the same be of the value of more than twenty-five dollars, shall, upon conviction thereof, be adjudged guilty of grand larceny, and imprisoned in a state prison for a term not exceeding five years, but if the same be of the value of twenty-five dollars or under, he or she shall, upon conviction, be adjudged guilty of petit larceny, and be punished by imprisonment in a county jail not exceeding six months, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment.

Nothing in this section contained shall be deemed or held to discharge any mechanic's lien, or right of lien in favor of any employee as now recognized by law.

## ARTICLE 124

### Legislature

Section 1320. Preventing the meeting or organization of either branch of the legislature.

1321. Disturbing the legislature while in session.

1322. Compelling adjournment.

1323. Intimidating a member of the legislature.

1324. Compelling either house to perform or omit any official act.

1325. Altering draft of bill.

1326. Altering engrossed copy.



- Section 1327. Bribery of members of the legislature.  
1328. Receiving bribes by members of legislature.  
1329. Witnesses refusing to attend before the legislature or legislative committees.  
1330. Refusing to testify.  
1331. Members of the legislature liable to forfeiture of office.

**§ 1320. Preventing the meeting or organization of either branch of the legislature.** A person who wilfully and by force or fraud prevents the legislature of this state, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is punishable by imprisonment in a state prison not less than five years nor more than ten years, or by a fine of not less than five hundred dollars, nor more than two thousand dollars, or by both.

**§ 1321. Disturbing the legislature while in session.** A person who wilfully disturbs the legislature of this state, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house of the legislature, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

**§ 1322. Compelling adjournment.** A person who wilfully and by force or fraud compels or attempts to compel the legislature of this state, or either of the houses composing it, to adjourn or disperse, is punishable by imprisonment in a state prison not less than five nor more than ten years, or by fine of not less than five hundred dollars, nor more than two thousand dollars, or by both.

**§ 1323. Intimidating a member of the legislature.** A person who wilfully, by intimidation or otherwise, prevents any member of the legislature of this state, from attending any session of the house of which he is a member, or of any committee thereof, or from giving his vote upon any question which may come before such house, or from performing any other official act, is guilty of a misdemeanor.

**§ 1324. Compelling either house to perform or omit any official act.** A person who wilfully compels or attempts to compel either of the houses composing the legislature of this state to pass, amend, or reject any bill, or resolution, or to grant or refuse any petition, or to perform or omit to perform any other official act, is punishable by imprisonment in a state

prison not less than five nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or by both.

**§ 1325. Altering draft of bill.** A person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of felony.

**§ 1326. Altering engrossed copy.** A person who fraudulently alters the engrossed copy or enrollment of any bill which has been passed by the legislature of this state, with intent to procure it to be approved by the governor or certified by the secretary of state, or printed or published by the printer of the statutes in language different from that in which it was passed by the legislature, is guilty of felony.

**§ 1327. Bribery of members of the legislature.** A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a member of the legislature, or attempts, directly or indirectly, by menace, deceit, suppression of truth, or other corrupt means, to influence a member to give or withhold his vote, or to absent himself from the house of which he is a member, or from any committee thereof, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

**§ 1328. Receiving bribes by members of legislature.** A member of either of the houses composing the legislature of this state, who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or who gives or offers or promises to give any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question, is punishable by imprisonment in a state prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both.

**§ 1329. Witnesses refusing to attend before the legislature or legislative committees.** A person who, being duly summoned to attend as a witness before either house

of the legislature or any committee thereof, authorized to summon witnesses, refuses or neglects without lawful excuse to attend pursuant to such summons, is guilty of a misdemeanor.

**§ 1330. Refusing to testify.** A person who being present before either house of the legislature or any committee thereof authorized to summon witnesses, wilfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce upon reasonable notice any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

**§ 1331. Members of the legislature liable to forfeiture of office.** The conviction of a member of the legislature of either of the crimes defined in this article, involves as a consequence in addition to the punishment prescribed by this chapter, a forfeiture of his office; and disqualifies him from ever afterwards holding any office under this state.

## ARTICLE 126

### Libel

- Section 1340. Libel defined.  
 1341. Libel a misdemeanor.  
 1342. Malice presumed; defense to prosecution.  
 1343. Publication defined.  
 1344. Liability of editors and others.  
 1345. Publishing a true report of public official proceedings.  
 1346. Indictment for libel published against resident.  
 1347. \*Indictment for libel against nonresident.  
 1348. Restriction on indictment for libel.  
 1349. Power of court; place of trial.  
 1350. Privileged communications.  
 1351. Threatening to publish libel.  
 1352. Furnishing libelous information.

**§ 1340. Libel defined.** A malicious publication, by writing, printing, picture, effigy, sign or otherwise than by mere speech, which exposes any living person, or the memory of any person deceased, to hatred, contempt, ridicule or obloquy, or which causes, or tends to cause any person to be shunned or avoided, or which has a tendency to injure any person, corporation or association of persons, in his or their business or occupation, is a libel.

\* So in original. See § 1347, page 2706.

**§ 1341. Libel a misdemeanor.** A person who publishes a libel, is guilty of a misdemeanor.

**§ 1342. Malice presumed; defense to prosecution.** A publication having the tendency or effect, mentioned in section thirteen hundred and forty, is to be deemed malicious, if no justification or excuse therefor is shown.

The publication is justified when the matter charged as libelous is true, and was published with good motives and for justifiable ends.

The publication is excused when it is honestly made, in the belief of its truth and upon reasonable grounds for this belief, and consists of fair comments upon the conduct of a person in respect of public affairs, or upon a thing which the proprietor thereof offers or explains to the public.

**§ 1343. Publication defined.** To sustain a charge of publishing a libel, it is not necessary that the matter complained of should have been seen by another. It is enough that the defendant knowingly displayed it, or parted with its immediate custody, under circumstances which exposed it to be seen or understood by another person than himself.

**§ 1344. Liability of editors and others.** Every editor, or proprietor of a book, newspaper or serial, and every manager of a partnership or incorporated association, by which a book, newspaper or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution for libel the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes, by another who had no authority from him to make the publication and whose act was disavowed by him so soon as known.

**§ 1345. Publishing a true report of public official proceedings.** A prosecution for libel can not be maintained against a reporter, editor, publisher, or proprietor of a newspaper, for the publication therein, of a fair and true report of any judicial, legislative or other public and official proceeding, or of any statement, speech, argument or debate in the course of the same, without proving actual malice in making the report.

This section does not apply to a libel contained in the heading of the report, or in any other matter added by any other person concerned in the publication; or in the report of any thing said or done at the time and place of the public and official proceeding, which was not a part thereof.

**§ 1346. Indictment for libel published against resident.** An indictment for a libel, contained in a newspaper published within this state, against a resident thereof, may be found either in the county where the paper was published, or in the county where the person libeled resided when the offense was committed. In the latter case the defendant is entitled to an order of the supreme court, directing the indictment against him to be tried in the county in which the paper was printed and published, upon compliance with the following conditions:

1. He must apply for the order within thirty days after being committed upon, or giving bail to answer, the indictment;

2. He must execute a bond to the complainant, with two sufficient sureties, approved by the judge hearing his application, in a penal sum fixed by the judge, not less than two hundred and fifty nor more than one thousand dollars, conditioned for the payment, in case the defendant is convicted, of all the complainant's reasonable expenses in going to and from his place of residence and the place of trial, and in attendance upon the trial;

3. He must, within ten days after the granting of the order, file the order and deposit the bond with the clerk of the county in which the indictment is pending.

**§ 1347. Indictment for libel published against nonresident.** An indictment for a libel published against a person not a resident of this state, must be found and tried in the county, where the paper containing the libel purports upon its face to be published; or, if no county is indicated upon the face of the paper, in any county where the paper was circulated.

**§ 1348. Restriction on indictment for libel.** A person can not be indicted or tried for the publication of the same libel, against the same person, in more than one county.

**§ 1349. Power of court; place of trial.** Nothing contained in this article shall be construed to abridge, or in any manner affect, the power of a competent court, to change the place of trial of an indictment for libel, in the same manner as may lawfully be done, in respect to any other indictment.

**§ 1350. Privileged communications.** A communication made to a person entitled to, or interested in, the communication, by one who was also interested in or entitled to make it, or who stood in such a relation to the former as to afford a reasonable ground for supposing his motive innocent, is presumed not to be malicious, and is called a privileged communication.

**§ 1351. Threatening to publish libel.** A person who threatens another with the publication of a libel, concerning the latter or concerning any parent, husband, wife, child or other member of the family of the latter, and a person who offers to prevent the publication of a libel upon another person upon condition of the payment of, or with intent to extort, money or other valuable consideration from any person, is guilty of a misdemeanor.

**§ 1352. Furnishing libelous information.** Any person who wilfully states, delivers or transmits by any means whatever to any manager, editor, publisher, reporter or other employee of a publisher of any newspaper, magazine, publication, periodical or serial, any statement concerning any person or corporation, which, if published therein, would be a libel, is guilty of a misdemeanor.

## ARTICLE 128

### Logs

Section 1360. Floating logs or defacing marks thereon.

**§ 1360. Floating logs or defacing marks thereon.**

A person who:

1. Floats, runs or assists in floating or running any lumber, logs or other timber upon or over any river not excepted by law, within this state, recognized by law or use as a public highway for the purpose of floating and running lumber, logs and other timber therein, without first filing the bond executed and approved as required by law; or,

2. Unlawfully cuts out, alters or defaces any mark made upon any log or lumber, whether such mark be recorded or not, or puts a false mark upon any log or lumber floating in any of the waters of this state or lying upon land,

Is guilty of a misdemeanor.

## ARTICLE 130

### Lotteries

Section 1370. Lottery defined.

1371. Lottery unlawful and a public nuisance.

1372. Contriving, drawing, and assisting in a lottery.

1373. Selling lottery tickets.

1374. Advertising lotteries.

1375. Advertisements by persons out of the state.

1376. Offering property for disposal dependent upon the drawing of any lottery.

- Section 1377. Keeping a lottery office.  
 1378. Insuring lottery tickets.  
 1379. Advertising to insure lottery tickets.  
 1380. Property offered for disposal in lotteries, forfeited.  
 1381. Letting building for lottery purposes.  
 1382. Lotteries out of this state.  
 1383. Money paid for lottery tickets may be recovered by action.  
 1384. Prizes in lotteries, forfeited.  
 1385. Certain transfers of property in pursuance of lottery, void.  
 1386. Contracts, agreements and securities on account of raffling, void.

**§ 1370. Lottery defined.** A "lottery" is a scheme for the distribution of property by chance, among persons who have paid or agreed to pay a valuable consideration for the chance, whether called a lottery, raffle, or gift enterprise or by some other name.

**§ 1371. Lottery unlawful and a public nuisance.** A lottery is unlawful and a public nuisance.

**§ 1372. Contriving, drawing, and assisting in a lottery.** A person who contrives, proposes or draws a lottery, or assists in contriving, proposing or drawing the same, is punishable by imprisonment for not more than two years, or by fine of not more than one thousand dollars, or both.

**§ 1373. Selling lottery tickets.** A person who sells, gives, or in any way whatever furnishes or transfers, to or for another, a ticket, chance, share, or interest, or any paper, certificate, or instrument, purporting to be or to represent a ticket, chance, share, or interest, in or dependent upon the event of a lottery, to be drawn within or without this state, is guilty of a misdemeanor.

**§ 1374. Advertising lotteries.** A person who, by writing or printing, or by circular or letter, or in any other way, advertises or publishes an account of a lottery, whether within or without the state, stating how, when or where the same is to be, or has been, drawn, or what are the prizes therein, or any of them, or the price of a ticket, or any share or interest therein, or where or how it may be obtained, is guilty of a misdemeanor.

**§ 1375. Advertisements by persons out of the state.** The provisions of sections thirteen hundred and seventy-four and thirteen hundred and seventy-nine are applicable, whenever the

advertisement was published, or the letter or circular sent or delivered through or in this state, though the person causing or procuring the same to be published, sent or delivered, was out of the state at the time of so doing.

**§ 1376. Offering property for disposal dependent upon the drawing of any lottery.** A person who offers for sale or distribution, in any way, real or personal property, or any interest therein, to be determined by lot or chance, dependent upon the drawing of a lottery within or without this state, or who sells, furnishes, or procures, or causes to be sold, furnished, or procured, in any manner, a chance or share, or any interest in property offered for sale or distribution, in violation of this article, or a ticket or other evidence of such a chance, share, or interest, is guilty of a misdemeanor.

**§ 1377. Keeping a lottery office.** A person who opens, sets up, or keeps, by himself or another person, an office or other place for registering the numbers of tickets in a lottery within or without this state, or for making, receiving, or registering any bets or stakes for the drawing, or result of such a lottery, or who advertises or in any way publishes any account of an opening, setting up, or keeping of such an office or place, is guilty of a misdemeanor.

**§ 1378. Insuring lottery tickets.** A person who insures, or receives any consideration for insuring, for or against the drawing of a ticket, share, or interest in a lottery, or of a number of such a ticket, share or interest, or who receives any valuable consideration upon an agreement to pay money, or deliver property, in the event that a ticket, share, or interest, or a number of such a ticket, share, or interest in a lottery, shall prove fortunate or unfortunate, or shall be drawn or not drawn\* in a particular way or in a particular order, or who promises or agrees, or offers to pay money, or to deliver property, or to do, or forbear to do, anything for the benefit of any person, with or without consideration, upon any accident or contingency dependent on the drawing thereof, or of any number or ticket therein, is guilty of a misdemeanor.

**§ 1379. Advertising to insure lottery tickets.** A person who, by writing or printing, or by circular or letter, or in any other way, advertises or publishes an offer, notice, or proposition, in violation of the last section, is guilty of a misdemeanor.

\* Through an error this line was transferred in the original bill.



**§ 1380. Property offered for disposal in lotteries, forfeited.** All property offered for sale, or distribution, in violation of the provisions of this article, is forfeited to the people of this state, as well before as after the determination of the chance on which the same was dependent. And it is the duty of the respective district attorneys, to demand, sue for and recover, in behalf of the people, all property so forfeited, and to cause the same to be sold when recovered, and to pay the proceeds of the sale of such property, and any moneys that may be collected in any such suit, into the county treasury, for the benefit of the poor.

**§ 1381. Letting building for lottery purposes.** A person who lets, or permits to be used any building or portion of a building, knowing that it is intended to be used for any of the purposes declared punishable by this article, is guilty of a misdemeanor.

**§ 1382. Lotteries out of this state.** The provisions of this article are applicable to lotteries drawn or to be drawn out of this state, whether authorized or not by the laws of the state where they are drawn or to be drawn, in the same manner as to lotteries drawn or to be drawn within this state.

**§ 1383. Money paid for lottery tickets may be recovered by action.** Any person who shall purchase any share, interest, ticket, certificate of any share or interest, or part of a ticket, or any paper or instrument purporting to be a ticket or share or interest in any ticket, or purporting to be a certificate of any share or interest in any ticket, or in any portion of any lottery, may sue for and recover double the sum of money, and double the value of any goods or things in action, which he may have paid or delivered in consideration of such purchase, with double costs of suit.

Any person who shall have paid any money, or valuable thing, for a chance or interest in any raffle or distribution, prohibited by the preceding sections, may sue for and recover the same of the person to whom such payment or delivery was made.

**§ 1384. Prizes in lotteries, forfeited.** Any prize that shall be drawn in any lottery shall be forfeited to the use of the poor; and it shall be the duty of the overseers of the poor of the town where the person or persons drawing such prize, or any of them, shall reside, to sue for the same, in their names; and they shall recover the same, in an action for money had and received.

**§ 1385. Certain transfers of property in pursuance of lottery, void.** Every grant, bargain, sale, conveyance, or transfer of any real estate, or of any goods, chattels, things in action, or any personal property, which shall hereafter be made in pursuance of any lottery, or for the purpose of aiding and assisting in such lottery, game or other device, to be determined by lot or chance is hereby declared void and of no effect.

**§ 1386. Contracts, agreements and securities on account of raffling, void.** All contracts, agreements and securities given, made or executed, for or on account of any raffle, or distribution of money, goods or things in action, for the payment of any money, or other valuable thing, in consideration of a chance in such raffle or distribution, or for the delivery of any money, goods or things in action, so raffled for, or agreed to be distributed as aforesaid, shall be utterly void.

## ARTICLE 132

### Maiming

Section 1400. Maiming defined; punishment.

1401. What injury may constitute maiming.

1402. Maiming one's self to escape performance of a duty.

1403. Maiming one's self to obtain alms.

1404. Subsequent recovery of injured person, when a defense.

**§ 1400. Maiming defined; punishment.** A person who wilfully, with intent to commit felony, or to injure, disfigure or disable, inflicts upon the person of another an injury which:

1. Seriously disfigures his person by any mutilation thereof;
- or,
2. Destroys or disables any member or organ of his body; or,
  3. Seriously diminishes his physical vigor by the injury of any member or organ,

Is guilty of maiming, and is punishable by imprisonment for a term not exceeding fifteen years.

The infliction of the injury is presumptive evidence of the intent.

**§ 1401. What injury may constitute maiming.** To constitute maiming, it is immaterial by what means or instrument, or in what manner, the injury was inflicted.

**§ 1402. Maiming one's self to escape performance of a duty.** A person who, with design to disable himself from

performing a legal duty, existing or anticipated, inflicts upon himself an injury, whereby he is so disabled, is guilty of a felony.

**§ 1403. Maiming one's self to obtain alms.** A person who inflicts upon himself an injury, such as if inflicted upon another would constitute maiming, with intent to avail himself of such injury, in order to excite sympathy, or to obtain alms, or any charitable relief, is guilty of a felony.

**§ 1404. Subsequent recovery of injured person, when a defense.** Where it appears, upon a trial for maiming another person, that the person injured has, before the time of trial, so far recovered from the wound, that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor, no conviction for maiming can be had; but the defendant may be convicted of assault in any degree.

## ARTICLE 134

### Malicious Mischief

- Section 1420. Damaging building or vessel by explosion.
1421. Burning crops or timber, how punished.
1422. Altering signal or light for railroad or vessel.
1423. Injuring highway boundary, pier, sea-wall, dock, rock, buoy, landmark, mile-board, pipe, main, sewer, machine, telegraph, or other property.
1424. False alarms of fire; interference with fire-alarm telegraph systems.
1425. Malicious injury to and destruction of property.
1426. Malicious injury to standing crops, when a misdemeanor.
1427. Removal of books and works of art from library; wilful injury to works of art, ornamental trees or other improvements.
1428. Wilful or malicious injury to certain articles in libraries, galleries, museums or exhibitions.
1429. Destroying or delaying election returns.
1430. Property in house of worship.
1431. Interference with gas or electric meters or steam valves.
1432. Unlawful interference with water meters, water service pipes and their connections.
1433. Injury to property, how punished.
1434. Placing injurious substances on roads.

**§ 1420. Damaging building or vessel by explosion.**

A person who unlawfully and maliciously, by the explosion of gun-powder, or any other explosive substance, destroys or damages any building or vessel, is punishable as follows:

1. If thereby the life or safety of a human being is endangered, by imprisonment for not more than ten years;

2. In every other case by imprisonment for not more than five years.

**§ 1421. Burning crops or timber, how punished.** A person who wilfully burns or sets fire to any grain, grass, or growing crop, or standing timber, or to any building, fixtures or appurtenances to real property of another, under circumstances not amounting to arson in any of its degrees, is punishable by imprisonment for not more than four years.

**§ 1422. Altering signal or light for railroad or vessel.** A person who, with intent to bring a vessel, railway engine, or railway train into danger:

1. Unlawfully or wrongfully shows, masks, extinguishes, alters, or removes a light or other signal; or,

2. Exhibits any false light or signal,

Is punishable by imprisonment for not more than ten years.

**§ 1423. Injuring highway boundary, pier, sea-wall, dock, rock, buoy, landmark, mile-board, pipe, main, sewer, machine, telegraph, or other property.** A person who wilfully or maliciously displaces, removes, injures, or destroys:

1. A public highway or bridge, or a private way laid out by authority of law, or a bridge upon such public or private way; or,

2. A pier, boom, or dam, lawfully erected or maintained upon any water within the state, or hoists any gate in or about such dam; or,

3. A pile, or other material, fixed in the ground and used for securing any sea-bank or sea-walls, or the bank or dam of any river or other water, or any dock, quay, jetty, or lock; or,

4. A buoy or beacon, lawfully placed in any waters within the state; or,

5. A tree, rock, post, or other monument, which has been either erected or marked for the purpose of designating a point in the boundary of the state, or of a county, city, town, or village, or of a farm, tract, or lot of land, or any mark or inscription thereon; or,

6. A mile-board, mile-stone, or guide-post, erected upon a highway, or any inscription upon the same; or,

7. A line of telegraph or telephone, wire or cable, pier or abutment, or the material or property belonging thereto, without lawful authority, or who shall unlawfully and wilfully cut, break, tap, or make connection with any telegraph or telephone line, wire, cable or instrument, or read or copy in any unauthorized manner any message, communication or report passing over it, in this state; or who shall wilfully prevent, obstruct or delay, by any means or contrivance whatsoever, the sending, transmission, conveyance or delivery, in this state, of any authorized message, communication or report by or through any telegraph or telephone line, wire or cable, under the control of any telegraph or telephone company doing business in this state; or who shall aid, agree with, employ or conspire with any person or persons to unlawfully do, or permit or cause to be done, any of the acts hereinbefore mentioned, or who shall occupy, use a line, or shall knowingly permit another to occupy, use a line, a room, table, establishment or apparatus to unlawfully do or cause to be done any of the acts hereinbefore mentioned; or,

8. A pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenance or appendage connected therewith; or,

9. A sewer or drain, or a pipe or main connected therewith, or forming part thereof; or,

10. Destroys or damages with intent to destroy or render useless any engine, machine, tool or implement intended for use in trade or husbandry,

Is punishable by imprisonment for not more than two years.

11. Any person who shall without authority of the corporation owning the same open any fire-hydrant, except for the purpose of extinguishing a fire, or who shall wantonly injure or impair the same, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of ten dollars or by imprisonment in a county jail for the term of ten days; and it shall be the duty of all policemen, deputy sheriffs or constables to arrest any person found violating this subdivision.

**§ 1424. False alarms of fire; interference with fire-alarm telegraph systems.** Any person who shall wilfully give any false alarm of fire, or who shall wilfully tamper, meddle or interfere with any station or signal box of any fire-alarm telegraph system, or any auxiliary fire appliance, or who shall wilfully break, injure, deface or remove any such box or station, or who shall wilfully break, injure, destroy, or disturb any of the wires, poles or other supports and appliances connected with or forming a part of any fire-alarm telegraph system, or any auxiliary

fire appliance, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars or by imprisonment for not less than ten days or by both such fine and imprisonment.

**§ 1425. Malicious injury to and destruction of property.** A person who wilfully:

1. Cuts down, destroys or injures any wood or timber standing or growing, or which has been cut down and is lying on lands of another, or of the people of the state; or,

2. Cuts down, girdles or otherwise injures a fruit, shade or ornamental tree standing on the lands of another, or of the people of the state; or,

3. Severs from the freehold of another, or of the people of the state, any produce thereof, or any thing attached thereto; or,

4. Digs, takes or carries away without lawful authority or consent from any lot of land in any city or incorporated village, or from any lands included within the limits of a street or avenue laid down on the map of such city or village, or otherwise recognized or established, any earth, soil or stone; or,

5. Enters without the consent of the owner or occupant any orchard, fruit garden, vineyard or ground whereon is cultivated any fruit, with intent to take, injure or destroy any thing there growing or grown; or,

6. Cuts down, destroys or in any way injures any shrub, tree or vine being or growing within any such orchard, garden, vineyard or upon any such ground, or any building, frame work or erection thereon; or,

7. Maliciously injures any ice upon any water from which ice is taken as an article of merchandise with intent to injure the owner thereof, or enters or skates upon any pond or body of water not navigable, kept and used for the purpose of taking ice therefrom as an article of merchandise, and upon or adjoining which a notice has been placed in a conspicuous position forbidding such entry, and stating the purpose for which said body of water is kept or used, or puts or throws upon or into any such pond or body of water any stick, stone or other substance to the injury of the ice or water; or,

8. Unlawfully takes or carries away or interferes with or disturbs by any means the oysters or other shell fish of another, legally planted upon the bed of any river, bay, sound or water of this state, or removes, pulls up or destroys any stake or buoy \*designated or marking out any legally planted oyster bed of another, is guilty of a misdemeanor; and any oysters planted upon the bed of any waters of this state leased by the commissioners of fisheries shall be deemed legally planted, and evidence that

\* So in original.

any boat or vessel has been used for the purpose of taking, carrying away or interfering with such oysters shall be presumptive evidence of guilt as against the owner, master or crew of such vessel; or,

9. Intrudes or places any hovel, shanty or building upon, or within the limits of any lot or piece of land within any incorporated city or village, without the consent of the owner, or within the boundaries of any street or avenue within such city or village; or,

10. Kills, wounds or traps any bird, deer, squirrel, rabbit or other animal within the limits of any cemetery or public burying ground, or of any public park or pleasure ground, or removes the young of any such animal, or the eggs of any such bird, from any cemetery, park or pleasure ground, or exposes for sale, or knowingly buys or sells any bird or animal so killed or taken; or,

11. Drives or leads along a public highway a wild and dangerous animal, or a vehicle or engine propelled by steam, except upon a railroad, along a public highway, or causes or directs such animal, vehicle or engine to be so driven, led or to be made to pass, unless a person of mature age shall precede such animal, vehicle or engine by at least one-eighth of a mile, carrying a red light, if in the night time, and gives warning to all persons whom he meets traveling such highway, of the approach of such animal, vehicle or engine; or,

11-a. With intent so to do, damages in any manner an automobile or other motor vehicle; or, (*Subd. added by L. 1909, ch. 525, in effect September 1, 1909.*)

12. Takes or attempts to take, without the consent of the owner of any lake or pond, any fish from the waters thereof, provided such lake or pond is so situated that fish can not pass thereinto from the waters of any other lake, pond or stream, either public or owned by other persons; or, without the consent of the owner of any such lake or pond, places therein any piscivorous fish or any poison or other substance injurious to the health of fish, or lets the waters out of any such lake or pond, with intent to take fish therefrom or to harm fish therein; or,

13. Injures any arsenal or armory, or its fixtures, or any uniforms, arms or equipments, or other property therein deposited; or,

14. Trespasses upon any rifle range lawfully used by or in connection with the national guard of the state, or any organization, division or district thereof, or injures any target or other property situate thereon, or wilfully violates thereon any regulation established to maintain order, preserve property or prevent accident upon such range, or removes, mutilates or destroys a battle flag, book, placard, relic or record deposited or kept in the state military bureau; or,

15. Cuts, spoils or destroys any cordage, cable, buoys, buoy-rope, head-fast or other fast fixed to the anchor or moorings belonging to any vessel, or who shall, with intent to injure, tamper in any way with the lines or cables by which any vessel is moored or made fast, or who shall, with intent to injure, tamper in any manner with the steering-gear, bell-gear, engines, machinery, lights or any other equipments of any vessel,

Shall be deemed guilty of a misdemeanor.

16. Any person, who in any manner, for exhibition or display, shall place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement, of any nature upon any flag, standard, color or ensign of the United States of America or state flag of this state or ensign, shall expose or cause to be exposed to public view any such flag, standard, color or ensign, upon which after the first day of September, nineteen hundred and five, shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article, or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after the first day of September, nineteen hundred and five, shall have been printed, painted, attached, or otherwise placed, a representation of any such flag, standard, color or ensign, to advertise, call attention to, decorate, mark, or distinguish, the article or substance, on which so placed, or who shall publicly mutilate, deface, defile, or defy, trample upon, or cast contempt, either by words or act, upon any such flag, standard, color or ensign, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than thirty days, or both, in the discretion of the court; and shall also forfeit a penalty of fifty dollars for each such offense, to be recovered with costs in a civil action, or suit, in any court having jurisdiction, and such action or suit may be brought by or in the name of any citizen of this state, and such penalty when collected less the reasonable cost and expense of action or suit and recovery to be certified by the district attorney of the county in which the offense is committed shall be paid into the treasury of this state; and two or more penalties may be sued for and recovered in the same action or suit. The words, flag, standard, color or ensign, as used in this subdivision or section, shall include any flag, standard, color, ensign, or any picture or repre-



sentation, of either thereof, made of any substance, or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color or ensign, of the United States of America, or a picture or a representation, of either thereof, upon which shall be shown the colors, the stars, and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation may believe the same to represent the flag, colors, standard, or ensign of the United States of America. The possession by any person, other than a public officer, as such, of any such flag, standard, color or ensign, on which shall be anything made unlawful at any time by this section, or of any article or substance or thing on which shall be anything made unlawful at any time by this section shall be presumptive evidence that the same is in violation of this section, and was made, done or created after the first day of September, nineteen hundred and five, and that such flag, standard, color, ensign, or article, substance, or thing, did not exist on the first day of September, nineteen hundred and five.

**§ 1426. Malicious injury to standing crops, when a misdemeanor.** A person, who maliciously injures or destroys any standing crops, grain, cultivated fruits, or vegetables, the property of another, in any case for which punishment is not otherwise prescribed by this chapter or by some other statute, is guilty of a misdemeanor.

**§ 1427. Removal of books and works of art from library; wilful injury to works of art, ornamental trees or other improvements.** Any person who:

1. Removes or assists in removing any book, manuscript, map, print, coin, medal, printing or other literary article or work of art from the library building of any reference library company, except for its preservation or repair or for the purpose of its deposit in some other building of the company, or, being a trustee or officer of such company, consents to the removal thereof; or, upon such removal refuses to permit the same to be restored; or,

2. Not being the owner thereof, and without lawful authority, wilfully injures, disfigures, removes or destroys a gravestone, monument, work of art, or useful or ornamental improvement, or any shade tree or ornamental plant, whether situated upon private grounds or upon the street, road or sidewalk, cemetery or public park or place, or removes from any grave in a cemetery any flowers, memorials or other tokens of affection, or other thing connected with them,

Is guilty of a misdemeanor.

**§ 1428. Wilful or malicious injury to certain articles in libraries, galleries, museums or exhibitions.**

A person who wilfully or maliciously cuts, tears, defaces, disfigures, soils, obliterates, breaks or destroys, a book, map, chart, picture, engraving, statue, coin, model, apparatus, specimen, or other work of literature or object of art, or curiosity, deposited in a public library, gallery, museum, collection, fair, or exhibition, or in a library, gallery, museum, collection or exhibition belonging to any incorporated college or university, or to any other incorporated institution devoted to educational, scientific, literary, artistic, historical or charitable purposes, is punishable by imprisonment in a state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

**§ 1429. Destroying or delaying election returns.**

A messenger appointed by authority of law to receive and carry a report, certificate or certified copy of any statement relating to the result of any election, who wilfully mutilates, tears, defaces, obliterates or destroys the same, or does any other act which prevents the delivery of it as required by law; and a person who takes away from such messenger any such report, certificate or certified copy, with intent to prevent its delivery, or who wilfully does any injury or other act in this section specified, is punishable by imprisonment in a state prison not exceeding five years.

**§ 1430. Property in house of worship.** A person who wilfully and without authority, breaks, defaces or otherwise injures any house of religious worship, or any part thereof, or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware, or other chattel kept therein for use in connection with religious worship, is guilty of felony.

**§ 1431. Interference with gas or electric meters or steam valves.** A person who wilfully with intent to injure or defraud:

1. Connects a tube, pipe, wire or other instrument or contrivance with a pipe or wire used for the conducting or supplying illuminating gas, fuel, natural gas or electricity in such a manner as to supply such gas or electricity to any burner, orifice, lamp or motor where the same is or can be burned or used without passing through the meter or instrument provided for registering the quantity consumed, or uses such gas or electricity obtained by reason of the making of such connection; or,

2. Obstructs, alters, injures or prevents the action of a meter or other instrument used to measure or register the quantity of illuminating fuel, natural gas or electricity consumed in a house or apartment, or at an orifice or burner, lamp or motor, or by a consumer or other person or a person other than a state inspector or deputy inspector of gas meters or an employee of the company owning any gas or electric meter, who wilfully shall detach or disconnect such meter, or make or report any test of, or examine for the purpose of testing any such meter so detached or disconnected; or,

3. In any manner whatever, changes, extends or alters any service or other pipe, wire or attachment of any kind, connecting or through which natural or artificial gas or electricity is furnished from the gas mains or pipes or wires of any person, company or corporation without first procuring from said person, company or corporation written permission to make such change, extension or alterations, or uses gas or electricity obtained by reason of such changes, extensions or alterations without first procuring the written permission aforesaid; or,

4. Makes any connection or re-connection with the gas mains, service pipes or wires of any person, company or corporation furnishing to consumers natural or artificial gas or electricity, or turns on or off or in any manner interferes with any valve or stopcock or other appliances belonging to such person, company or corporation and connected with its service or other pipes or wires, or enlarges the orifice of mixers, or uses natural gas for heating purposes except through mixers, or uses electricity or artificial gas for any purpose before it has passed through an instrument for measuring the quantity consumed, without first procuring from such person, company or corporation a written permit to turn on or off such stopcock or valve, or to make such connections or re-connections, or to enlarge the orifice of mixers or to use for heating purposes without mixers, or to interfere with the valves, stopcocks, wires, or other appliances of such person, company or corporation as the case may be; or,

5. Retains possession of or refuses to deliver any mixer or mixers, meter or meters, lamp or lamps, or other appliances which may be or may have been loaned or rented to them by any person, company or corporation for the purpose of furnishing gas, electricity or power through the same, or who sells, loans or in any manner disposes of the same to any person or persons other than the said person, company or corporation entitled to the possession of the same; or,

6. Sets on fire any gas escaping from wells, broken or leaking mains, pipes, valves or other appliances used by any person, com-

pany or corporation, in conveying gas to consumers, or interferes in any manner with the wells, pipes, mains, gateboxes, valves, stopcocks, wires, cables, conduits, or any other appliances, machinery or property of any person, company or corporation engaged in furnishing gas to consumers unless employed by or acting under the authority and direction of such person, company or corporation; or,

7. Opens or causes to be opened or re-connects or causes to be re-connected any valve lawfully closed or disconnected by a district steam corporation; or,

8. Turns on steam or causes it to be turned on, or to re-enter any premises when the same has been lawfully stopped from entering such premises,

Is guilty of a misdemeanor.

**§ 1432. Unlawful interference with water meters, water service pipes and their connections.** A person who, wilfully, with intent to injure or defraud:

1. Breaks or defaces, or causes to be broken or defaced, the seal of a water meter; or,

2. Obstructs, alters, injures or prevents, or causes to be obstructed, altered, injured or prevented, the action of any such meter or other instrument used to measure or register the quantity of water supplied to or consumed by any person, corporation or company; or,

3. Makes or causes to be made any connection by means of pipe, conduit or otherwise with the water main or service pipe of any person, corporation or company furnishing water to consumers, in such manner as to take water from said main or service pipe without its passing through the meter or other instrument provided for registering or measuring the amount or quantity of water taken from said main or service pipe; or,

4. Makes any connection or re-connection with the water main or service pipe of any person, corporation or company furnishing water to consumers, or turns on or off, or in any manner interferes with any valve, stopcock or other appliance belonging to said person, corporation or company, without obtaining from such person, corporation or company a written permit to make such connection or re-connection or to turn or otherwise interfere with said valve, stopcock or other appliance; or,

5. Prevents, by the erection of any device or construction, or by any other means, free access to any such meter by the person, company or corporation furnishing such water; or interferes, obstructs or prevents, by any means, the reading or inspection of such meter,

Is guilty of a misdemeanor.

**§ 1433. Injury to property, how punished.** A person who unlawfully and wilfully destroys or injures any real or personal property of another, or who without authority or permission from a person who has the right to give such authority or permission, loosens any brake or blocking of any car standing on any railroad track in this state, or without like authority or permission, puts upon or runs any hand car, or other car, on any railroad track in this state, or without like authority or permission, interferes or meddles with any brake or coupling of any car while standing or moving on any railroad track in this state, or takes any part therein, in a case where the punishment is not specially prescribed by statute, is punishable as follows:

1. If the value of the property destroyed, or the diminution in the value of the property by the injury is more than twenty-five dollars, by imprisonment for not more than four years.

2. In any other case, by imprisonment for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

3. And in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property, or the public officer having charge thereof.

**§ 1434. Placing injurious substances on roads.** Whoever, with intent to prevent the free use of a cycle thereon, shall throw, drop or place, or shall cause or procure to be thrown, dropped or placed, in or upon any cycle path, avenue, street, sidewalk, alley, road, highway or public way or place, any glass, tacks, nails, pieces of metal, brier, thorn or other substance which might injure or puncture any tire used on a cycle, or which might wound, disable or injure any person using such cycle, shall be guilty of a misdemeanor, and on conviction be fined not less than five nor more than fifty dollars.

## ARTICLE 136

### Marriages

Section 1450. Solemnizing unlawful marriages.

**§ 1450. Solemnizing unlawful marriages.** A minister or magistrate who solemnizes a marriage when either of the parties is known to him to be under the age of legal consent, or to be an idiot or insane person, or a marriage to which within his knowledge a legal impediment exists, is guilty of a misdemeanor. Until a marriage has been dissolved or annulled by a

proper tribunal or court of competent jurisdiction, any person who shall assume to grant a divorce, in writing, purporting to divorce husband and wife and permitting them or either of them to lawfully marry again, shall be guilty of a misdemeanor punishable by fine for the first offense not exceeding five hundred dollars, and for the second offense one thousand dollars, or imprisonment not exceeding one year, or both such fine and imprisonment.

### **ARTICLE 138**

#### **Married Women**

Section 1460. Presence of husband no defense.

*(Article heading expressly repealed by L. 1909, ch. 524, in effect May 27, 1909.)*

**§ 1460. Presence of husband no defense.** *(Renumbered § 1092 and inserted in art. 98 by L. 1909, ch. 524, in effect May 27, 1909.)*

### **ARTICLE 140**

#### **Meetings**

Section 1470. Disturbing lawful meetings.

1471. Leaving state with intent to elude provisions of this article.

1472. Witnesses' privilege.

**§ 1470. Disturbing lawful meetings.** A person who, without authority of law, wilfully disturbs any assembly or meeting, not unlawful in its character, is guilty of a misdemeanor.

**§ 1471. Leaving state with intent to elude provisions of this article.** A person who leaves the state, with intent to elude any provision of this article, or to commit any act without the state, which is prohibited by this article, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this article, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

**§ 1472. Witnesses' privilege.** No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this article upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

**ARTICLE 142****Military**

- Section 1480. Depriving members of national guard of employment.
1481. Discrimination against members of national guard.
1482. Drugging person for enlistment.
1483. Seizing military stores belonging to the state.
1484. Converting military property; unlawfully wearing uniform.
1485. Introduction of spirituous or malt liquors into arsenal or armory.
1486. Unlawfully exacting toll of a member of the national guard.
1487. Failure to respond to military duty.

**§ 1480. Depriving members of national guard of employment.** A person who, either by himself or with another, wilfully deprives a member of the national guard of his employment, or prevents his being employed by himself or another, or obstructs or annoys said member of said national guard, or his employer, in respect of his trade, business, or employment, because said member of said national guard is such member, or dissuades any person from enlistment in the said national guard by threat of injury to him in case he shall so enlist, in respect of his employment, trade, or business, is guilty of a misdemeanor.

**§ 1481. Discrimination against members of national guard.** No association or corporation, constituted or organized for the purpose of promoting the success of the trade, employment, or business of the members thereof, shall by any constitution, rule, by-law, resolution, vote, or regulation, discriminate against any member of the national guard of the state of New York, because of such membership in respect of the eligibility of such member of the said national guard to membership in such association or corporation, or in respect of his right to retain said last mentioned membership; it being the purpose of this section and the section immediately preceding to protect a member of the said national guard from disadvantage in his means of livelihood and liberty therein but not to give him any preference or advantage on account of his membership of said national guard. A person who aids in enforcing any such provisions against a member of the said national guard with the intent to discriminate against him because of such membership, is guilty of a misdemeanor.

**§ 1482. Drugging person for enlistment.** A person who administers any drug or stupefying substance to another, with the intent, while such person is under the influence thereof, to induce such person to enter the military or naval service of the United States, of this state, or any other state, country or government, is guilty of a misdemeanor.

**§ 1483. Seizing military stores belonging to the state.** A person who enters any fort, magazine, arsenal, armory, arsenal yard or encampment, and seizes or takes away any arms, ammunition, military stores or supplies belonging to the people of this state; and a person who enters any such place with intent so to do, is punishable by imprisonment in a state prison not exceeding ten years.

**§ 1484. Converting military property; unlawfully wearing uniform.** Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the national guard, or in any manner pawn or pledge any arms, uniforms or equipments, issued under the provisions of the military law, and any person not a member of the national guard, except members of organizations specially authorized to do so by the military law, who shall wear any uniform or designation of grade similar to those in use by the national guard, issued or authorized under the provisions of said law, is guilty of a misdemeanor.

**§ 1485. Introduction of spirituous or malt liquors into arsenal or armory.** Any person who introduces any wine, spirituous or malt liquors into any arsenal or armory, except when prescribed for medical purposes by a medical officer of the national guard, is guilty of a misdemeanor.

**§ 1486. Unlawfully exacting toll of a member of the national guard.** Any person, master or keeper of a toll-gate, toll-bridge or ferry, or any person in charge thereof who wilfully hinders or delays any member of the national guard or refuses free passage to any such member going to or returning from any parade, encampment, drill or meeting which he may be by law required to attend, or wilfully hinders, delays or refuses free passage to any conveyance or military property of the state in charge of a member of said guard, is guilty of a misdemeanor.

**§ 1487. Failure to respond to military duty.** Every member of an independent military organization not regularly organized as an organization of the national guard, who fails



to respond or to do military duty, or refuses to enlist when lawfully called upon to do so by the commander-in-chief, in cases of emergency or necessity, is guilty of a misdemeanor.

## **ARTICLE 144**

### **Navigation**

Section 1500. Offenses against the navigation law.

1501. Unlicensed piloting.

1502. Acting as port-warden without authority.

1503. Using net or weir unlawfully in Hudson river.

1504. Lights upon swing bridges.

1505. Interfering with navigation.

1506. Wilfully destroying vessel.

1507. Fitting out or lading any vessel with intent to wreck the same.

Section 1508. Making false manifest.

1509. Destroying invoice.

**§ 1500. Offenses against the navigation law.** Any person having the charge, command or control of a steamboat or vessel who:

1. Permits a line used for the purpose of landing or receiving passengers, to be attached in any way to the machinery of any steamboat, or permits a small boat used for the purpose of landing or receiving passengers to be hauled by means of such machinery; or,

2. Carries or permits a steamboat to carry a greater number of passengers than is stated in the certificate of such steamboat issued under the navigation law; or,

3. Wilfully violates any of the provisions of section eleven of the navigation law, relating to the sailing rules; or,

4. Neglects to carry and show on a vessel the lights required by section twelve of the navigation law; or,

5. Neglects to carry on a vessel the life boats and life preservers required by sections fourteen and fifteen of the navigation law; or,

6. Neglects to carry on a vessel the steam fire pump required by section thirteen of the navigation law; or,

7. Intentionally loads or obstructs or causes to be loaded or obstructed in any way the safety valve of the boiler of any steamboat or naphtha launch, or employs any other means or device whereby the boiler of such vessel may be subjected to a greater pressure than is allowed by the inspectors' certificate, or intentionally deranges or hinders the operation of any machinery or

device employed to denote the stage of the water or steam in any boiler or to give warning of approaching danger, or intentionally permits the water to fall below the prescribed low water limit of the boiler; or,

8. Acts or permits another person to act as officer of a vessel without having the license required by section seventeen of the navigation law, except as permitted by the provisions of section thirty of the navigation law; or,

9. Uses or permits to be used in lamps, lanterns or other lights, on a vessel, any oil which will not stand a fire test of at least three hundred degrees Fahrenheit; or,

10. After employing a steam vessel for towing, receives any commission or compensation for orders given to the owner, captain or agent of any vessel for towage; or interferes with or hinders any such owner, captain or agent, while in the prosecution of his business; or,

11. Neglects to cause the dampers in the pipes or chimneys of a steamboat to be closed, or to otherwise prevent the escape of sparks and coals therefrom while passing near any of the villages or cities situated on the Hudson river, or while landing or receiving passengers or freight, or while lying at the docks or wharves thereof; or,

12. Violates any other provision of the navigation law for which no other punishment is prescribed,

Is guilty of a misdemeanor.

**§ 1501. Unlicensed piloting.** A person other than a lawfully authorized branch Hell Gate pilot who pilots or offers to pilot or tows or offers to tow any boat or vessel (except barges, vessels under fifty-five tons burthen, and canal boats actually used in navigating the canals) through that part of the East river, commonly called Hell Gate, is guilty of a misdemeanor. But no pilotage shall be charged to any vessel under a coasting license, on entering or departing from the port of New York by way of the East river called Hell Gate unless such vessel actually employs a pilot, and the making of such charge or demand without such employment shall be deemed a misdemeanor.

This section does not apply to vessels propelled wholly or partly by steam, owned or belonging to citizens of the United States, and licensed and engaged in the coasting trade.

**§ 1502. Acting as port-warden without authority.** A person who not being a port-warden, assumes or undertakes to act as such, or undertakes the performance of any of the duties prescribed by law, as pertaining to the office of port-warden; and a person who knowingly employs any other than the wardens for

the performance of such duties, and a person who issues any certificate of a survey on vessels, materials or goods damaged, with intent to avoid the provisions of any statute, is guilty of a misdemeanor.

**§ 1503. Using net or weir unlawfully in Hudson river.** A person, who uses any net or weir for setting or attaching nets, or a pole or other fixture in any part of the Hudson river, except as permitted by statute, is guilty of a misdemeanor.

**§ 1504. Lights upon swing bridges.** A corporation, company or individual, owning, maintaining or operating a swing bridge across the Hudson river, who during the navigation season between sundown and sunrise, neglects to keep and maintain upon every such bridge the lights required by law, is guilty of a misdemeanor.

**§ 1505. Interfering with navigation.** A person who throws, or causes, or permits to be thrown, from any boat, scow, or other vessel, or in any other manner, into any of the navigable waters of this state, including bays, sounds and harbors, any earth, ashes, cinders, stone, or other material, or who builds any structure therein, which will in any manner lessen the depth of such waters, or interfere with the free and safe navigation thereof, is guilty of a misdemeanor.

**§ 1506. Wilfully destroying vessel.** A person, who wrecks, burns, sinks, scuttles, or otherwise injures or destroys a vessel, or the cargo of a vessel, or wilfully permits the same to be wrecked, burned, sunk, scuttled, or otherwise injured or destroyed, with intent to prejudice or defraud an insurer or any other person, is punishable by imprisonment for not more than five years.

**§ 1507. Fitting out or lading any vessel with intent to wreck the same.** A person who fits out any vessel, or who lades any cargo on board of a vessel, with intent to permit or cause the same to be wrecked, sunk or otherwise injured or destroyed, and thereby to defraud or prejudice an insurer or another person, is punishable by imprisonment in the state prison not exceeding ten years.

**§ 1508. Making false manifest.** A person, guilty of preparing, making or subscribing, a false or fraudulent manifest, invoice, bill of lading, ship's register or protest, with intent to defraud another, is punishable by imprisonment in a state prison not exceeding three years, or by a fine not exceeding one thousand dollars, or both.

**§ 1509. Destroying invoice.** A person, who wilfully destroys or suppresses an invoice, bill of lading, or any other document, writing, or thing whatever, which tends to show the ownership of wrecked property, is guilty of a misdemeanor.

## ARTICLE 146

### Negotiable Instruments

Section 1520. Notes given for patent-rights.

1521. Notes given for a speculative consideration.

**§ 1520. Notes given for patent-rights.** A person who takes, sells or transfers a promissory note or other negotiable instrument, knowing the consideration of such note or instrument to consist in whole or in part, of the right to make, use or sell any patent invention or inventions, or any invention claimed or represented to be patented, without having the words "given for a patent-right" written or printed legibly and prominently on the face of such note or instrument above the signature thereto, is guilty of a misdemeanor.

**§ 1521. Notes given for a speculative consideration.** A person who takes, sells or transfers a promissory note or other negotiable instrument, knowing the consideration of such note or instrument to consist in whole or in part of the purchase price of any farm product at a price greater by four or more times than the fair market value of the same product at the time in the locality, or in which the consideration shall be in whole or in part, membership of and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase or sell any farm product at such rate, without having the words "given for a speculative consideration," or other words clearly showing the nature of the consideration prominently and legibly written or printed on the face of such note or instrument above the signature thereof, is guilty of a misdemeanor.

## ARTICLE 148

### Nuisances

Section 1530. Public nuisance defined.

1531. Unequal damage.

1532. Maintaining nuisance.

1533. Permitting use of building for nuisance; opium smoking.

**§ 1530. Public nuisance defined.** A "public nuisance" is a crime against the order and economy of the state, and consists in unlawfully doing an act, or omitting to perform a duty, which act or omission:

1. Annoys, injures or endangers the comfort, repose, health or safety of any considerable number of persons; or,

2. Offends public decency; or,

3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a lake, or a navigable river, bay, stream, canal or basin, or a stream, creek or other body of water which has been dredged or cleared at public expense, or a public park, square, street or highway; or,

4. In any way renders a considerable number of persons insecure in life, or the use of property.

**§ 1531. Unequal damage.** An act which affects a considerable number of persons, in either of the ways specified in the last section, is not less a nuisance because the extent of the damage is unequal.

**§ 1532. Maintaining nuisance.** A person who commits or maintains a public nuisance, the punishment for which is not specially prescribed, or who wilfully omits or refuses to perform any legal duty relating to the removal of such a public nuisance, is guilty of a misdemeanor.

**§ 1533. Permitting use of building for nuisance; opium smoking.** A person who:

1. Lets, or permits to be used, a building, or portion of a building, knowing that it is intended to be used for committing or maintaining a public nuisance; or,

2. Opens or maintains a place where opium, or any of its preparations, is smoked by other persons; or,

3. At such place sells or gives away any opium, or its said preparations, to be there smoked or otherwise used; or,

4. Visits or resorts to any such place for the purpose of smoking opium or its said preparations,

Is guilty of a misdemeanor.

## ARTICLE 150

### Oysters

Section 1550. Nonresident taking or planting oysters.

1551. Use of certain dredges.

**§ 1550. Nonresident taking or planting oysters.** A person, who not being at the time an actual inhabitant and

resident of this state, plants oysters in the waters of this state, without the consent of the owner of the same, or of the shore, or gathers oysters or other shell fish from their beds of natural growth, in any such waters on his own account or for his own benefit, or the benefit of a nonresident employer, is guilty of a misdemeanor, punishable by imprisonment not exceeding six months, or by a fine not exceeding one hundred dollars, or both.

**§ 1551. Use of certain dredges.** A person who uses a dredge or drag operated by steam, or any dredge or drag weighing over thirty pounds for the purpose of catching, or taking oysters or other shell fish from beds of natural growth in the waters of this state, is guilty of a misdemeanor.

## ARTICLE 152

### Passage Tickets

- Section 1560. Company defined.
1561. Certain sales and exchanges of passage tickets prohibited.
1562. Redemption of unused passage tickets.
1563. Advertising as agent, without written authorization; false or misleading information.
1564. Issuance of order or other instrument securing passage by vessel from foreign port to this state; what to contain.
- \*1665. Punishment for violation of two preceding sections.
1566. Street railroad transfer tickets not to be given away or sold.
1567. Offices kept for unlawful sale of passage tickets declared disorderly houses.
1568. Owners, pursers and clerks allowed to sell tickets.
1569. Station masters, conductors and agents allowed to sell tickets.
1570. What must be stated in passage ticket.
1571. Sale of tickets not filled out, a misdemeanor.

**§ 1560. Company defined.** The term "company," as used in this article, includes all corporations, whether created under the laws of this state, or of the United States, or of those of any other state or nation.

**§ 1561. Certain sales and exchanges of passage tickets prohibited.** A person who:

1. Sells, or causes to be sold, a passage ticket, or order for such ticket on any railway, vehicle, or vessel, to any immigrant passenger at a higher rate than one and a quarter cents per mile; or,

\* So in original.

2. Takes payment for any such ticket or order for a ticket under a false representation as to the class of the ticket, whether immigrant or first-class; or,

3. Directly or indirectly, by means of false representations, purchases or receives from an immigrant passenger any such ticket; or,

4. Procures or solicits any such passenger having such a ticket, to exchange the same for another passage ticket, or to sell the same and purchase some other passage ticket; or,

5. Solicits or books any passenger arriving at the port of New York from a foreign country, before such passenger has left the vessel on which he has arrived, or enters or goes on board any vessel arriving at the port of New York from a foreign country, having immigrant passengers on board, for the purpose of soliciting or booking such passengers, and a person or agent of a corporation employing any person for the purpose of booking such passengers before leaving the ship,

Is guilty of a misdemeanor.

**§ 1562. Redemption of unused passage tickets.**

Every person who shall have purchased a passage ticket from an authorized agent of a railroad company, which shall not have been used, or shall have been used only in part, may, within thirty days after the date of the sale of said ticket, present the same, unused or partly used, for redemption, at the general office of the railroad company which issued said ticket, or at the ticket office where said ticket was sold, or at the ticket office at the point to which the ticket has been used. If said ticket, wholly unused, shall be presented for redemption at the ticket office where sold, the same shall be then and there redeemed by the agent in charge of said ticket office at the price paid for said ticket. If said ticket, partly used, shall be presented for redemption at the ticket office where sold, or at the ticket office at the point to which used, the ticket agent at either of said offices, upon the delivery of said ticket, shall issue to the holder thereof a receipt, properly describing said ticket and setting forth the date of the receipt of said ticket, and the name of the person from whom received, and shall thereupon forthwith transmit said ticket for redemption to the general office. It shall be the duty of every railroad company to redeem tickets presented for redemption, as in this section provided for, promptly and within not to exceed thirty days from the date of presentation at the general office or from the date of the aforesaid receipt. A wholly unused ticket shall be redeemed at the price paid therefor. A partly used ticket shall be redeemed at a rate which shall

be equal to the difference between the price paid for the whole ticket and the cost of a ticket of the same class between the points for which said ticket was actually used. Mileage books shall be redeemed within thirty days after the date of the expiration thereof in the same manner. Every railroad company which shall wrongfully refuse redemption, as in this section provided for, shall forfeit to the aggrieved party fifty dollars, which sum may be recovered, together with the amount of redemption money to which the party is entitled, in an action in any court of competent jurisdiction, together with costs; but no such action can be maintained unless commenced within one year after the cause of action accrued.

**§ 1563. Advertising as agent, without written authorization; false or misleading information.** No person issuing, selling or offering to sell any passage ticket or any instrument giving or purporting to give any right, either absolutely or upon any condition or contingency, to a passage or conveyance upon any vessel, or a berth or stateroom in any vessel, shall hold himself out to be or advertise himself in any way as the agent of the owners or consignees of such vessel or line, unless he has received authority in writing therefor, specifying the name of the company, line or vessel for which he is authorized to act as agent and the city, town or village, together with the street, and street number in which his office is kept for the sale of tickets, and unless such written authorization is conspicuously displayed in such office. Provided that this section shall not apply to the sale of passage tickets on board any such vessel or to the offices of the actual owners or consignees of such vessel.

No person issuing, selling or offering to sell any such passage ticket or instrument giving or purporting to give any such right to passage or conveyance shall give any false or misleading information in regard to said passage ticket or instrument or line over which such passage is sold, or as to his agency for such line or vessel.

**§ 1564. Issuance of order or other instrument securing passage by vessel from foreign port to this state; what to contain.** No person agreeing to furnish or secure for any other person, for a consideration, passage by vessel from any foreign port to any port in this state shall issue any advice, order, certificate or other instrument purporting to entitle one or more persons to a passage ticket or other evidence of a right of passage, unless every such advice, order, certificate or instrument shall be signed or countersigned by a duly appointed agent as provided in section fifteen hundred and sixty-three, of the



vessel or line over which said advice, order, certificate or other instrument is held out to be good to secure such passage ticket or other evidence of a right of passage. Every such order, advice, certificate or other instrument and every receipt for money paid for or on account of any such advice, order, certificate or other instrument, shall contain a statement of the amount paid or to be paid for such passage; the name, address and age of the person for whom intended; the name of the company or line, if any, to which the vessel on which passage is to be made belongs; the place from which such passage is to commence; the place where such passage is to terminate; the name of the person purchasing such advice, order, certificate or other instrument, and such advice, order, certificate or other instrument must be signed by the person who issues it.

**§ 1565. Punishment for violation of two preceding sections.** Any person violating any of the provisions of section fifteen hundred and sixty-three, or fifteen hundred and sixty-four, shall be guilty of a misdemeanor and for a second or further violation shall be guilty of a felony.

**§ 1566. Street railroad transfer tickets not to be given away or sold.** No transfer ticket or written or printed instrument giving, or purporting to give, the right of transfer to any person from a public conveyance operated upon one line or route of a street surface, elevated or underground railroad to a public conveyance upon another line or route of a street surface, elevated or underground railroad, or from one car to another car upon the same line of street surface, elevated or underground railroad shall be issued, sold or given except to a passenger lawfully entitled thereto. Any person who shall issue, sell or give away such a transfer ticket or instrument as aforesaid to a person not lawfully entitled thereto, and any person not lawfully entitled thereto who shall receive and use or offer for passage any such transfer ticket or instrument, or shall sell or give away such transfer ticket or instrument to another with intent to have such transfer ticket used or offered for passage after the time limited for its use shall have expired, shall be guilty of a misdemeanor. (*Thus amended by L. 1909, ch. 204, in effect September 1, 1909.*)

Amendment of 1909 inserted the words "elevated or underground" in the three places where they occur, in first sentence, and struck "surface" out of the title before "railroad".

**§ 1567. Offices kept for unlawful sale of passage tickets declared disorderly houses.** All offices kept for the purpose of selling passage tickets in violation of any of the provisions of this article, and all offices where any such sale is made, are deemed disorderly houses; and all persons keeping any such office, and all persons associating together for the purpose of violating any of the provisions of this article, are punishable by imprisonment in a county jail for a period not exceeding six months.

**§ 1568. Owners, pursers and clerks allowed to sell tickets.** The provisions of this article do not prevent the actual owners or consignees of any vessel, from selling passage tickets thereon; nor do they prevent the purser or clerk of any vessel from selling in his office on board of such vessel, any passage ticket upon such vessel.

**§ 1569. Station masters, conductors and agents allowed to sell tickets.** The provisions of this article do not prevent the station master or other ticket agent upon any railway, from selling in his office at any station on such railway, any passage tickets upon such railway; nor do they prevent any conductor upon a railway from selling such tickets upon the trains of such railway.

**§ 1570. What must be stated in passage ticket.** A ticket or instrument issued as evidence of a right of passage upon the high seas, from any port in this state, to any port of any other state or nation, and every certificate or order issued for the purpose, or under pretense of procuring any such ticket or instrument, and every receipt for money paid for such ticket or instrument must state the name of the vessel on board of which the passage is to be made, the name of the owners or consignees of such vessel, the name of the company, or line, if any, to which such vessel belongs, the place from which such passage is to commence, the place where such passage is to terminate, the day of the month and year upon which the voyage is to commence, the name of the person purchasing such ticket or instrument, or receiving such order, certificate or receipt, and the amount paid therefor; and such ticket or instrument, order, certificate or receipt, unless sold or issued by the owners or consignees of such vessel, must be signed by their authorized agent.

**§ 1571. Sale of tickets not filled out, a misdemeanor.** A person who issues, sells or delivers to another, any ticket, instrument, certificate, order or receipt, which is not made or filled out as prescribed in the last section, is guilty of a misdemeanor.

## ARTICLE 154

### Pawnbrokers

Section 1590. Pawnbroking without a license.

1591. Refusing to exhibit stolen goods to owner.

1592. Selling before time to redeem.

**§ 1590. Pawnbroking without a license.** A person, who carries on the business of a pawnbroker, by receiving goods in pledge for loans at a rate of interest above that allowed by law, except by virtue of a license from a municipal corporation or other authority empowered to grant licenses to pawnbrokers, is guilty of a misdemeanor.

**§ 1591. Refusing to exhibit stolen goods to owner.** A pawnbroker, or person carrying on the business of a pawnbroker, or a junk dealer, who having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner of said goods or his agent authorized to demand an inspection thereof, is guilty of a misdemeanor.

**§ 1592. Selling before time to redeem.** A pawnbroker who sells any article received by him in pledge, before the time to redeem the same has expired, or who wilfully refuses to disclose the name of the purchaser and the price received by him for any article received by him in pledge, and subsequently sold, is guilty of a misdemeanor. No pawnbroker shall transact any pawnbroking business or advance any moneys upon goods pawned or received except between the hours of seven o'clock a. m., and six o'clock p. m., on week days, excepting on Saturday, and then only between the hours of seven o'clock a. m., and twelve o'clock midnight, nor shall any business be transacted by pawnbrokers as such between the hours of twelve o'clock midnight on Saturday and seven o'clock a. m. on Monday, and every violation of these prohibitions is a misdemeanor.

## ARTICLE 156

### Peddlers

Section 1610. Unlicensed peddlers.

**§ 1610. Unlicensed peddlers.** A person who is found trading as a peddler without a license, or contrary to the terms of his license, or who refuses to produce his license on demand of any officer or citizen, is guilty of a misdemeanor.

## ARTICLE 158

### Perjury and Subornation of Perjury

Section 1620. Perjury.

1621. Irregularities in the mode of administering oaths  
no defense.

1622. Swearing falsely in any form, perjury.

- Section 1623. Incompetency of witness no defense for perjury.  
 1624. Witness' knowledge of materiality of his testimony not necessary.  
 1625. Making of deposition or certificate, when deemed complete.  
 1626. Statement of that which one does not know to be true.  
 1627. Contradictory statements under oath.  
 1628. Summary committal of witnesses who have committed perjury.  
 1629. Witnesses necessary to prove the perjury may be bound over to appear.  
 1630. Documents necessary to prove such perjury may be detained.  
 1631. Witnesses' testimony.  
 1632. Subornation of perjury defined.  
 1633. Punishment of perjury and subornation of perjury.  
 1634. Official \*interpreters of city court of city of New York.

**§ 1620. Perjury.** A person who swears or affirms that he will truly testify, declare, depose, or certify, or that any testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed, is true, in an action, or a special proceeding, or upon any hearing, or inquiry, or on any occasion in which an oath is required by law, or is necessary for the prosecution or defense of a private right, or for the ends of public justice, or may lawfully be administered, and who in such action or proceeding, or on such hearing, inquiry or other occasion, wilfully and knowingly testifies, declares, deposes, or certifies falsely, in any material matter, or states in his testimony, declaration, deposition, affidavit, or certificate, any material matter to be true which he knows to be false, is guilty of perjury. (*Thus amended by L. 1909, ch. 240, § 58, in effect April 22, 1909.*)

**Amendment of 1909** made no change in the section in the form in which it became a law. Ch. 240, § 58, was apparently intended to correct an error appearing in the legislative bill of the penal law but which was cured before enactment.

**§ 1621. Irregularities in the mode of administering oaths no defense.** It is no defense to a prosecution for perjury that an oath was administered or taken in an irregular manner. The term "oath," includes an affirmation, and every other mode authorized by law of attesting the truth of that which is stated.

**§ 1622. Swearing falsely in any form, perjury.** A person swearing, affirming, or declaring, in any form, where an oath is authorized by law, is lawfully sworn, and is guilty of

\* So in original. See § 1634, page 2739.

perjury, in a case where he would be guilty of the same crime, if he had sworn by laying his hand upon the Gospels.

**§ 1623. Incompetency of witness no defense for perjury.** It is no defense to a prosecution for perjury that the defendant was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he actually was permitted to give such testimony or make such deposition or certificate.

**§ 1624. Witness' knowledge of materiality of his testimony not necessary.** It is no defense to a prosecution for perjury that the defendant did not know the materiality of the false statement made by him; or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material, and might have affected such proceeding.

**§ 1625. Making of deposition or certificate, when deemed complete.** The making of a deposition or certificate is deemed to be complete, within the provisions of this article, from the time when it is delivered by the defendant to any other person with intent that it be uttered or published as true.

**§ 1626. Statement of that which one does not know to be true.** An unqualified statement of that which one does not know to be true is equivalent to a statement of that which he knows to be false.

**§ 1627. Contradictory statements under oath.** In any prosecution for perjury the falsity of the testimony or statement set forth in the indictment shall be presumptively established by proof that the defendant has testified, declared, deposed or certified under oath to the contrary thereof in any other written testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed.

**§ 1628. Summary committal of witnesses who have committed perjury.** Where it appears probable to a court of record that a person, who has testified before it in an action or proceeding in that court, has committed perjury in any testimony so given, the court may immediately commit him, by an order or process for that purpose, to prison, or take a recognizance, with sureties, for his appearing and answering to an indictment for perjury.

**§ 1629. Witnesses necessary to prove the perjury may be bound over to appear.** In a case specified in the last section, the court may bind over witnesses to establish the

perjury, to appear at the proper court to testify before a grand jury, and also upon the trial, in case an indictment is found for the perjury. It must cause immediate notice of any such commitment or recognizance, with the names of the witnesses so bound over, to be given to the district attorney of the county.

**§ 1630. Documents necessary to prove such perjury may be detained.** In such a case, if a paper or document, produced by either party, is deemed by the court necessary to be used in the prosecution for the perjury, the court may detain the same, and direct it to be delivered to the district attorney.

**§ 1631. Witnesses' testimony.** The sections of this chapter which declare that evidence obtained upon the examination of a person as a witness shall not be received against him in a criminal proceeding, do not forbid such evidence being proved against such person upon any charge of perjury committed in such examination.

**§ 1632. Subornation of perjury defined.** A person, who wilfully procures or induces another to commit perjury, is guilty of subornation of perjury.

**§ 1633. Punishment of perjury and subornation of perjury.** Perjury and subornation of perjury are each punishable as follows:

1. When the perjury is committed upon the trial of an indictment for felony, by imprisonment for a term not exceeding twenty years;
2. In any other case, by imprisonment for a term not exceeding ten years.

**§ 1634. Official interpreter of city court of city of New York.** If an official interpreter of the city court of the city of New York, knowingly and wilfully, falsely interprets any evidence, matter or thing, between a witness and the court, or a justice thereof, in the course of an action or special proceeding, he is guilty of perjury.

## ARTICLE 160

### Poor Persons

Section 1650. Unlawful removal of poor person.

**§ 1650. Unlawful removal of poor person.** Any person who shall send, remove or entice to remove, or bring, or cause to be sent, removed or brought, any poor or indigent person,

from any city, town or county, to any other city, town or county without legal authority, and there leave such person for the purpose of avoiding the charge of such poor or indigent person upon the city, town or county, from which he is so sent, removed or brought or enticed to remove, shall be guilty of a misdemeanor, and on conviction, shall be imprisoned not exceeding six months, or fined not exceeding one hundred dollars, or both.

## ARTICLE 162

### Prisoners

Section 1690. Definitions.

1691. Communication with prisoners prohibited.

1692. Rescue of a prisoner.

1693. Escaping prisoner may be recaptured.

1694. Prisoner escaping.

1695. Attempt to escape from state prison.

1696. Aiding escape.

1697. Suffering prisoner to escape.

1698. Concealing escaped prisoner.

**§ 1690. Definitions.** Definition of prison.—The term, “prison,” as used in this article, means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest.

Definition of prisoner.—The term, “prisoner,” as used in this article, means any person held in custody under process of law, or under lawful arrest.

#### **§ 1691. Communication with prisoners prohibited.**

A person who:

1. Not being authorized by law visits any state prison, reformatory, penitentiary, county jail or other place for the detention of persons convicted of crime or communicates with any prisoner therein without the consent of the agent or warden, superintendent, keeper, sheriff or other person having charge thereof or without such consent brings into or conveys out of a state prison, reformatory, penitentiary, county jail or other place for the detention of persons convicted of crime, any letter, information or writing to or from any prisoner; or,

2. Conveys into or takes from such prison, reformatory, penitentiary, county jail or other place for the detention of persons convicted of crime, or who personally or through any other person or persons gives, sells, furnishes or otherwise delivers to any prisoner or prisoners in custody any drug, liquor or any article prohibited by law or by the rules of the superintendent, keeper,

sheriff, board of managers or other person, or official having charge or control thereof,

Is guilty of a misdemeanor.

**§ 1692. Rescue of a prisoner.** A person who, by force or fraud, rescues a prisoner from lawful custody, or from an officer or other person having him in lawful custody, is guilty of a felony, if the prisoner was held upon a charge, commitment, arrest, conviction, or sentence of felony; and if the prisoner was held upon a charge, arrest, commitment, conviction, or sentence for misdemeanor, the rescuer is guilty of a misdemeanor.

**§ 1693. Escaping prisoner may be recaptured.** A prisoner, in custody under sentence of imprisonment for any crime, who escapes from custody, may be recaptured and imprisoned for a term equal to that portion of his original term of imprisonment which remained unexpired upon the day of his escape.

**§ 1694. Prisoner escaping.** A prisoner who, being confined in a prison, or being in lawful custody of an officer or other person, by force or fraud escapes from such prison or custody, is guilty of felony if such custody or confinement is upon a charge, arrest, commitment, or conviction for a felony; and of a misdemeanor if such custody or confinement is upon a charge, arrest, commitment or conviction for a misdemeanor.

**§ 1695. Attempt to escape from state prison.** A prisoner confined in a state prison for a term less than for life, who attempts by force or fraud, although unsuccessfully, to escape from such prison, is guilty of felony.

**§ 1696. Aiding escape.** A person who, with intent to effect or facilitate the escape of a prisoner, whether the escape is effected or attempted or not, enters a prison, or conveys to a prisoner any information, or sends into a prison any disguise, instrument, weapon, or other thing, is guilty of felony, if the prisoner is held upon a charge, arrest, commitment, or conviction for a felony; and of a misdemeanor, if the prisoner is held upon a charge, arrest, commitment, or conviction for a misdemeanor.

A person who aids or assists a prisoner in escaping, or attempting to escape, from the lawful custody of a sheriff, or other officer or person, is guilty of a misdemeanor, if the prisoner is held under arrest, commitment, or conviction for a misdemeanor, or upon a charge thereof; and of a felony if the prisoner is held under an arrest, commitment, or conviction for a felony, or upon a charge thereof.



**§ 1697. Suffering prisoner to escape.** A sheriff, or other officer or person, who allows a prisoner, lawfully in his custody, in any action or proceeding, civil or criminal, or in any prison under his charge or control, to escape or go at large, except as permitted by law, or connives at or assists such escape, or omits an act or duty whereby such escape is occasioned, or contributed to, or assisted, is

1. If he corruptly and wilfully allows, connives at, or assists the escape, guilty of a felony;

2. In any other case, is guilty of a misdemeanor.

An officer who is convicted of the offense specified in the first subdivision of this section, forfeits his office, and is forever disqualified to hold any office, or place of trust, honor or profit, under the constitution or laws of this state.

**§ 1698. Concealing escaped prisoner.** A person who knowingly or wilfully conceals, or harbors for the purpose of concealment, a person who has escaped or is escaping from custody, is guilty of a felony if the prisoner is held upon a charge or conviction of felony, and of a misdemeanor if the person is held upon a charge or conviction of misdemeanor.

## ARTICLE 164

### Prize-Fighting and Sparring

Section 1710. Prize-fighting and sparring.

1711. What constitutes a challenge.

1712. Betting or stakeholding on fight.

1713. Fight out of state.

1714. Place of trial.

1715. Apprehension of persons about to fight.

1716. Witnesses' privilege.

**§ 1710. Prize-fighting and sparring.** A person who, within this state, engages in, instigates, aids, encourages or does any act to further a contention, or fight, without weapons, between two or more persons, or a fight commonly called a ring or prize-fight, either within or without the state, or who engages in a public or private sparring exhibition, with or without gloves, within the state, at which an admission fee is charged or received, either directly or indirectly, or who sends or publishes a challenge, or acceptance of a challenge for such a contention, exhibition or fight, or carries or delivers such a challenge or acceptance, or trains or assists any person in training or preparing for such a contention, exhibition or fight, is guilty of a misdemeanor.

**§ 1711. What constitutes a challenge.** Any words spoken or written, or any signs uttered or made to any person, expressing or implying, or intended to express or imply a desire, request, invitation or demand to engage in any fight, such as is mentioned in section seventeen hundred and ten, are to be deemed a challenge within the meaning of that section.

**§ 1712. Betting or stakeholding on fight.** A person who bets, stakes, or wagers money or other property, upon the result of such a fight or encounter, or who holds or undertakes to hold money or other property so staked or wagered, to be delivered to or for the benefit of the winner thereof, is guilty of a misdemeanor.

**§ 1713. Fight out of state.** A person who leaves the state, with intent to elude any provision of this article, or to commit any act without the state, which is prohibited by this article, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this article, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

**§ 1714. Place of trial.** An indictment for an offense, specified in the last section, may be tried in any county within the state.

**§ 1715. Apprehension of persons about to fight.** A magistrate having power to issue warrants in criminal cases, to whom it is made to appear that there is reasonable ground to apprehend that an offense specified in sections seventeen hundred and ten, seventeen hundred and twelve and seventeen hundred and thirteen is about to be committed within his jurisdiction, or by any person being within his jurisdiction, must issue his warrant to a sheriff or constable, or other proper officer, for the arrest of the person so about to offend. Upon a person being arrested and brought before him by virtue of the warrant, he must inquire into the matter, and, if it appears that there is reasonable ground to believe that the person arrested is about to commit any offense, the magistrate must require him to give a bond to the people of the state in such a sum, not exceeding one thousand dollars, as the magistrate may fix, either with or without sureties in his discretion, conditioned that such person will not, for one year thereafter, commit any such offense.

If the person arrested does not furnish a bond, within a time fixed by the magistrate, the latter must commit him to the county jail, there to remain until discharged by a court of record having

criminal jurisdiction. A person so committed may, at any time, be discharged upon a writ of habeas corpus, upon his executing the bond required by the committing magistrate. If the bond is required to be given with one or more sureties, the surety or sureties must be approved by the officer taking the same.

§ 1716. **Witnesses' privilege.** No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this article, upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

## ARTICLE 166

### Public Health

- Section 1740. Wilful violation of health laws.
1741. Obstructing health officer in performance of his duty.
1742. Omitting to label drugs, or labeling them wrongly.
1743. Selling poison without labeling, and recording the sale.
1744. Penalty for violation of public health law.
1745. Regulations as to prescriptions of opium and morphine.
1746. Sale of cocaine or eucaine.
1747. Careless distribution of medicines, drugs and chemicals.
1748. Adulterated goods.
1749. Adulteration of natural fruit juices.
1750. Disposing of tainted food.
1751. Violations of agricultural law.
1752. Having narcotics in possession.
1753. Articles in imitation of food.
1754. Putting noisome or unwholesome substances in highway.
1755. Obstructing passage of ambulance.
1756. Exposing person affected with a contagious disease in a public place.
1757. Spraying fruit trees with poison.
1758. Contamination of salt wells.
1759. Throwing gas tar or refuse into public waters.
1760. Wilfully poisoning food.
1761. Acts of intoxicated physicians.
1762. Misconduct of veterinary surgeons.
1763. Illegal practice of embalming.

**§ 1740. Wilful violation of health laws.** 1. A person who wilfully violates or refuses or omits to comply with any lawful order or regulation prescribed by any local board of health or local health officer, is guilty of a misdemeanor.

2. A person who wilfully violates any provision of the health laws, or any regulation lawfully made or established by any public officer or board under authority of the health laws the punishment for violating which is not otherwise prescribed by those laws, or by this chapter, is punished by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars or by both.

**§ 1741. Obstructing health officer in performance of his duty.** A person who wilfully opposes or obstructs a health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

**§ 1742. Omitting to label drugs, or labeling them wrongly.** Any person, who, in putting up any drug, medicine, or food or preparation used in medical practice, or making up any prescription, or filling any order for drugs, medicines, food or preparation puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing a drug, medicine, food or preparation used in medical practice, or substitutes or dispenses a different article for or in lieu of any article prescribed, ordered, or demanded, or puts up a greater or less quantity of any ingredient specified in any such prescription, order or demand than that prescribed, ordered, or demanded, or otherwise deviates from the terms of the prescription, order, or demand by substituting one drug for another, is guilty of a misdemeanor; provided, however, that, except in the case of physicians' prescriptions, nothing herein contained shall be deemed or construed to prevent or impair or in any manner affect the right of an apothecary, druggist, pharmacist or other person to recommend the purchase of an article other than that ordered, required or demanded, but of a similar nature, or to sell such other article in place or in lieu of an article ordered, required or demanded, with the knowledge and consent of the purchaser. Upon a second conviction for a violation of this section the offender must be sentenced to imprisonment, for a term of not less than ten days nor more than one year, and to the payment of a fine of not less than ten dollars nor more than five hundred dollars. The third conviction of a violation of any of the provisions of this section, in addition to rendering the offender liable to the penalty prescribed by law for a misdemeanor; shall forfeit any right which he may possess under the law of this state at

the time of such conviction, to engage as proprietor, agent, employee or otherwise, in the business of an apothecary, pharmacist, or druggist, or to compound, prepare or dispense prescriptions or orders for drugs, medicines or foods or preparations used in medical practice; and the offender shall be by reason of such conviction disqualified from engaging in any such business as proprietor, agent, employee or otherwise or compounding, preparing or dispensing medical prescriptions or orders for drugs, medicines, or foods or preparations used in medical practice.

This section shall not affect or impair any liability, penalty or punishment under the provisions of section four hundred and one of the penal code as the same existed prior to September first, nineteen hundred and seven, but the same may be enforced, prosecuted or inflicted as fully and to the same extent as though this section had not been passed; and all actions civil or criminal instituted under or by virtue of said section as the same existed prior to July nineteenth, nineteen hundred and seven, and pending immediately prior to September first, nineteen hundred and seven, may be prosecuted and defended to final effect in the same manner as though this section had not been enacted.

The provisions of this section shall not apply to the practice of a practitioner of medicines who is not the proprietor of a store for the dispensing or retailing of drugs, medicines and poisons, or who is not in the employ of such a proprietor, and shall not prevent practitioners of medicine from supplying their patients with such articles as they may deem proper, and except as to the labeling of poisons shall not apply to the sale of medicines or poisons at wholesale when not for the use or consumption of the purchaser; provided, however, that the sale of medicines or poisons at wholesale shall continue to be subject to such regulations as from time to time may be lawfully made by the board of pharmacy or by any competent board of health.

**§ 1743. Selling poison without labeling, and recording the sale.** It shall be unlawful for any person to sell at retail or furnish any of the poisons named in the schedules hereinafter set forth, without affixing or causing to be affixed, to the bottle, box, vessel or package, a label containing the name of the article and the word "poison" distinctly shown, with the name and place of business of the seller, all printed in red ink, together with the name of such poisons printed or written thereupon in plain, legible characters, which schedules are as follows, to wit:

Schedule A. Arsenic, cyanide of potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable

alkaloids and their salts, oil of bitter almonds, containing hydrocyanic acid, opium and its preparations, except paragoric and such others as contain less than two grains of opium to the ounce.

Schedule B. Aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic acid, paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life in quantities of sixty grains or less, and such other poisons as the state board of pharmacy, under the authority given to it by the public health law, may from time to time add to either of said schedules. Every person who shall dispose of or sell at retail or furnish any poisons included under schedule A shall, before delivering the same, make or cause to be made an entry in a book kept for that purpose, stating the date of sale, the name and address of the purchaser, the name and the quantity of the poison, the purpose for which it is represented by the purchaser to be required and the name of the dispenser, such book to be always open for inspection by the proper authorities, and to be preserved for at least five years after the last entry. He shall not deliver any of said poisons without satisfying himself that the purchaser is aware of its poisonous character and that the said poison is to be used for a legitimate purpose. The foregoing portions of this section shall not apply to the dispensing of medicines or poisons on physicians' prescriptions. Wholesale dealers in drugs, medicines, pharmaceutical preparations or chemicals shall affix or cause to be affixed to every bottle, box, parcel or outer enclosure of an original package containing any of the articles enumerated under said schedule A, a suitable label or brand in red ink with the word "poison" upon it.

Any person who violates any of the provisions of this section shall be guilty of a misdemeanor.

**§ 1744. Penalty for violation of public health law.**

Any person who violates any provision of article eleven of the public health law for which no other penalty is imposed, is guilty of a misdemeanor.

**§ 1745. Regulations as to prescriptions of opium and morphine.**

A person who, except on the written or verbal order of a physician, refills more than once prescriptions containing opium, morphine or preparations of either, in which the

dose of opium exceeds one-fourth grain, or morphine one-twentieth grain, is guilty of a misdemeanor.

**§ 1746. Sale of cocaine or eucaine.** It shall be unlawful for any person to sell, furnish or dispose of alkaloid cocaine or its salts, or alpha or beta eucaine or their salts or any admixture of cocaine or eucaine, except upon the written prescription of a duly registered physician, which prescription shall be retained by the person who dispenses the same, shall be filled but once and of which no copy shall be taken by any person; except, however, that such alkaloid cocaine or its salts, and alpha or beta eucaine or their salts may lawfully be sold at wholesale upon the written order of a licensed pharmacist or licensed druggist, duly registered practicing physician, licensed veterinarian or licensed dentist provided that the wholesale dealer shall affix or cause to be affixed to the bottle, box, vessel or package containing the article sold, and upon the outside wrapper of the package as originally put up, a label distinctly displaying the name and quantity of cocaine or its salts, alpha or beta eucaine or their salts, sold, and the word "poison" with the name and place of business of the seller, all printed in red ink; and provided also that the wholesale dealer shall before delivering any of the articles make or cause to be made in a book kept for the purpose an entry of the sale thereof stating the date of sale, the quantity, name and form in which sold, the name and address of the purchaser, and the name of the person by whom the entry is made; and the said book shall be always open for inspection by the proper authorities and shall be preserved for at least five years after the date of the last entry made therein; and provided also that any manufacturer may sell to another manufacturer of the same article, or to a wholesale dealer in drugs, or, a wholesale dealer in drugs may sell to a manufacturer of the same article, or to another wholesale dealer in drugs, alkaloid cocaine or its salts or alpha or beta eucaine or their salts or any admixture of cocaine or eucaine in the original package. Such package shall be labeled as herein provided and shall be securely sealed. Each manufacturer and each wholesale dealer in drugs shall, before the delivery or at the time of the receipt, as the case may be, of any such drug, enter or cause to be entered in a book to be kept by them respectively for that purpose a record of the purchase and sale of such drug stating the date of purchase and the name and address of the person from whom purchased; the date of sale and the name and address of the person to whom sold; the quantity, name and form in which sold and a description of the package or container in which sold and how sealed and there shall also be entered in such book at the place of such record a statement that such drug was sold or

purchased, as the case may be, in the original package; that the seals thereon were undamaged and unbroken and the labels were attached thereto as herein provided and were not in any manner defaced or damaged, which statement shall be signed by the person selling such drug and the person purchasing such drug in the books herein required to be kept by them respectively.

Any person who violates any of the provisions of this section shall be guilty of a felony punishable by imprisonment of not more than one year or a fine of not more than one thousand dollars, or both.

**§ 1747. Careless distribution of medicines, drugs and chemicals.** Any person, firm, or corporation, who distributes, or causes to be distributed, any free or trial samples of any medicine, drug, chemical or chemical compound, by leaving the same exposed upon the ground, sidewalk, porch, doorway, letter-boxes, or in any other manner, that children may become possessed of the same, shall be guilty of a misdemeanor punishable by a fine not exceeding twenty-five dollars for each offense, but this section shall not apply to the direct delivery of any such article to an adult.

**§ 1748. Adulterated goods.** A person who:

1. With the intent that the same may be sold as unadulterated or undiluted, adulterates or dilutes wine, milk, distilled spirits or malt liquor, or any drug, medicine, food or drink, for man or beast; or,

2. Knowing that the same has been adulterated or diluted, offers for sale or sells the same as unadulterated or undiluted, or without disclosing or informing the purchaser that the same has been adulterated or diluted, in a case where special provision has not been made by statute, for the punishment of the offense; or,

3. Sells or offers to sell, or stores or transports with intent to sell for any purpose other than cooling beer in casks, ice cut from any canal or from the wide waters or basins of any canal, unless the ice so sold, or offered for sale or stored or transported, is contained in a building, cart, car, sleigh, float or receptacle upon which is plainly marked in roman or capital letters, not less than eight inches square, the words, "canal ice;" or,

4. Who shall adulterate maple sugar, maple syrup or honey, with glucose, cane sugar or syrup, beet sugar or syrup, or any other substance for the purpose of sale, or who shall knowingly sell or offer for sale maple sugar, maple syrup or honey that has been adulterated in any way; or,

5. Violates any provision of section three hundred and ninety of the general business law, relating to canned and preserved food, Is guilty of a misdemeanor.



**§ 1749. Adulteration of natural fruit juices.** Any person who shall knowingly sell, offer or expose for sale, or give away, any compound or preparation composed, in whole or in part, of any unwholesome, deleterious or poisonous acid, or other unwholesome, deleterious or poisonous substance, as a substitute for the pure, unadulterated and unfermented juice of lemons, limes, oranges, currants, grapes, apples, peaches, plums, pears, berries, quinces, or other natural fruits, representing such compound or preparation to be the pure, unadulterated and unfermented juice of any of such fruits; or who, in the mixing, decoction, or preparation of food or drink, shall knowingly use any such compound or preparation in the place of, or as a substitute for, the pure, unadulterated and unfermented juice of one or more of such fruits, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than two hundred and fifty dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

**§ 1750. Disposing of tainted food.** A person who with intent that the same may be used as food, drink, or medicine, sells, or offers or exposes for sale, any article whatever which, to his knowledge, is tainted or spoiled, or for any cause unfit to be used as such food, drink, or medicine, is guilty of a misdemeanor.

**§ 1751. Violations of the agricultural law.** Any person who disregards, disobeys or violates any proclamation, notice, order or regulation, lawfully issued or prescribed by the commissioner of agriculture, for the suppression or prevention of the spread of infectious or contagious diseases among domestic animals, or who violates any of the provisions of sections three hundred and three hundred and four of the agricultural law, is guilty of a misdemeanor.

**§ 1752. Having narcotics in possession.** 1. A person, other than a duly licensed physician or surgeon engaged in the lawful practice of his profession, who has in his possession any narcotic or anæsthetic substance, compound or preparation, capable of producing stupor or unconsciousness, with intent to administer the same or cause the same to be administered to another, without the latter's consent, unless by direction of a duly licensed physician, is guilty of a felony, punishable by imprisonment in the state prison for not more than ten years.

2. The possession by any person, other than as exempted in the foregoing subdivision, of any such narcotic or anæsthetic substance or compound, concealed or furtively car-

ried on the person, is presumptive evidence of an intent to administer the same or cause the same to be administered in violation of the provisions of this section.

**§ 1753. Articles in imitation of food.** A person, who sells or manufactures, exposes or offers for sale as an article of food, any substance in imitation thereof, without disclosing the imitation by a suitable and plainly visible mark or brand, is guilty of a misdemeanor.

**§ 1754. Putting noisome or unwholesome substances in highway.** A person, who deposits, leaves or keeps, on or near a highway or route of public travel, either on the land or on the water, any noisome or unwholesome substance, or establishes, maintains or carries on, upon or near a public highway or route of public travel, either on the land or on the water, any business, trade or manufacture which is noisome or detrimental to public health, is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars, or by imprisonment not less than three nor more than six months, or both.

**§ 1755. Obstructing passage of ambulance.** A person, who wilfully stops or obstructs the passage of any ambulance or vehicle used for the transportation of sick or wounded persons or animals upon any public street, highway or place, or who wilfully injures the same, or wilfully drives any vehicle into collision therewith, is guilty of a misdemeanor. All sheriffs, constables and police officers must, when called upon by the persons in charge of such ambulance or vehicle, aid in placing sick or wounded persons or animals therein, and in enforcing the provisions of this section.

**§ 1756. Exposing person affected with a contagious disease in a public place.** A person, who wilfully exposes himself or another, affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

**§ 1757. Spraying fruit trees with poison.** Any person who shall spray with, or apply in any way poison or any poisonous substance, to fruit trees while the same are in blossom, is guilty of a misdemeanor, punishable by a fine of not less than ten dollars nor more than fifty dollars for each offense; provided, however, that nothing in this section shall prevent the directors of the experimental stations at Ithaca and Geneva from conducting experiments in the application of poison and spraying mixtures to fruit trees while in blossom.

§ 1758. **Contamination of salt wells.** A person who wilfully places, introduces or causes to flow or enter into any spring, brook or body of water, which is used in the manufacture of salt, or into any salt well, or salt mine, or into any cavity or reservoir beneath the surface of the earth from which salt or brine is taken or used in the manufacture of salt, any impure or deleterious substance or thing whatsoever, which is liable to pollute the waters thereof, or the brine or salt taken or manufactured therefrom, provided that this act shall not interfere with any existing system of drainage or sewerage, is punishable by imprisonment in a penitentiary or state prison for not more than five years or by a fine of not more than two thousand dollars, or by both such fine and imprisonment.

§ 1759. **Throwing gas tar or refuse into public waters.** A person, who throws or deposits gas tar, or the refuse of a gas house or gas factory, or offal, refuse, or any other noxious, offensive, or poisonous substance into any public waters, or into any sewer or stream running or entering into such public waters, is guilty of a misdemeanor.

§ 1760. **Wilfully poisoning food.** A person who wilfully mingles poison with any food, drink or medicine, intended or prepared for the use of human beings, and a person who wilfully poisons any spring, well or reservoir of water, is punishable by imprisonment in a state prison not exceeding ten years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or both such fine and imprisonment.

§ 1761. **Acts of intoxicated physicians.** A physician or surgeon, or person practicing as such, who, being in a state of intoxication, administers any poison, drug or medicine, or does any other act as a physician or surgeon, to another person, by which the life of the latter is endangered, or his health seriously affected, is guilty of a misdemeanor.

§ 1762. **Misconduct of veterinary surgeons.** A person who presents to a county clerk for registration as a practitioner of veterinary medicine or surgery any diploma or certificate fraudulently obtained or practices veterinary medicine and surgery without complying with or contrary to law, is guilty of a misdemeanor. This section shall not be construed to prohibit students from prescribing under the supervision of preceptors, or to prohibit gratuitous services in case of emergency, or the services of an authorized practitioner of a neighboring state when incidentally called into requisition.

**§ 1763. Illegal practice of embalming.** Any person violating any provision of section two hundred and ninety-eight of the public health law, or any of the rules and regulations in reference to the business and practice of embalming human dead bodies, made and duly approved as by article fourteen of said public health law prescribed, is guilty of a misdemeanor.

## ARTICLE 168

### Public Justice

- Section 1780. Disclosure of deposition taken by a magistrate.  
 1781. Disclosure of depositions returned by grand jury with presentment.  
 1782. Disclosing fact of indictment having been found.  
 1783. Grand juror disclosing what transpired before the grand jury.  
 1784. Stenographer disclosing evidence taken before grand jury.  
 1785. Instituting suit in false name.  
 1786. Maliciously procuring search warrant.  
 1787. Combinations to resist execution of process.  
 1788. Re-confining person discharged upon writ.  
 1789. Concealing persons entitled to writ of deliverance.  
 1790. Liquors not to be sold in court-house during court.  
 1791. Bringing liquors into or selling within jails prohibited.  
 1792. Misconduct of officer having charge of jurors.

**§ 1780. Disclosure of deposition taken by a magistrate.** A magistrate or clerk of any magistrate who wilfully permits any deposition taken on an examination of a defendant before such magistrate, and remaining in the custody of such magistrate or clerk, to be inspected by any person, except a judge of a court having jurisdiction of the offense, the attorney general, the district attorney of the county and his assistants, the complainant and his counsel, and the defendant and his counsel, is guilty of a misdemeanor.

**§ 1781. Disclosure of depositions returned by grand jury with presentment.** A clerk of any court who wilfully permits any deposition returned by a grand jury and filed with such clerk, to be inspected by any person, except the court, the deputies or assistants of such clerk, and the district attorney and his assistants, until after the arrest of the defendant, is guilty of a misdemeanor.

**§ 1782. Disclosing fact of indictment having been found.** A judge, grand juror, district attorney, clerk, or other officer, who, except in the due discharge of his official duty, discloses, before an accused person is in custody, the fact of an indictment having been found or ordered against him, is guilty of a misdemeanor.

**§ 1783. Grand juror disclosing what transpired before the grand jury.** A grand juror who, except when lawfully required by a court or officer wilfully discloses:

1. Any evidence adduced before the grand jury; or,

2. Anything which he himself or any other member of the grand jury said, or in what manner he or any other grand juror voted, upon any matter before them,

Is guilty of a misdemeanor.

**§ 1784. Stenographer disclosing evidence taken before grand jury.** A stenographer appointed to take testimony given before a grand jury who permits any person other than the district attorney to take a copy of such testimony or of any portion thereof or to read the same or any portion thereof, except on the written order of the court, is guilty of a misdemeanor.

**§ 1785. Instituting suit in false name.** A person who institutes or prosecutes an action or other proceeding in the name of another without his consent and contrary to the statutes, is guilty of a misdemeanor, punishable by imprisonment not exceeding six months.

**§ 1786. Maliciously procuring search warrant.** A person who maliciously, and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

**§ 1787. Combinations to resist execution of process.** A person, who enters into a combination with another to resist the execution of any legal process, or other mandate of a court of competent jurisdiction, under circumstances not amounting to a riot, is guilty of a misdemeanor.

A person who leaves the state, with intent to elude any provision of this section, or to commit any act without the state, which is prohibited by this section, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this section, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this

section upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

**§ 1788. Re-confining person discharged upon writ.**

A person, who either solely, or as a member of a court, or in the execution of a judgment, order or process, knowingly re-commits, imprisons or restrains of his liberty, for the same cause, any person who has been discharged from imprisonment upon a writ of habeas corpus, or certiorari, is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars or by imprisonment not exceeding six months, or both; and in addition to the punishment prescribed therefor, he forfeits to the party aggrieved, one thousand two hundred and fifty dollars to be recovered in a civil action.

**§ 1789. Concealing persons entitled to writ of deliverance.** A person having in his custody or power or under his restraint, one who would be entitled to a writ of habeas corpus or certiorari, or for whose relief a writ of habeas corpus or certiorari has been issued who, with intent to elude the service of such writ, or to avoid the effect thereof, transfers the party to the custody, or places him under the power or control of another, or conceals or changes the place of his confinement, or who without lawful excuse refuses to produce him, is guilty of a misdemeanor, punishable as prescribed in the last section.

**§ 1790. Liquors not to be sold in court-house during court.** Strong, spirituous, or fermented liquor, or wine, shall not, on any pretense whatever, be sold within a building established as a court-house for holding courts of record, while such a court is sitting therein. A person violating this section is guilty of a misdemeanor.

**§ 1791. Bringing liquors into or selling within jails prohibited.** A person who brings into or sells in a jail, strong, spirituous, fermented, or other liquor, or wine, contrary to the provisions of sections three hundred and forty-nine or three hundred and fifty of the prison law; or a sheriff, keeper of a jail, assistant keeper, or an officer, or person employed in or about a jail, who knowingly suffers liquor or wine to be sold or used therein, contrary to either of said sections, is guilty of a misdemeanor, and shall be punished accordingly. A conviction also operates as a forfeiture of his office.

**§ 1792. Misconduct of officer having charge of jurors.** An officer to whose charge any juror is committed by

a court or magistrate, who negligently or wilfully permits such juror, without leave of the court or magistrate:

1. To receive any communication from any person; or,
2. To make any communication to any person; or,
3. To obtain or receive any book or paper, or refreshment; or,
4. To leave the jury room,

Is guilty of a misdemeanor.

The word "juror" as used in this section includes a talesman, and extends to jurors in all courts whether of record or not of record, and in special proceedings, and before any officer authorized to impanel a jury in any case or proceeding.

## ARTICLE 170

### Public Offices and Officers

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1876. Misdemeanor for judge, justice or magistrate to permit not by attorneys to practice in his court.

**§ 1820. Acting in a public office without having qualified.** A person who executes any of the functions of a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, as prescribed by law, is guilty of a misdemeanor.

**§ 1821. Acts of officer de facto.** The last section must not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where persons other than himself are interested in maintaining the validity of such acts.

**§ 1822. Giving or offering bribes.** A person who gives or offers a bribe to any executive officer of this state with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in a state prison not exceeding ten years, or by fine not exceeding five thousand dollars, or by both.

**§ 1823. Asking or receiving bribes.** An executive officer, or person elected or appointed to an executive office, who asks, receives or agrees to receive any bribe, upon an agreement or understanding that his vote, opinion or action upon any matter then pending or which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in a state prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both; and in addition thereto forfeits his office and is forever disqualified from holding any public office under this state.

**§ 1824. Attempting to prevent officer from performing duty.** A person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, is guilty of a misdemeanor.

**§ 1825. Resisting officer.** A person who knowingly resists, by the use of force or violence, any executive officer, in the performance of his duty, is guilty of a misdemeanor.

**§ 1826. Taking unlawful fees.** A public officer or a deputy, clerk, assistant or other subordinate of a public officer, or any person appointed or employed by or in the office of a public officer, who shall, in any manner act for or in behalf of any such

officer, who asks or receives, or consents or agrees to receive, any emolument, gratuity or reward, or any promise of emolument, gratuity or reward, or any money, property or thing of value or of personal advantage, except such as may be authorized by law, for doing or omitting to do any official act, or for performing or omitting to perform, or for having performed or omitted to perform any act whatsoever directly or indirectly related to any matter in respect to which any duty or discretion is by or in pursuance of law imposed upon or vested in him, or may be exercised by him by virtue of his office, or appointment or employment or his actual relation to the matter, shall be guilty of a felony, punishable by imprisonment for not more than ten years or by a fine of not more than four thousand dollars, or both.

**§ 1827. Comptroller not to be interested in tax sales.** The comptroller, or any person employed in his office, who shall be directly or indirectly interested in any tax sale made by such comptroller, or in the title acquired by such sale, or in any money paid or to be paid for the redemption of any lands sold for taxes or on the cancellation of any tax sale; or any person who shall pay or give to the state comptroller, or to any employee in his office, any compensation, reward or promise thereof for any service or services performed or to be performed in regard to such sale, redemption, cancellation or such tax title, is guilty of a misdemeanor. A sale in violation of this section is void.

**§ 1828. Prison officers not to be interested in prison contracts.** A superintendent of state prisons, or agent, warden or other officer or guard, employed at either of the prisons, who:

1. Shall be directly or indirectly interested in any contract, purchase or sale, for, by, or on account of such prison; or,

2. Accepts a present from a contractor or contractor's agent, directly or indirectly, or employs the labor of a convict or another person employed in such prison on any work for the private benefit of such superintendent, officer or guard, is guilty of a misdemeanor, except that the agent and warden shall be entitled to employ prisoners for necessary household service.

**§ 1829. Taking reward for omitting or delaying official acts.** An executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor.

**§ 1830. Taking fees for services not rendered.** An executive officer who asks or receives any fee or compensation for

any official service which has not been actually rendered, except in cases of charges for prospective costs, or of fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor.

**§ 1831. Taking unlawful reward for services in extradition of fugitives.** An officer of this state who asks or receives any fee or compensation of any kind for any services rendered or expense incurred in procuring from the governor of this state a demand upon the executive authority of a state or territory of the United States, or of a foreign government, for the surrender of a fugitive from justice; or for any service rendered or expense incurred in procuring the surrender of such fugitive, or of conveying him to this state, or for detaining him therein, except upon an employment by the governor of this state, is guilty of a misdemeanor.

**§ 1832. Corrupt bargain for appointment.** 1. A person who gives or offers to give, any gratuity or reward, in consideration that himself or any other person shall be appointed to a public office, or to a clerkship, deputation, or other subordinate position, in such an office, or shall be permitted to exercise, perform, or discharge any prerogatives or duties, or to receive any emoluments, of such an office, is guilty of a misdemeanor.

2. A person who asks or receives, or agrees to receive, any gratuity, or reward, or any promise thereof, for appointing another person, or procuring for another person an appointment, to a public office or to a clerkship, deputation, or other subordinate position in such an office, is guilty of a misdemeanor. If the person so offending is a public officer, a conviction also forfeits his office.

**§ 1833. Selling right to official powers.** A public officer who, for any reward, consideration or gratuity, paid, or agreed to be paid, directly or indirectly, grants to another the right or authority to discharge any functions of his office, or permits another to make appointments or perform any of its duties, is guilty of a misdemeanor, and a conviction for the same forfeits his office, and disqualifies him forever from holding any office whatever under this state.

**§ 1834. Appointment avoided by conviction.** A grant, appointment, or deputation, made contrary to the provisions of either subdivision two of section eighteen hundred and thirty-two, or section eighteen hundred and thirty-three, is avoided and annulled by a conviction for the violation of either of those sections, in respect to such grant, appointment, or deputation; but any official act done before conviction, is unaffected by the conviction.

**§ 1835. Intrusion into public office.** A person who wilfully intrudes himself into a public office, to which he has not been duly elected or appointed, or who, having been an executive or administrative officer, wilfully exercises any of the functions of his office, after his right so to do has ceased, is guilty of a misdemeanor.

**§ 1836. Officer refusing to surrender to successor.** A person who, having been an executive or administrative officer, wrongfully refuses to surrender the official seal, or any books or papers, appertaining to his office, upon the demand of his lawful successor, is guilty of a misdemeanor.

**§ 1837. Administrative officers.** The various provisions of the preceding sections of this article which relate to executive officers apply to administrative officers, in the same manner as if administrative and executive officers were both mentioned.

**§ 1838. Injury to records and misappropriation by ministerial officers.** A sheriff, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer, who:

1. Mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office; or,
2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property intrusted to him in virtue of his office,

Is guilty of felony.

**§ 1839. Permitting escapes, and other unlawful acts, committed by ministerial officers.** A sheriff, coroner, clerk of a court, constable, or other ministerial officer, and every deputy or subordinate of any ministerial officer, who:

1. Receives any gratuity, or reward, or any security or promise of one, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape is attempted or not; or,
2. Commits any unlawful act tending to hinder justice,

Is guilty of misdemeanor.

A conviction of a sheriff or other officer also operates as a forfeiture of his office, and disqualifies him forever thereafter from holding the same.

**§ 1840. Neglecting or refusing to execute process.** An officer who, in violation of a duty imposed upon him by law to receive a person into his official custody, or into a prison under his charge, wilfully neglects or refuses so to do, is guilty of a misdemeanor.

**§ 1841. Provision as to neglect of duty.** A public officer, or person holding a public trust or employment, upon whom any duty is enjoined by law, who wilfully neglects to perform the duty, is guilty of a misdemeanor. This and section eighteen hundred and forty do not apply to cases of official acts or omissions the prevention or punishment of which is otherwise specially provided by statute.

**§ 1842. Neglect of county officer to make report.** A county officer or an officer whose salary is paid by the county, who neglects or refuses to make a report under oath to the board of supervisors of such county on any subjects or matters connected with the duties of his office, whenever required by resolution of such board, is guilty of a misdemeanor.

**§ 1843. Neglect of duty by superintendent or overseer of the poor.** The county superintendents of the poor, or any overseer of the poor, whose duty it shall be to provide for the support of any bastard and the sustenance of its mother, who shall neglect to perform such duty, shall be guilty of a misdemeanor, and shall, on conviction, be liable to a fine of two hundred and fifty dollars, or to imprisonment not exceeding one year, or by both such fine and imprisonment.

**§ 1844. Delaying to take person arrested for crime before a magistrate.** A public officer or other person having arrested any person upon a criminal charge, who wilfully and wrongfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor.

**§ 1845. Special peace officers to be citizens.** No sheriff of a county, mayor of a city, or officials, or other person authorized by law to appoint special deputy sheriffs, special constables, marshals, policemen, or other peace officers in this state, to preserve the public peace or quell public disturbance, shall hereafter, at the instance of any agent, society, association or corporation, or otherwise, appoint as such special deputy, special constable, marshal, policeman, or other peace officer, any person who shall not be a citizen of the United States and a resident of the state of New York, and entitled to vote therein at the time of his appointment, and a resident of the same county as the mayor or sheriff or other official making such appointment; and no person shall assume or exercise the functions, powers, duties or privileges incident and belonging to the office of special deputy sheriff, special constables, marshal or policeman, or other peace officer, without having first received his appointment in writing from the authority lawfully appointing him.

A violation of the provisions of this section is a misdemeanor.

**§ 1846. Making arrest without lawful authority.**

Any person who shall, in this state, without due authority, exercise, or attempt to exercise the functions of, or hold himself out to any one as a deputy sheriff, marshal, or policeman, constable or peace officer, or any public officer, or person pretending to be a public officer, who, unlawfully, under the pretense or color of any process, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements without a regular process therefor, is guilty of a misdemeanor. But nothing herein contained shall be deemed to affect, repeal or abridge the powers authorized to be exercised under sections one hundred and two, one hundred and four, one hundred and sixty-nine, one hundred and eighty-three, eight hundred and ninety-five, eight hundred and ninety-six and eight hundred and ninety-seven of the code of criminal procedure; or under section ninety of the railroad law; or under section eleven hundred and forty-seven of this chapter. All places kept for summer resorts and the grounds of racing associations in the counties of New York, Kings and Westchester, are hereby exempted from the provisions of this section.

**§ 1847. Misconduct in executing search warrant.**

An officer, who, in executing a search warrant, wilfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

**§ 1848. Refusing to aid officer in making an arrest.**

A person, who, after having been lawfully commanded to aid an officer in arresting any person, or in re-taking any person who has escaped from legal custody, or in executing any legal process, wilfully neglects or refuses to aid such officer is guilty of a misdemeanor.

**§ 1849. Refusing to make an arrest.** A person, who, after having been lawfully commanded by any magistrate to arrest another person, wilfully neglects or refuses so to do, is guilty of a misdemeanor.

**§ 1850. Resisting execution of process and aiding escapes in county which has been proclaimed in insurrection.** A person, who, after proclamation issued by the governor declaring a county to be in a state of insurrection, resists, or aids in resisting, the execution of process in such county, or who aids or attempts the rescue or escape of another from lawful custody or confinement in such county, or who resists, or aids in resisting, a force ordered out by the governor to quell or suppress an insurrection, is guilty of a felony.

**§ 1851. Resisting public officer in the discharge of his duty.** A person who, in any case or under any circumstances not otherwise specially provided for, wilfully resists, delays, or obstructs a public officer in discharging, or attempting to discharge, a duty of his office, is guilty of a misdemeanor.

**§ 1852. Buying demands by a justice or constable for suit before a justice.** A justice of the peace or a constable who, directly or indirectly, buys or is interested in buying any thing in action, for the purpose of commencing a suit thereon before a justice, is guilty of a misdemeanor.

**§ 1853. Giving inducement to bring suit before a justice.** A justice of the peace or constable who, directly or indirectly, gives, or promises to give, any valuable consideration to any person as an inducement to bring, or in consideration of having brought, a suit thereon before a justice, is guilty of a misdemeanor.

**§ 1854. Forfeiture of office.** A person convicted of a violation of either of the two preceding sections, in addition to the punishment, by fine and imprisonment, prescribed therefor by this article, forfeits his office.

**§ 1855. Receiving claims, in what cases allowable.** Nothing in the three preceding sections shall be construed to prohibit the receiving in payment of any thing in action for any estate, real or personal, or for any services of an attorney or counselor actually rendered, or for a debt antecedently contracted; or the buying or receiving of any thing in action for the purpose of remittance, and without any intent to violate the three preceding sections.

**§ 1856. Application of previous sections to persons prosecuting in person.** The provisions of sections two hundred and seventy-four, two hundred and seventy-five, eighteen hundred and fifty-three and eighteen hundred and fifty-five, relative to the buying of claims by a justice of the peace or constable, with intent to prosecute them, apply to every case of such buying a claim, or lending or advancing money, by any person prosecuting in person an action or legal proceeding.

**§ 1857. Omission of duty by public officer.** Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding a public trust or employment, every wilful omission to perform such duty, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

**§ 1858. Falsely marking enrolled person exempt.** A county clerk who marks "exempt" any person enrolled as liable to military duty, whom he knows not to be exempt, is guilty of a misdemeanor.

**§ 1859. Neglect to return names of constables.** A town clerk who wilfully omits to return to the county clerk the name of a person who has qualified as constable, pursuant to law, is punishable by a fine not exceeding ten dollars.

**§ 1860. Falsely certifying as to record of deeds and instruments.** An officer authorized by law to record a conveyance of real property, or of any other instrument, which by law may be recorded, who knowingly and falsely certifies that such a conveyance or instrument has been recorded, is guilty of a felony.

**§ 1861. False certificates.** A public officer who, being authorized by law to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not expressly provided by law, is guilty of a misdemeanor.

**§ 1862. Penalty for recording instruments without acknowledgment.** A public officer authorized to file or record any instrument or conveyance of, or affecting property which is duly proved or acknowledged, who knowingly files or records any such instrument or conveyance which is not accompanied by a certificate according to law, of the proof or acknowledgment, is guilty of a misdemeanor.

**§ 1863. Auditing and paying fraudulent claims upon the state or a municipal corporation.** A public officer, or a person holding or discharging the duties of any office or place of trust under the state, or in any county, town, city or village, a part of whose duty is to audit, allow or pay, or take part in auditing, allowing or paying, claims or demands upon the state, or such county, town, city or village, who knowingly audits, allows or pays, or directly or indirectly consents to, or in any way connives at the auditing, allowance or payment of any claim or demand against the state or such county, town, city or village, which is false or fraudulent, or contains charges, items or claims, which are false or fraudulent, is guilty of felony, punishable by imprisonment for a term not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.



**§ 1864. Obtaining proceeds of fraudulent audit or payment.** A person who, being or acting as a public officer or otherwise, by wilfully auditing, or paying, or consenting to, or conniving at the auditing or payment of a false or fraudulent claim or demand, or by any other means, wrongfully obtains, receives, converts, disposes of or pays out or aids, or abets another in obtaining, receiving, converting, disposing of, or paying out any money or property, held, owned, or in the possession of the state, or of any city, county or village, or other public corporation, or any board, department, agency, trustee, agent or officer thereof, is guilty of a felony, punishable by imprisonment for not less than three nor more than five years, or by a fine not exceeding five times the amount or value of the money or the property converted, paid out, lost or disposed of by means of the act done or abetted by such person, or by both such imprisonment and fine. The amount of any such fine when paid or collected, shall be paid to the treasury of the corporation or body injured. A conviction under this section forfeits any office held by the offender, and renders him incapable thereafter of holding any office or place of trust.

A transfer in whole or part of any deposit with any bank or other depository, or of any credit, claim or demand upon such depository, whereby the right, title or possession of the owner or holder of such deposit, or of any custodian thereof, is impaired or affected, is a conversion thereof under this section.

**§ 1865. Misappropriation and falsification of accounts by public officers.** A public officer, or a deputy, or clerk of any such officer, and any other person receiving money on behalf of, or for account of the people of this state, or of any department of the government of this state, or of any bureau or fund created by law, and in which the people of this state are directly or indirectly interested, or for or on account of any city, county, village or town, who:

1. Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money so received by him as such officer, clerk or deputy, or otherwise; or,

2. Knowingly keeps any false account, or makes any false entry or erasure in any account of, or relating to, any money so received by him; or,

3. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or,

4. Wilfully omits or refuses to pay over to the people of this state or their officer or agent authorized by law to receive the same, or to such city, village, county, or town, or the proper officer or

authority empowered to demand and receive the same, any money received by him as such officer when it is his duty imposed by law to pay over, or account for, the same,

Is guilty of a felony.

**§ 1866. Violations of law by public officers.** An officer or other person mentioned in the last section who wilfully disobeys any provision of law regulating his official conduct, in cases other than those specified in that section is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or imprisonment not exceeding two years, or both.

**§ 1867. Misappropriation by county treasurer.** A county treasurer, who wilfully misappropriates any moneys, funds or securities, received by or deposited with him as such treasurer, or who is guilty of any other malfeasance or wilful neglect of duty in his office, is punishable by a fine not less than five hundred dollars nor more than ten thousand dollars, or by imprisonment in a state prison not less than one year or more than five years, or by both such fine and imprisonment.

**§ 1868. Officials not to be interested in sales, leases or contracts.** A public officer or school officer, who is authorized to sell or lease any property, or to make any contract in his official capacity, or to take part in making any such sale, lease or contract, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, except in cases where such sale, lease or contract, or payment under the same, is subject to audit or approval by the commissioner of education, is guilty of a misdemeanor.

**§ 1869. County clerks omitting to publish statements required by law.** A county clerk who wilfully omits to publish any statement required by law, within the time prescribed, is guilty of a misdemeanor, punishable by a fine of one hundred dollars, or imprisonment for six months, or both.

**§ 1870. Obstructing officer in collecting revenue.** A person who wilfully obstructs or hinders a public officer from collecting any revenue, taxes or other sum of money in which, or in any part of which the people of this state are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

**§ 1871. School district trustee not to draw draft on supervisor in certain cases.** A school district trustee who issues an order or draws a draft on a supervisor or collector for any money, unless there is at the time sufficient money in the

hands of such supervisor or collector belonging to the district to meet such order or draft, is guilty of a misdemeanor.

**§ 1872. Fraudulently presenting bills or claims to public officers for payment.** A person who, knowingly, with intent to defraud, presents, for audit, or allowance, or for payment, to any officer or board of officers of the state, or of any county, town, city or village, authorized to audit, or allow, or to pay bills, claims or charges, any false or fraudulent claim, bill, account, writing or voucher, or any bill, account or demand, containing false or fraudulent charges, items or claims, is guilty of a felony.

**§ 1873. Taking property from officer's custody.** A person who takes from the custody of an officer or other person, personal property, in charge of the latter, under any process of law, or who wilfully injures or destroys such property, is guilty of a misdemeanor.

**§ 1874. Neglecting to make transcripts or making false certificates.** If a surrogate, county clerk, register, clerk of a court, or other person, having the custody of the records or other papers in a public office, refuses, or unreasonably neglects or delays, to make a search, or to furnish a transcript or certificate as prescribed in section two hundred and fifty-five of the judiciary law, section one hundred and sixty-one of the county law, or section sixty-six of the public officers law, or makes a false certificate, he is guilty of a misdemeanor.

**§ 1875. Violation by sheriff of certain provisions relating to prisoners.** A sheriff, or other officer, who wilfully violates any of the provisions of sections one hundred and ten and one hundred and eleven of the code of civil procedure; or sections three hundred and forty, three hundred and forty-one, three hundred and forty-two, three hundred and forty-three, three hundred and forty-four, three hundred and forty-five, and three hundred and forty-six of the prison law, forfeits to the person aggrieved, treble damages. He is also guilty of a misdemeanor, and shall be punished accordingly. A conviction also operates as a forfeiture of his office.

**§ 1876. Misdemeanor for judge, justice or magistrate to permit any but attorneys to practice in his court.** A judge, justice or magistrate within the city of New York who knowingly permits to practice in his court, a person who has not been regularly admitted to practice in the courts of record of this state, is guilty of a misdemeanor, and shall be pun-

ished by imprisonment in the county jail, not exceeding one month, or by a fine of not less than one hundred dollars or more than two hundred and fifty dollars, or by both such fine and imprisonment.

But this section and section two hundred and seventy-one do not apply to a case where a person appears in a cause to which he is a party.

## ARTICLE 172

### Public Safety

- Section 1890. Overloading passenger vessel.
1891. Unauthorized pressure of steam.
1892. Generation of unsafe amount of steam.
1893. Mismanagement of steam boilers.
1894. Explosives and combustibles.
1895. Endangering life by maliciously placing explosive near building.
1896. Making and disposing of dangerous weapons.
1897. Carrying and use of dangerous weapons.
1898. Possession, presumptive evidence.
1899. Destruction of dangerous weapons.
1900. Negligently managing and refusing to extinguish fires.
1901. Obstructing attempts to extinguish fires.
1902. Unauthorized manufacture, sale or use of illuminating oils.
1903. Violating law to prevent conflagrations.
1904. Ice cutting and ice bridges.
1905. Fire-escapes in hotels.
1906. Discharging fire-arms.
1907. Driving vehicles and animals on sidewalks.
1908. Driving vehicles and teams on side-paths.
1909. Riding bicycle on sidewalk or foot-path.
1910. Endangering life by refusal to labor.
1911. Injury to life saving apparatus.
1912. Procuring liquor for persons to whom sale is forbidden by the liquor tax law.
1913. Employment by common carrier of person addicted to intoxication.

**§ 1890. Overloading passenger vessel.** A person navigating a vessel for gain, who wilfully or negligently receives so many passengers, or such a quantity of other lading, on board the vessel, that by means thereof it sinks or is upset or injured, and thereby the life of a human being is endangered, is guilty of a misdemeanor.

**§ 1891. Unauthorized pressure of steam.** A person who applies, or causes to be applied, to a steam boiler a higher pressure of steam than is allowed by law, or by the inspector, officer or person authorized to limit the pressure of steam to be applied to such boiler, is guilty of a misdemeanor.

**§ 1892. Generation of unsafe amount of steam.** A captain or other person having charge of the machinery or boiler of a steamboat, used for the conveyance of passengers, in the waters of this state, who from ignorance or gross neglect, or for the purpose of increasing the speed of the boat, creates, or causes to be created, an undue and unsafe pressure of steam, is guilty of a misdemeanor.

**§ 1893. Mismanagement of steam boilers.** An engineer or other person having charge of a steam boiler, steam engine, or other apparatus for generating or employing steam, employed in a railway, manufactory, or other mechanical works, who, wilfully or from ignorance or gross neglect, creates or allows to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

**§ 1894. Explosives and combustibles.** A person who makes or keeps gunpowder, nitro-glycerine, or any other explosive or combustible material, within a city or village, or carries such materials through the streets thereof, in a quantity or manner prohibited by law or by ordinance of the city or village, is guilty of a misdemeanor.

A person who manufactures gunpowder, dynamite, nitro-glycerine, liquid or compressed air or gases, except acetylene gas and other gases used for illuminating purposes, naphtha, gasoline, benzine or any explosive articles or compounds, or manufactures ammunition, fireworks or other articles of which such substances are component parts in a cellar, room, or apartment of a tenement or dwelling-house or any building occupied in whole or in part by persons or families for living purposes, is guilty of a misdemeanor.

And a person who, by the careless, negligent, or unauthorized use or management of gunpowder or other explosive substances, injures or occasions the injury of the person or property of another, is punishable by imprisonment for not more than two years.

Any person or persons who shall knowingly present, attempt to present, or cause to be presented or offered for shipment to any railroad, steamboat, steamship, express or other company engaged as common carrier of passengers or freight, dynamite, nitro-glycerine, powder or other explosives dangerous to life or limb,

without revealing the true nature of said explosives or substance so offered or attempted to be offered to the company or carrier to which it shall be presented, shall be guilty of a felony, and upon conviction, shall be fined in any sum not exceeding one thousand dollars and not less than three hundred dollars, or imprisonment in a state prison for not less than one nor more than five years, or be subject to both such fine and imprisonment.

Nothing in this section contained shall be construed to prohibit or forbid the manufacture and sale of soda-water, seltzer-water, ginger ale, carbonic or mineral water, or the charging with liquid carbonic acid gas of such waters or ordinary waters, or of beer, wines, ales or other malt and vinous beverages in such cellar, room or apartment of a tenement or dwelling-house, or any building occupied in whole or in part by persons or families for living purposes.

**§ 1895. Endangering life by maliciously placing explosive near building.** A person, who places in, upon, under, against, or near to any building, car, vessel or structure, gunpowder or any other explosive substance, with intent to destroy, throw down, or injure the whole or any part thereof, under such circumstances, that, if the intent were accomplished, human life or safety would be endangered thereby, although no damage is done, is guilty of a felony.

**§ 1896. Making and disposing of dangerous weapons.** A person who manufactures, or causes to be manufactured, or sells or keeps for sale, or offers, or gives, or disposes of any instrument or weapon of the kind usually known as a slungshot, billy, sandclub or metal knuckles, to any person or a person who offers, sells, loans, leases or gives any gun, revolver, pistol or other fire-arm or any air-gun, spring-gun or other instrument or weapon in which the propelling force is a spring or air or any instrument or weapon commonly known as a toy pistol or in or upon which any loaded or blank cartridges are used, or may be used, or any loaded or blank cartridges or ammunition therefor to any person under the age of sixteen years is guilty of a misdemeanor.

**§ 1897. Carrying and use of dangerous weapons.** A person who attempts to use against another, or who carries, or possesses any instrument or weapon of the kind commonly known as a slungshot, billy, sandclub or metal knuckles, or who with intent to use the same against another, carries or possesses a dagger, dirk or dangerous knife is guilty of a felony.

Any person under the age of sixteen years, who shall have, carry or have in his possession in any public place any of the

articles named or described in the last section which it is forbidden therein to offer, sell, loan, lease or give to him, shall be guilty of a misdemeanor.

Any person over the age of sixteen years, who shall have or carry concealed upon his person in any city, village or town of this state, any pistol, revolver or other fire-arm without a written license therefor, theretofore issued to him by a police magistrate of such city or village or by a justice of the peace of such town, or in such manner as may be prescribed by ordinance of such city, village or town, shall be guilty of a misdemeanor.

No person not a citizen of the United States, shall have or carry fire-arms or dangerous weapons in any public place at any time. This section shall not apply to the regular and ordinary transportation of fire-arms as merchandise, nor to sheriffs, policemen or to other duly appointed peace officers, nor to duly authorized military or civil organizations when parading, nor to the members thereof when going to and from the places of meeting of their respective organizations.

**§ 1898. Possession, presumptive evidence.** The possession, by any person other than a public officer, of any of the weapons specified in the last section, concealed or furtively carried on the person, is presumptive evidence of carrying, or concealing, or possessing, with intent to use the same in violation of that section.

**§ 1899. Destruction of dangerous weapons.** The carrying of a pistol, revolver, or of an instrument or weapon of the kind usually known as slungshot, billy, sandclub, metal knuckles, or of a dagger, dirk or dangerous knife, without lawful permission, license or authority so to do, by any person save a peace officer, is a nuisance and such weapons are hereby declared to be nuisances and, when any one or more of the above described instruments or weapons shall be taken from the possession of any person the same shall be surrendered to the sheriff of the county wherein the same shall be taken, except that, in cities of the first class the same shall be surrendered to the head of the police force or department of said city. The officer to whom the same may be so surrendered shall, except upon certificate of a judge of a court of record, or of the district attorney, that the non-destruction thereof is necessary or proper in the ends of justice, proceed at such time or times as he deems proper, and at least once in each year, to destroy or cause to be destroyed any and all such weapons or instruments, in such manner and to such extent that the same shall be and become wholly and entirely ineffective and useless for the purpose for which destined and harmless to human life or limb.

**§ 1900. Negligently managing and refusing to extinguish fires.** A person who:

1. Wilfully or negligently sets fire to, or assists another to set fire to any waste or forest lands belonging to the state or to another person whereby such forests are injured or endangered; or,

2. Negligently sets fire to his own woods, by means whereof the property of another is endangered; or,

3. Negligently suffers any fire upon his own land to extend beyond the limits thereof; or,

4. Having been lawfully ordered to repair to a place of a fire in the woods, and to assist in extinguishing it, omits without lawful excuse to comply with the order,

Is guilty of a misdemeanor.

**§ 1901. Obstructing attempts to extinguish fires.**

A person who at any burning of a building is guilty of any disobedience to lawful orders of a public officer or fireman, or of any resistance to, or interference with, the lawful efforts of a fireman or company of firemen, to extinguish the same, or of any disorderly conduct likely to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

**§ 1902. Unauthorized manufacture, sale or use of illuminating oils.** A person who violates any provision of the general business law, relating to the standard, manufacture, sale, use or storage of any oil or burning fluid, wholly or partly composed of naphtha, coal oil, petroleum or products manufactured therefrom, or of other substance or materials which will flash at a temperature below one hundred degrees Fahrenheit, or relating to the burning or carriage of any such oil or fluid which will ignite at a temperature below three hundred degrees Fahrenheit, is guilty of a misdemeanor.

**§ 1903. Violating law to prevent conflagrations.**

A person who violates any of the provisions of section three hundred and six of the general business law is guilty of a misdemeanor.

**§ 1904. Ice cutting and ice bridges.** A person or corporation cutting ice in or upon any waters within the boundaries of this state, for the purpose of removing the ice for sale or use, must surround the cuttings and openings made with fences or guards of boards or other material sufficient to form an obstruction to the free passage of persons through such fences or guards into the place where such ice is being cut. Such fences or guards must be erected at or before the time of commencing the cuttings or openings, and must be maintained until ice has again formed



therein to the thickness of at least three inches, or until the ice about such openings has melted or broken up. Whoever omits to comply with this section is guilty of a misdemeanor.

A person who cuts, loosens or detaches from any bay, estuary, inlet, or main, or island shore of the Saint Lawrence river, within the jurisdiction of this state, any field of ice, or large body of ice, which, when so loosened or detached forms or is likely to form a bridge or passage way between an island of the river and the main shore, or between any islands of such river, is guilty of a misdemeanor. The sheriff of the county of Saint Lawrence may appoint one or more deputies to patrol the Saint Lawrence river within the county at such times as shall seem to him proper, and to arrest any persons found engaged in a violation of this section; the fees and expenses of such deputies for such services shall be a county charge against said county, and shall be audited and paid in the same manner as other county charges.

**§ 1905. Fire-escapes in hotels.** A person who:

1. Being the owner, lessee, proprietor or manager of a hotel, fails to comply with the law relative to providing or keeping appliances to be used as fire-escapes; or,

2. Being the chief engineer or officer performing the duties of such in any city or village neglects to make or cause to be made the inspection required by law to be made touching fire-escapes in hotels,

Is guilty of a misdemeanor.

**§ 1906. Discharging fire-arms.** A person who, otherwise than in self defense, or in the discharge of official duty:

1. Wilfully discharges any species of fire-arms, air-gun or other weapon, or throws any other deadly missile in a public place or in any place where there is any person to be endangered thereby, although no injury to any person ensues; or,

2. Intentionally, without malice, points or aims any fire-arm at or toward any other person; or,

3. Discharges, without injury to any other person, fire-arms, while intentionally without malice, aimed at or toward any person; or,

4. Maims or injures any other person by the discharge of any fire-arm pointed or aimed intentionally, but without malice, at any such person,

Is guilty of a misdemeanor.

A person who leaves the state, with intent to elude any provision of this section, or to commit any act without the state, which is prohibited by this section, or who, being a resident of this state, does any act without the state, which would be punish-

able by the provisions of this section, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this section, upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

**§ 1907. Driving vehicles and animals on sidewalks.**

A person who wilfully and without authority or necessity drives any team, vehicle, cattle, sheep, horse, swine or other animal along or upon a sidewalk is punishable by a fine of fifty dollars, or imprisonment in the county jail not exceeding thirty days, or both.

**§ 1908. Driving vehicles and teams on side-paths.**

A person who wilfully and without authority or necessity drives any team or vehicle, except a bicycle, upon a side-path, or wheelway, constructed by or exclusively for the use of bicyclists, and not constructed in a street of a city, is punishable by a fine of not more than fifty dollars, or imprisonment not exceeding thirty days, or both.

**§ 1909. Riding bicycle on sidewalk or foot-path.**

A person who wilfully and without authority rides a bicycle upon a sidewalk or foot-path constructed, maintained, or allowed to remain for the exclusive use of pedestrians, in any street where a side-path for bicycles is maintained outside of an incorporated city or village, is guilty of a misdemeanor, punishable by a fine of not more than twenty-five dollars, or by imprisonment for not more than twenty days, or both.

**§ 1910. Endangering life by refusal to labor.**

A person, who wilfully and maliciously, either alone or in combination with others, breaks a contract of service or hiring, knowing, or having reasonable cause to believe, that the probable consequence of his so doing will be to endanger human life, or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, is guilty of a misdemeanor.

**§ 1911. Injury to life saving apparatus.**

Any person molesting, damaging, destroying, stealing, or in any way wrongfully withholding or interfering with the life-buoys, life-ladders, rubber or cork life-preservers, boats, or other life saving apparatus, or of the flags, pennants, signs, badges of office, buttons or medals of any humane or life saving association of the state of New York, shall be guilty of a misdemeanor.

**§ 1912. Procuring liquor for persons to whom sale is forbidden by the liquor tax law.** The purchase or procurement of liquor for any person to whom it is forbidden to sell liquor under section twenty-nine of the liquor tax law, is a misdemeanor, punishable upon conviction, by a fine of not less than ten dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment.

**§ 1913. Employment by common carrier of person addicted to intoxication.** Any person or officer of an association or corporation engaged in the business of conveying passengers or property for hire, who shall employ in the conduct of such business, as an engineer, fireman, conductor, switch-tender, train dispatcher, telegrapher, commander, pilot, mate, fireman or in other like capacity, so that by his neglect of duty the safety and security of life, person or property so conveyed might be imperiled, any person who habitually indulges in the intemperate use of liquors, after notice that such person has been intoxicated, while in the active service of such person, association or corporation, shall be guilty of a misdemeanor.

## ARTICLE 174

### Punishment

- Section 1930. What persons are punishable criminally.  
 1931. Punishments, how determined.  
 1932. Punishment of corporation convicted of felony.  
 1933. Punishment of acts committed out of the state.  
 1934. Punishment of accessory to felony.  
 1935. Punishment of felonies when not fixed by statute.  
 1936. Punishment of accessory to misdemeanor.  
 1937. Punishment of misdemeanors when not fixed by statute.  
 1938. Punishment when different penalties are provided by different provisions of law.  
 1939. Mitigation of punishment in certain cases.  
 1940. Punishment for felony when person convicted has been previously convicted of a misdemeanor.  
 1941. Punishment for second offense of felony or petit larceny.  
 1942. Punishment for fourth conviction of felony.

**§ 1930. What persons are punishable criminally.**  
 The following persons are liable to punishment within the state:  
 1. A person who commits within the state any crime, in whole or in part;

2. A person who commits without the state any offense which, if committed within the state, would be larceny under the laws of the state, and is afterwards found, with any of the property stolen or feloniously appropriated within this state;

3. A person who, being without the state, causes, procures, aids, or abets another to commit a crime within the state;

4. A person who, being out of this state, abducts or kidnaps by force or fraud, any person contrary to the laws of the place where such act is committed, and brings, sends or conveys such person within the limits of this state, and is afterwards found therein;

5. A person who, being out of the state and with intent to cause within it a result contrary to the laws of this state does an act which in its natural and usual course results in an act or effect contrary to its laws.

**§ 1931. Punishments, how determined.** Whenever in this chapter the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this chapter.

**§ 1932. Punishment of corporation convicted of felony.** In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable with imprisonment, as for a felony, such corporation is punishable by a fine of not more than five thousand dollars.

**§ 1933. Punishment of acts committed out of the state.** A person who commits an act without this state which affects persons or property within this state, or the public health, morals, or decency of this state, and which, if committed within this state, would be a crime, is punishable as if the act were committed within this state.

**§ 1934. Punishment of accessory to felony.** An accessory to a felony may be indicted, tried, and convicted, either in the county where he became an accessory, or in the county where the principal felony was committed, and whether the principal felon has or has not been previously convicted, or is or is not amenable to justice, and although the principal has been pardoned or otherwise discharged after conviction.

Except in a case where a different punishment is specially prescribed by law, a person convicted as an accessory to a felony is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both.

**§ 1935. Punishment of felonies when not fixed by statute.** A person convicted of a crime declared to be a felony, for which no other punishment is specially prescribed by this chapter, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment for not more than seven years, or by a fine of not more than one thousand dollars, or by both.

**§ 1936. Punishment of accessory to misdemeanor.** When an act or omission is declared by statute to be a misdemeanor, and no punishment for aiding or abetting in the doing thereof is expressly prescribed, every person who aids, or abets another in such act or omission is also guilty of a misdemeanor.

**§ 1937. Punishment of misdemeanors when not fixed by statute.** A person convicted of a crime declared to be a misdemeanor, for which no other punishment is specially prescribed by this chapter, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment in a penitentiary, or county jail, for not more than one year, or by a fine of not more than five hundred dollars, or by both.

**§ 1938. Punishment when different penalties are provided by different provisions of law.** An act or omission which is made criminal and punishable in different ways, by different provisions of law, may be punished under any one of those provisions, but not under more than one; and a conviction or acquittal under one bars a prosecution for the same act or omission under any other provision.

**§ 1939. Mitigation of punishment in certain cases.** Where it appears, at the time of passing sentence on a person convicted that he has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court, passing sentence, may mitigate the punishment to be imposed, in its discretion.

**§ 1940. Punishment for felony when person convicted has been previously convicted of a misdemeanor.** A person, who, having been convicted within this state of a misdemeanor, afterwards commits and is convicted of a felony, must be sentenced to imprisonment for the longest term prescribed for the punishment upon a first conviction for the felony.

**§ 1941. Punishment for second offense of felony or petit larceny.** A person, who, after having been convicted within this state, of a felony, or an attempt to commit a felony, or

of petit larceny, or, under the laws of any other state, government, or country, of a crime which, if committed within this state, would be a felony, commits any crime, within this state, is punishable upon conviction of such second offense, as follows:

1. If the subsequent crime is such that, upon a first conviction, the offender might be punished, in the discretion of the court, by imprisonment for life, he must be sentenced to imprisonment in a state prison for life;

2. If the subsequent crime is such that, upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life, then such person must be sentenced to imprisonment for a term not less than the longest term, nor more than twice the longest term, prescribed upon a first conviction.

**§ 1942. Punishment for fourth conviction of felony.** A person who, after having been three times convicted within this state, of felonies or attempts to commit felonies, or under the law of any other state, government or country, of crimes which if committed within this state would be felonies, commits a felony within this state, shall be sentenced upon conviction of such fourth, or subsequent, offense to imprisonment in a state prison for the term of his natural life, but after serving a period of time equal to the maximum penalty prescribed for the offense of which he is convicted, less the usual commutation for good conduct, shall become subject to the jurisdiction of the board of commissioners of paroled prisoners, and may be paroled upon such conditions as said board may prescribe, but said board shall not grant an absolute discharge to such prisoner.

**§ 1943. Punishment of woman for concealing birth of issue.** (*Renumbered § 2461 and inserted in art. 220 by L. 1909, ch. 524, in effect May 27, 1909.*)

## ARTICLE 176

### Quarantine

- Section 1960. Violation of quarantine laws by master of vessel.  
1961. Giving false information; permitting person to land before visit of health officers.  
1962. Landing from vessel before visit of health officers.  
1963. Going on board vessel at quarantine grounds without leave.  
1964. Violating quarantine regulations.

**§ 1960. Violation of quarantine laws by master of vessel.** A master of a vessel subject to quarantine or visitation by the health officer, arriving in the port of New York, who refuses or omits:

1. To proceed to and anchor his vessel at the place assigned for quarantine, at the time of his arrival; or,

2. To submit his vessel, cargo and passengers, to the examination of the health officer, and to furnish all necessary information to enable that officer to determine the length of quarantine and other regulations to which they ought respectively to be subject; or,

3. To remain with his vessel at quarantine during the period assigned for her quarantine, and while at quarantine to comply with the directions and regulations prescribed by law, and with such as any of the officers of health, by virtue of the authority given to them by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers or crew,

Is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

**§ 1961. Giving false information; permitting person to land before visit of health officers.** A master of a vessel hailed by a pilot, who:

1. Gives false information to such pilot, relative to the condition of his vessel, crew or passengers, or the health of the place or places from whence he came, or refuses to give such information as shall be lawfully required; or,

2. Lands any person from his vessel, or permits any person, except a pilot, to come on board of his vessel, or unloads or transships any portion of his cargo, before his vessel has been visited and examined by the health officers; or,

3. Approaches with his vessel nearer the city of New York than the place of quarantine to which he may be directed,

Is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or by both.

**§ 1962. Landing from vessel before visit of health officers.** A person, who, being on board any vessel at the time of her arrival at the port of New York, lands from such vessel, or unloads, or transships, or assists in unloading or transshipping any portion of her cargo, before such vessel has been visited and examined by the health officers, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

**§ 1963. Going on board vessel at quarantine grounds without leave.** A person who goes on board of, or

has any communication or intercourse with any vessel at quarantine, or with any of the crew or passengers of such vessel, without the permission of the health officer, and every person who, without such authority, enters the quarantine grounds or anchorage, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or both; and in addition thereto he may be detained at quarantine so long as the health officer directs, not exceeding twenty days. And in case such person shall be taken sick of any infectious, contagious or pestilential disease, during such twenty days, he may be detained at the marine hospital, for such further time as the health officer directs.

**§ 1964. Violating quarantine regulations.** A person who, having been lawfully ordered by a health officer to be detained in quarantine, and not having been discharged, leaves the quarantine grounds or anchorage, or wilfully violates any quarantine law or regulation, is guilty of a misdemeanor.

## ARTICLE 178

### Railroads

- Section 1980. Unlawful acts of and neglect of duty by railroad officials.
1981. Misconduct of public service commissioners and their employees.
1982. Person unable to read not to act or be employed as engineer; telegraph operators.
1983. Misconduct of officials or employees on elevated railroads.
1984. Intoxication or other misconduct of railroad or steamboat employees.
1985. Ringing bells and blowing whistles at crossings; obstructing highways.
1986. Placing passenger cars in front of other cars.
1987. Platforms and heating apparatus of passenger cars.
1988. Guard posts; automatic couplers.
1989. Inciting railroad employees not to wear uniform; unauthorized wearing of uniform.
1990. Riding on freight trains; boarding cars in motion; obstructing passage of car.
1991. Injuring railroad property and appurtenances; obstructing tracks.

**§ 1980. Unlawful acts of and neglect of duty by railroad officials.** An officer, agent, attorney or employee of a railroad corporation, who:



1. Offers a place, appointment, position or any other consideration to a public service commissioner or to a secretary, clerk, agent, employee or expert employed by the public service commissions; or,

2. After due notice, neglects or refuses to make or furnish any statement or report lawfully required by the public service commissions, or wilfully hinders, delays or obstructs such commissioners in the discharge of their official duties,

Is guilty of a misdemeanor.

**§ 1981. Misconduct of public service commissioners and their employees.** Any public service commissioner, or any secretary, clerk, agent, expert or other person employed by the public service commissions, who:

1. Directly or indirectly solicits or requests from or recommends to any railroad corporation, or to any officer, attorney or agent thereof, the appointment of any person to any place or position; or,

2. Accepts, receives or requests, either for himself or for any other person, any pass, gift or gratuity from any railroad corporation; or,

3. Secretly reveals to any railroad corporation, or to any officer, member, or employee thereof, any information gained by him from any other railroad corporation,

Is guilty of a misdemeanor.

**§ 1982. Person unable to read not to act or be employed as engineer; telegraph operators.** Any person unable to read the time tables of a railroad and ordinary handwriting, who acts as an engineer or runs a locomotive or train on any railroad in this state; or any person who, in his own behalf, or in the behalf of any other person or corporation, knowingly employs a person so unable to read to act as such engineer or to run any such locomotive; or who employs a person as a telegraph operator who is under the age of eighteen years, or who has less than one year's experience in telegraphing, to receive or transmit a telegraphic message or train order for the movement of trains, is guilty of a misdemeanor.

**§ 1983. Misconduct of officials or employees on elevated railroads.** Any conductor, brakeman, or other agent or employee of an elevated railroad, who:

1. Starts any train or car of such railroad, or gives any signal or order to any engineer or other person to start any such train or car, before every passenger therein who manifests an intention to depart therefrom by arising, or moving toward the exit thereof, has departed therefrom; or before every passenger on the plat-

form or station at which the train has stopped, who manifests a desire to enter the train, has actually boarded or entered the same, unless due notice is given by an authorized employee of such railroad that the train is full, and that no more passengers can then be received; or,

2. Obstructs the lawful ingress or egress of a passenger to or from any such car; or,

3. Opens a platform gate of any such car while the train is in motion, or starts such train before such gate is firmly closed,

Is guilty of a misdemeanor.

**§ 1984. Intoxication or other misconduct of railroad or steamboat employees.** 1. Any person who, being employed upon any railway as engineer, conductor, baggage-master, brakeman, switch-tender, fireman, bridge-tender, flagman, signal man, or having charge of stations, starting, regulating or running trains upon a railroad, or, being employed as captain, engineer or other officer of a vessel propelled by steam, is intoxicated while engaged in the discharge of any such duties; or,

2. An engineer, conductor, brakeman, switch-tender, or other officer, agent or employee of any railroad corporation, who wilfully violates or omits his duty as such officer, agent or employee, by which human life or safety is endangered, the punishment of which is not otherwise prescribed,

Is guilty of a misdemeanor.

**§ 1985. Ringing bells and blowing whistles at crossings; obstructing highways.** A person acting as engineer, driving a locomotive on any railway in this state, who fails to ring the bell, or sound the whistle, upon such locomotive, or cause the same to be rung or sounded, at least eighty rods from any place where such railway crosses a traveled road or street on the same level, except in cities, or to continue the ringing of such bell or sounding such whistle at intervals, until such locomotive and the train to which the locomotive is attached shall have completely crossed such road or street, or any officer or employee of a corporation in charge of a locomotive, train or car, who shall wilfully obstruct, or cause to be obstructed, any farm or highway crossing with any locomotive, train or car for a longer period than five consecutive minutes, is guilty of a misdemeanor.

**§ 1986. Placing passenger cars in front of other cars.** A person being an officer or employee of a railway company, who knowingly places, directs, or suffers a freight, lumber, merchandise or oil car to be placed in rear of a car used for the conveyance of passengers in a railway train is guilty of a misdemeanor.

**§ 1987. Platforms and heating apparatus of passenger cars.** A railroad corporation, or any officer or director thereof having charge of its railroad, or any person managing a railroad in this state, or any person or corporation running passenger cars upon a railroad into or through this state, who:

1. Fails to have the platforms or ends of the passenger cars run upon such railroad constructed in such manner as will prevent passengers falling between the cars while in motion; or,

2. Except temporarily, in case of accident or emergency, heats any passenger car, while in motion, on any such railroad more than fifty miles in length, except a narrow-gauge railroad which runs only mixed trains, between October fifteenth and May first, by any stove or furnace inside of or suspended from such car, except stoves of a pattern and kind approved by the public service commissions for cooking purposes in dining-room cars, and except within the extended time allowed by the public service commissions, in pursuance of law, for introducing other heating apparatus,

Is guilty of a misdemeanor.

**§ 1988. Guard posts; automatic couplers.** All corporations and persons other than employees, operating any steam railroad in this state:

1. Failing to cause guard posts to be placed in prolongation of the line of bridge trusses upon such railroad, so that in case of derailment, the posts and not the trusses shall receive the blow of the derailed locomotive or car; or,

2. Failing to equip all of their own freight cars, run and used in freight or other trains on such railroad, with automatic self-couplers, or running or operating on such railroad any freight car belonging to any such person or corporation, without having the same equipped, except in case of accident or other emergency, with automatic self-couplers, and except within the extended time allowed by the public service commission, in pursuance of law, for equipping such car with such couplers, is guilty of a misdemeanor, punishable by a fine of five hundred dollars for each offense.

**§ 1989. Inciting railroad employees not to wear uniform; unauthorized wearing of uniform.** A person who:

1. Advises or induces any one, being an officer, agent or employee of a railway company, to leave the service of such company, because it requires a uniform to be worn by such officer, agent or employee, or to refuse to wear such uniform, or any part thereof; or,

2. Uses any inducement with a person employed by a railway company to go into the service or employment of any other railway company, because a uniform is required to be worn; or,

3. Wears the uniform designated by a railway company without authority,

Is guilty of a misdemeanor.

**§ 1990. Riding on freight trains; boarding cars in motion; obstructing passage of car.**

1. A person who rides on any engine or any freight or wood car of any railway company, without authority or permission of the proper officers of the company or of the person in charge of said car or engine; or,

2. Who gets on any car or train while in motion, for the purpose of obtaining transportation thereon as a passenger; or,

3. Who wilfully obstructs, hinders or delays the passage of any car lawfully running upon any steam or horse, or street railway,  
Is guilty of a misdemeanor.

**§ 1991. Injuring railroad property and appurtenances; obstructing tracks.**

A person who wilfully.

1. Displaces, loosens, removes, injures or destroys any rail, sleeper, switch, bridge, viaduct, culvert, embankment or structure or any part thereof, attached, appertaining to or connected with any railway, or by any other means attempts to wreck, destroy, or so damage any car, tender, locomotive or railway train or part thereof, while moving or standing upon any railway track in this state, as to render such car, tender, locomotive or railway train wholly or partially unfitted for its ordinary use, whether operated by steam, electricity or other motive power; or,

2. Places any obstruction upon the track of any such railway;  
or,

3. Wilfully destroys or breaks any guard erected or maintained by a railroad corporation as a warning signal for the protection of its employees; or,

4. Wilfully discharges a loaded fire-arm, or projects, or throws a stone or other missile at a railway train, or at a locomotive, car or vehicle standing or moving upon a railway; or,

5. Wilfully displaces, removes, cuts, injures or destroys any wire, insulator, pole, dynamo, motor, locomotive, or any part thereof, attached, appertaining to or connected with any railway operated by electricity, or wilfully interferes with or interrupts any motive power used in running such road, or wilfully places any obstruction upon the track of such railroad, or wilfully discharges a loaded fire-arm, or projects or throws a stone or any other missile at such railway train or locomotive, car or vehicle, standing or moving upon such railway; or,

6. Removes a journal brass from a car while standing upon any railroad track in this state, without authority from some person who has a right to give such authority,

Is punishable as follows: First. If thereby the safety of any person is endangered, by imprisonment for not more than twenty years. Second. In every other case by imprisonment for not more than five years.

## ARTICLE 180

### Rape

Section 2010. Rape defined.

2011. Penetration sufficient.

2012. When physical ability must be proved.

2013. No conviction for rape on unsupported testimony.

**§ 2010. Rape defined.** A person who perpetrates an act of sexual intercourse with a female not his wife, against her will or without her consent; or,

1. When through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, she is incapable of giving consent, or, by reason of mental or physical weakness, or immaturity, or any bodily ailment, she does not offer resistance; or,

2. When her resistance is forcibly overcome; or,

3. When her resistance is prevented by fear of immediate and great bodily harm, which she has reasonable cause to believe will be inflicted upon her; or,

4. When her resistance is prevented by stupor, or weakness of mind produced by an intoxicating, or narcotic, or anæsthetic agent; or, when she is known by the defendant to be in such state of stupor or weakness of mind from any cause; or,

5. When she is, at the time, unconscious of the nature of the act, and this is known to the defendant; or when she is in the custody of the law, or of any officer thereof, or in any place of lawful detention, temporary or permanent,

Is guilty of rape in the first degree and punishable by imprisonment for not more than twenty years.

A person who perpetrates an act of sexual intercourse with a female, not his wife, under the age of eighteen years, under circumstances not amounting to rape in the first degree, is guilty of rape in the second degree, and punishable with imprisonment for not more than ten years.

**§ 2011. Penetration sufficient.** Any sexual penetration, however slight, is sufficient to complete the crime.

**§ 2012. When physical ability must be proved.** No conviction for rape can be had against one who was under the age of fourteen years, at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, beyond a reasonable doubt.

**§ 2013. No conviction for rape on unsupported testimony.** No conviction can be had for rape or defilement upon the testimony of the female defiled, unsupported by other evidence.

## ARTICLE 182

### Real Property

- Section 2030. Contracts in relation to Indian lands.
2031. Buying lands in suit of person not in possession.
2032. Buying pretended titles to real property.
2033. Mortgage of lands under adverse possession not prohibited.
2034. Forceful entry and detainer.
2035. Returning to take possession of lands after being removed by legal process.
2036. Unlawful intrusion on real property.
2037. Person leaving the state to elude provisions of this article.
2038. Witnesses' privilege.
2039. Unauthorized applications for loans upon real property.

**§ 2030. Contracts in relation to Indian lands.** A person who without the authority and consent of the legislature, in any manner or for or on any terms, purchases any lands within this state of any Indian residing therein, or makes any contract with any Indian for or concerning the sale of any lands within this state, or gives, sells, demises, conveys or otherwise disposes of any such lands, or any interest therein, or offers so to do, or enters upon or takes possession of or settles upon any such lands, by pretext or color of any right or interest in the same, in consequence of any such purchase, or contract made or to be made, since October fourteenth, seventeen hundred and seventy-five, is guilty of a misdemeanor.

**§ 2031. Buying lands in suit of person not in possession.** A person who takes a conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any court, knowing the

pendency of such suit and that the grantor was not in possession of such lands or tenements, is guilty of a misdemeanor.

**§ 2032. Buying pretended titles to real property.**

A person who buys or sells, or in any manner procures, or takes or makes any covenant or promise to convey any right, or title real or pretended, to any lands or tenements, unless the grantor thereof or the person making such covenant or promise has been in possession, or he and those by whom he claims, have been in possession of the same or of the reversion and remainder thereof, or have taken the rents and profits thereof for the space of one year before such covenant or promise made, is guilty of a misdemeanor.

**§ 2033. Mortgage of lands under adverse possession not prohibited.**

Sections two thousand and thirty-one and two thousand and thirty-two shall not be construed to prevent any person having a just title to lands in the adverse possession of another, from executing a mortgage upon such lands, nor shall said sections apply to any conveyance or release of lands or tenements to any person in the lawful possession thereof.

**§ 2034. Forcible entry and detainer.** A person, guilty of using, or of procuring, encouraging or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and the manner allowed by law, is guilty of a misdemeanor.

**§ 2035. Returning to take possession of lands after being removed by legal process.**

A person, who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer, and who afterwards, without authority of law, returns to settle or reside upon or take possession of such lands, is guilty of a misdemeanor.

**§ 2036. Unlawful intrusion on real property.**

A person, who intrudes upon any lot or piece of land within the bounds of a city or village, without authority from the owner thereof, or who erects or occupies thereon any hut, or other structure whatever without such authority; and a person who places, erects, or occupies within the bounds of any street or avenue of a city or village, any hut, or other structure, without lawful authority, is guilty of a misdemeanor.

**§ 2037. Person leaving the state to elude provisions of this article.** A person who leaves the state, with intent to elude any provision of the last three sections, or to com-

mit any act without the state, which is prohibited by the last three sections, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of the last three sections, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

**§ 2038. Witnesses' privilege.** No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in sections two thousand and thirty-four, two thousand and thirty-five and two thousand and thirty-six, upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

**§ 2039. Unauthorized applications for loans upon real property.** In cities of the first and second class, any person who shall make application to any other person, or to any corporation, for a loan upon any real property without the written authority of the owner of such real property, or of his attorney in fact, appointed in writing, or of a person who has made a written contract for the purchase of such property with the owner thereof, shall be guilty of a misdemeanor.

## ARTICLE 184

### Records and Documents

Section 2050. Injury to public record.

2051. Offering false or forged instruments to be filed or recorded.

**§ 2050. Injury to public record.** A person who, wilfully and unlawfully removes, mutilates, destroys, conceals, or obliterates a record, map, book, paper, document, or other thing, filed or deposited in a public office or with any public officer by authority of law, is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both.

**§ 2051. Offering false or forged instruments to be filed or recorded.** A person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this state, which instrument, if genuine, might be filed or registered or recorded under any law of this state or of the United States, is guilty of felony.



**ARTICLE 186****Religion**

Section 2070. Preventing performance of religious act.

2071. Disturbing religious meetings.

2072. Definition of the offense.

2073. Compelling adoption of a form of belief.

**§ 2070. Preventing performance of religious act.**

A person who wilfully prevents by threats or violence another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor.

**§ 2071. Disturbing religious meetings.** A person who wilfully disturbs, interrupts or disquiets any assemblage of people met for religious worship, by any of the acts enumerated in the next section, is guilty of a misdemeanor.

**§ 2072. Definition of the offense.** The following acts, or any of them, except as permitted by section two hundred and eighty-two of membership corporations law, constitute a disturbance of a religious meeting:

1. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting;

2. Engaging in, or promoting, within two miles of the place where a religious meeting is held, any racing of animals or gambling of any description; or elsewhere than in a city or village keeping open any huckster shop, inn, store or grocery, in any other place than that in which such business shall have usually been carried on; or elsewhere than in a city exhibiting within the distance aforesaid any shows or plays, unless the same shall have been duly licensed by the proper authorities;

3. Obstructing in any manner without authority of law, within the like distance, free passage along a highway to the place of such meeting.

**§ 2073. Compelling adoption of a form of belief.**

An attempt by means of threats or violence, to compel any person to adopt, practice or profess a particular form of religious belief, is a misdemeanor.

**ARTICLE 188****Riots and Unlawful Assemblies**

- Section 2090. Riot defined.  
2091. Punishment of riot.  
2092. Unlawful assemblies.  
2093. Remaining present at place of riot or unlawful assembly after warning.  
2094. Remaining present at place of a meeting, originally lawful, after it has adopted an unlawful purpose.  
2095. Refusing to assist in arresting rioter.  
2096. Leaving state with intent to elude provisions of this article.  
2097. Witnesses' privilege.

**§ 2090. Riot defined.** Whenever three or more persons, having assembled for any purpose, disturb the public peace, by using force or violence to any other person, or to property, or threaten or attempt to commit such disturbance, or to do an unlawful act by the use of force or violence, accompanied with the power of immediate execution of such threat or attempt, they are guilty of riot.

**§ 2091. Punishment of riot.** A person guilty of riot, or of participating in a riot, either by being personally present, or by instigating, promoting, or aiding the same, is punishable as follows:

1. If the purpose of the assembly, or of the acts done or threatened or intended by the persons engaged, is to resist the enforcement of a statute of this state, or of the United States, or to obstruct any public officer of this state, or of the United States, in serving or executing any process or other mandate of a court of competent jurisdiction, or in the performance of any other duty; or if the offender carries, at the time of the riot, fire-arms or any other dangerous weapon, or is disguised; by imprisonment for not more than five years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment.

2. In any other case, if the offender directs, advises, encourages, or solicits other persons, present or participating in the riot or assembly, to acts of force or violence, by imprisonment for not more than two years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

3. In any case, not embraced within the foregoing subdivisions of this section, by imprisonment for not more than one year, or

by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

**§ 2092. Unlawful assemblies.** Whenever three or more persons:

1. Assemble with intent to commit any unlawful act by force; or,
2. Assemble with intent to carry out any purpose in such a manner as to disturb the public peace; or,
3. Being assembled attempt or threaten any act tending towards a breach of the peace, or an injury to person or property, or any unlawful act;

Such an assembly is unlawful, and every person participating therein by his presence, aid or instigation, is guilty of a misdemeanor.

But this section shall not be so construed as to prevent the peaceable assembling of persons for lawful purposes of protest or petition.

**§ 2093. Remaining present at place of riot or unlawful assembly after warning.** A person, remaining present at the place of an unlawful assembly or riot, after the persons assembled have been warned to disperse by a magistrate or public officer, is guilty of a misdemeanor, unless as a public officer, or at the request or command of a public officer, he is endeavoring or assisting to disperse the same, or to protect persons or property, or to arrest the offenders.

**§ 2094. Remaining present at place of a meeting, originally lawful, after it has adopted an unlawful purpose.** Where three or more persons assemble for a lawful purpose, and afterwards proceed to commit an act that would amount to a riot, if it had been the original purpose of the meeting, every person who does not retire when the change of purpose is made known, or such act is committed, except public officers and persons assisting them in attempting to disperse the assembly, is guilty of a misdemeanor.

**§ 2095. Refusing to assist in arresting rioter.** A person, present at the place of an unlawful assembly or riot, who, being commanded by a duly authorized public officer to act or aid in suppressing the riot, or in protecting persons or property, or in arresting a person guilty of or charged with participating in the unlawful assembly or riot, neglects or refuses to obey such command, is guilty of a misdemeanor.

**§ 2096. Leaving state with intent to elude provisions of this article.** A person who leaves the state, with

intent to elude any provision of this article, or to commit any act without the state, which is prohibited by this article, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this article, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

§ 2097. **Witnesses' privilege.** No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this article, upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

## ARTICLE 190

### Robbery

- Section 2120. Robbery defined.  
2121. Force or fear must be employed.  
2122. Degree of force immaterial.  
2123. Taking property secretly not robbery.  
2124. Robbery in first degree.  
2125. Punishment of robbery in first degree.  
2126. Robbery in second degree.  
2127. Punishment of robbery in second degree.  
2128. Robbery in third degree.  
2129. Punishment of robbery in third degree.

§ 2120. **Robbery defined.** Robbery is the unlawful taking of personal property, from the person or in the presence of another, against his will, by means of force, or violence, or fear of injury, immediate or future, to his person or property, or the person or property of a relative or member of his family, or of any one in his company at the time of the robbery.

§ 2121. **Force or fear must be employed.** To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If employed merely as a means of escape it does not constitute robbery.

§ 2122. **Degree of force immaterial.** When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial.

§ 2123. **Taking property secretly not robbery.** The taking of property from the person of another is robbery, when

it appears that although the taking was fully completed without his knowledge, such knowledge was prevented by the use of force or fear.

**§ 2124. Robbery in first degree.** An unlawful taking or compulsion, if accomplished by force or fear, in a case specified in the foregoing sections of this article is robbery in the first degree, when committed by a person:

1. Being armed with a dangerous weapon; or,
2. Being aided by an accomplice actually present; or,
3. When the offender inflicts grievous bodily harm or injury upon the person from whose possession, or in whose presence, the property is taken, or upon the wife, husband, servant, child, or inmate of the family of such person, or any one in his company at the time, in order to accomplish the robbery.

**§ 2125. Punishment of robbery in first degree.** Robbery in the first degree is punishable by imprisonment for a term not exceeding twenty years.

**§ 2126. Robbery in second degree.** Such unlawful taking or compulsion, when accomplished by force or fear, in a case specified in the foregoing sections of this article, but not under circumstances amounting to robbery in the first degree, is robbery in the second degree, when accomplished:

1. By the use of violence; or,
2. By putting the person robbed in fear of immediate injury to his person or that of some one in his company.

**§ 2127. Punishment of robbery in second degree.** Robbery in the second degree is punishable by imprisonment for a term not exceeding fifteen years.

**§ 2128. Robbery in third degree.** A person who robs another, under circumstances not amounting to robbery in the first or second degree, is guilty of robbery in the third degree.

**§ 2129. Punishment of robbery in third degree.** Robbery in the third degree is punishable by imprisonment for not more than ten years.

## ARTICLE 192

### Sabbath

Section 2140. The Sabbath.

2141. Sabbath breaking.

2142. Punishment for Sabbath breaking.

2143. Labor prohibited on Sunday.

2144. Persons observing another day as a Sabbath.

- Section 2145. Public sports on Sunday.
2146. Trades, manufactures, and mechanical employments prohibited on Sunday.
2147. Public traffic on Sunday.
2148. Serving process on Sunday.
2149. Forfeiture of commodities exposed for sale on Sunday.
2150. Maliciously serving process on Saturday on person who keeps Saturday as holy time.
2151. Processions and parades on Sunday.
2152. Theatrical and other performances on Sunday.
2153. Barbering on Sunday.

§ 2140. **The Sabbath.** The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community.

§ 2141. **Sabbath breaking.** A violation of the foregoing prohibition is Sabbath breaking.

§ 2142. **Punishment for Sabbath breaking.** Sabbath breaking is a misdemeanor, punishable by a fine not less than five dollars and not more than ten dollars, or by imprisonment in a county jail not exceeding five days, or by both, but for a second or other offense, where the party shall have been previously convicted, it shall be punishable by a fine not less than ten dollars and not more than twenty dollars, and by imprisonment in a county jail not less than five nor more than twenty days.

§ 2143. **Labor prohibited on Sunday.** All labor on Sunday is prohibited, excepting the works of necessity and charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community.

§ 2144. **Persons observing another day as a Sabbath.** It is a sufficient defense to a prosecution for work or labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time, and does not labor on that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

§ 2145. **Public sports on Sunday.** All shooting, hunting, fishing, playing, horse racing, gaming or other public sports, exercises or shows, upon the first day of the week, and all noise disturbing the peace of the day are prohibited.

**§ 2146. Trades, manufactures, and mechanical employments prohibited on Sunday.** All trades, manufactures, agricultural or mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity they may be performed on that day in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community.

**§ 2147. Public traffic on Sunday.** All manner of public selling or offering for sale of any property upon Sunday is prohibited, except that articles of food may be sold and supplied at any time before ten o'clock in the morning, and except also that meals may be sold to be eaten on the premises where sold or served elsewhere by caterers; and prepared tobacco, milk, ice and soda-water in places other than where spirituous or malt liquors or wines are kept or offered for sale, and fruit, flowers, confectionery, newspapers, drugs, medicines and surgical appliances may be sold in a quiet and orderly manner at any time of the day. The provisions of this section, however, shall not be construed to allow or permit the public sale or exposing for sale or delivery of uncooked flesh foods, or meats, fresh or salt, at any hour or time of the day.

**§ 2148. Serving process on Sunday.** All service of legal process, of any kind whatever, on the first day of the week is prohibited, except in cases of breach of the peace or apprehended breach of the peace or when sued out for the apprehension of a person charged with crime, or except where such service is specially authorized by statute. Service of any process upon said day except as herein permitted is absolutely void for any and every purpose whatsoever.

**§ 2149. Forfeiture of commodities exposed for sale on Sunday.** In addition to the penalty imposed by section twenty-one hundred and forty-two, all property and commodities exposed for sale on the first day of the week in violation of the provisions of this article shall be forfeited. Upon conviction of the offender by a justice of the peace of a county, or by any police justice or magistrate, such officer shall issue a warrant for the seizure of the forfeited articles, which, when seized, shall be sold on one day's notice, and the proceeds paid to the overseers of the poor, for the use of the poor of the town or city.

**§ 2150. Maliciously serving process on Saturday on person who keeps Saturday as holy time.** Whoever maliciously procures any process in a civil action to be served on

Saturday, upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor.

§ 2151. **Processions and parades on Sunday.** All processions and parades on Sunday in any city, excepting only funeral processions for the actual burial of the dead, and processions to and from a place of worship in connection with a religious service there celebrated, are forbidden; and in such excepted cases there shall be no music, fire-works, discharge of cannon or fire-arms, or other disturbing noise. At a military funeral, and at the burial of a national guardsman, or of a deceased member of an association of veteran soldiers, or of a disbanded militia regiment, or of a secret fraternal society, music may be played while escorting the body, but not within one block of a place of worship where service is then being celebrated. A person wilfully violating any provision of this section is punishable by a fine not exceeding twenty dollars or imprisonment not exceeding ten days, or by both.

§ 2152. **Theatrical and other performances on Sunday.** The performance of any tragedy, comedy, opera, ballet, farce, negro minstrelsy, negro or other dancing, wrestling, boxing with or without gloves, sparring contest, trial of strength, or any part or parts therein, or any circus, equestrian or dramatic performance or exercise, or any performance or exercise of jugglers, acrobats, club performances or rope dancers on the first day of the week is forbidden; and every person aiding in such exhibition, performance or exercise by advertisement, posting or otherwise, and every owner or lessee of any garden, building or other room, place or structure, who leases or lets the same for the purpose of any such exhibition, performance or exercise, or who assents to the use of the same, for any such purpose, if it be so used, is guilty of a misdemeanor.

In addition to the punishment therefor provided by statute, every person violating this section is subject to a penalty of five hundred dollars, which penalty "The Society for the Reformation of Juvenile Delinquents" in the city of New York, for the use of that society, and the overseers of the poor in any other city or town, for the use of the poor, are authorized, in the name of the people of this state, to recover.

Besides this penalty, every such exhibition, performance or exercise, of itself, annuls any license which may have been previously obtained by the manager, superintendent, agent, owner



or lessee, using or letting such building, garden, room, place or other structure, or consenting to such exhibition, performance or exercise.

**§ 2153. Barbering on Sunday.** Any person who carries on or engages in the business of shaving, hair cutting or other work of a barber on the first day of the week, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five dollars; and upon a second conviction for a like offense shall be fined not less than ten dollars and not more than twenty-five dollars, or be imprisoned in the county jail for a period of not less than ten days, nor more than twenty-five days, or be punishable by both such fine and such imprisonment at the discretion of the court or magistrate; provided, that in the village of Saratoga Springs, from the fifteenth day of June to the fifteenth day of September, inclusive, and in the city of New York throughout the year, barber shops or other places where a barber is engaged in shaving, hair cutting or other work of a barber, may be kept open, and the work of a barber may be performed therein until one o'clock of the afternoon of the first day of the week.

## ARTICLE 194

### Salt Works

Section 2170. Injuries to the Onondaga salt works.

**§ 2170. Injuries to the Onondaga salt works.** A person who wilfully burns, destroys, or injures any salt manufactory connected with the Onondaga salt springs, or any building appurtenant to such manufactory or any part of such manufactory, or any of the buildings, reservoirs, pumps, conductors or water conduits, belonging to this state, used in the raising of salt water for the manufacture of salt, without authority of law, is punishable by imprisonment in a state prison not exceeding five years.

## ARTICLE 195

*(Added by L. 1909, ch. 524, in effect May 27, 1909.)*

### Seduction

Section 2175. Seduction under promise of marriage.

2176. Bar to prosecution.

2177. No conviction on unsupported testimony.

**§ 2175. Seduction under promise of marriage.** A person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by imprisonment for not more than five years, or by the fine of not more than one thousand dollars or both. *(Added by L. 1909, ch. 524, in effect May 27, 1909.)*

§ 2176. **Bar to prosecution.** The subsequent intermarriage of the parties, or the lapse of two years after the commission of the offense before the finding of an indictment, is a bar to a prosecution for a violation of this section. (*Added by L. 1909, ch. 524, in effect May 27, 1909.*)

§ 2177. **No conviction on unsupported testimony.** No conviction can be had for an offense specified in the \*last section, upon the testimony of the female seduced, unsupported by other evidence. (*Added by L. 1909, ch. 524, in effect May 27, 1909.*)

## ARTICLE 196

### Sentence

- Section 2180. Place to be specified in sentence; removal of convicts.
2181. Sentence to imprisonment for less than one year.
2182. Sentence to imprisonment for one year.
2183. Sentence to imprisonment for more than one year.
2184. Sentence to house of refuge, state industrial school, and New York state training school for girls.
2185. Sentence of males between sixteen and thirty years of age.
2186. Sentence of minors to imprisonment.
2187. Sentence of female convicts to imprisonment.
2188. Duty of court to sentence; suspending sentence.
2189. Indeterminate sentences to state prisons. (*Title as inserted by editors.*)
2190. Sentence to imprisonment on two or more convictions.
2191. Sentence when punishment prescribed is imprisonment for not less than a specified time.
2192. Sentence where punishment prescribed is imprisonment for not more than a specified time.
2193. Calculating term of imprisonment.
2194. Sentence of minor under sixteen years of age.
2195. Imprisonment when sentenced to a reformatory.
2196. Sentence to penitentiary under the provisions of § 320 of prison law, of person not punishable by imprisonment in state prison.
2197. Sentence to penitentiary under the provisions of § 320 of prison law, when term of imprisonment is five years or less. (*Repealed by L. 1909, ch. 467, in effect May 24, 1909.*)
2198. Sentence of convicts to state prisons.

§ 2180. **Place to be specified in sentence; removal of convicts.** The place of the imprisonment must be specified

\* So in original.

in the judgment and sentence of the court. But convicts may be removed from one place of confinement to another, in a case, and by the authority, designated by statute.

**§ 2181. Sentence to imprisonment for less than one year.** Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term less than one year, the imprisonment must be inflicted by confinement in the county jail, or place of confinement designated by law to be used as the jail of the county, except when otherwise specially prescribed by statute.

**§ 2182. Sentence to imprisonment for one year.** Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term of one year, he may be sentenced to, and the imprisonment may be inflicted by, confinement either in a county jail, or in a penitentiary or state prison. No person shall be sentenced to imprisonment in a state prison for less than one year.

**§ 2183. Sentence to imprisonment for more than one year.** Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term exceeding one year, or is sentenced to imprisonment for such a term, the imprisonment must be inflicted by confinement at hard labor in a state prison. But this and sections twenty-one hundred and eighty-one and twenty-one hundred and eighty-two shall not apply to a case where special provision is made by statute as to the punishment for any particular offense or class of offenses or offenders, nor to the cases specified in sections twenty-one hundred and eighty-four, twenty-one hundred and eighty-five, twenty-one hundred and eighty-six and twenty-one hundred and eighty-seven.

**§ 2184. Sentence to house of refuge, state industrial school, and New York state training school for girls.** Where a male person under the age of twelve years is convicted of a crime amounting to felony, or where a male person of twelve years and under the age of sixteen years is convicted of a crime, the trial court may, instead of sentencing him to imprisonment in a state prison or in a penitentiary, direct him to be confined in a house of refuge under the provisions of the statute relating thereto. Where the conviction is had and the sentence is inflicted in the first, second, third or ninth judicial district, the place of confinement must be a house of refuge established by the managers of the society for the reformation of juvenile delinquents in the city of New York; where the convic-

tion is had and the sentence inflicted in any other district, the place of confinement must be in the state industrial school. Where a female person not over the age of twelve years is convicted of a crime amounting to felony, or where a female person of the age of twelve years and not over the age of sixteen years is convicted of a crime, the trial court may, instead of sentencing her to imprisonment in a state prison or in a penitentiary, direct her to be confined in the New York state training school for girls, under the provisions of the statute relating thereto. But nothing in this section shall affect any of the provisions contained in section twenty-one hundred and ninety-four.

**§ 2185. Sentence of males between sixteen and thirty years of age.** A male between the ages of sixteen and thirty, convicted of a felony, who has not theretofore been convicted of a crime punishable by imprisonment in a state prison, may, in the discretion of the trial court, be sentenced to imprisonment in the New York state reformatory at Elmira, to be there confined under the provisions of law relating to that reformatory.

**§ 2186. Sentence of minors to imprisonment.** Where a male person between the ages of sixteen and twenty-one years is convicted of a felony, or where the term of imprisonment of a male convict for a felony is fixed by the trial court at one year or less, the court may direct the convict to be imprisoned in a county penitentiary, instead of a state prison, or in the county jail located in the county where sentence is imposed. A child of more than seven and less than sixteen years of age, who shall commit any act or omission which, if committed by an adult, would be a crime not punishable by death or life imprisonment, shall not be deemed guilty of any crime, but of juvenile delinquency only, but any other person concerned therein, whether as principal or accessory, who otherwise would be punishable as a principal or accessory shall be punishable as a principal or accessory in the same manner as if such child were over sixteen years of age at the time the crime was committed. Any child charged with any act or omission which may render him guilty of juvenile delinquency shall be dealt with in the same manner as now is or may hereafter be provided in the case of adults charged with the same act or omission except as specially provided heretofore in the case of children under the age of sixteen years. (*Thus amended by L. 1909, ch. 478, in effect September 1, 1909.*)

Amendment of 1909 materially changed former section, which read as follows:

**§ 2186. Sentence of minors to imprisonment.** Where a male person between the ages of sixteen and twenty-one years is convicted of a felony, or where

the term of imprisonment of a male convict for a felony is fixed by the trial court at one year or less, the court may direct the convict to be imprisoned in a county penitentiary, instead of a state prison, or in the county jail located in the county where sentence is imposed. The commission by a child under the age of sixteen years, of a crime, not capital or punishable by life imprisonment, which if committed by an adult would be a felony, renders such child guilty of a misdemeanor only, but any other person concerned therein, whether as principal or accessory, who otherwise would be punishable as a principal in the felony, shall be punishable as a principal in the same manner as if such child were over sixteen years of age at the time the crime was committed. A conviction of any child under the age of sixteen years of a crime for which, if the child were an adult, the penalty for conviction would be ten years' imprisonment or less shall not work any penalty or deprivation of any right or privilege except such as is imposed by the court or magistrate in pursuance with such conviction.

**§ 2187. Sentence of female convicts to imprisonment.** Any woman over the age of sixteen years, who shall be convicted of a felony in any of the courts of this state, shall, when the sentence imposed is one year or more, be sentenced to imprisonment in the state prison for women at Auburn. When the sentence imposed is less than one year, she may be committed to the county jail of the county where convicted, or to a penitentiary, or to the state prison for women at Auburn. A woman between the ages of fifteen and thirty, convicted of a felony, who has not theretofore been convicted of a crime punishable by imprisonment in a state prison, may in the discretion of the trial court be sentenced to a house of refuge or reformatory for women, to be there confined under the provisions of law relating to such house of refuge or reformatory.

**§ 2188. Duty of court to sentence; suspending sentence.** The several sections of this chapter which declare certain crimes to be punishable as therein mentioned devolve a duty upon the court authorized to pass sentence to determine and impose the punishment prescribed, but such court may in its discretion suspend sentence, during the good behavior of the person convicted, where the maximum term of imprisonment prescribed by law does not exceed ten years and such person has never been convicted of a felony. Courts of special sessions are empowered to suspend sentence and at any time within the longest period for which a defendant might have been sentenced, may issue process for the re-arrest of the defendant, and when arraigned the court as it is then constituted may proceed to enter judgment and impose sentence.

In the case of children under sixteen years of age, at the time of conviction, the longest period of time after suspension of sentence within which a sentence may be imposed for such offense shall be one year; and in any proceeding of a criminal nature, triable before a magistrate, the magistrate upon conviction, may

suspend sentence and place the offender under probation and at any time thereafter, during the longest period for which he could have been committed in the first instance, such magistrate, or his successor, if his term has expired, may pronounce any judgment or sentence or impose any fine or other penalty, or make any commitment which might have been pronounced, imposed or made at the time the conviction was had.

**§ 2189. Indeterminate sentences to state prisons.\***

A person never before convicted of a crime punishable by imprisonment in a state prison, who is convicted in any court in this state of a felony other than murder first or second degree, and sentenced to a state prison, shall be sentenced thereto under an indeterminate sentence, the minimum of which shall not be less than one year, or in case a minimum is fixed by law, not less than such minimum; otherwise, the minimum of such sentence shall not be more than one-half the longest period and the maximum shall not be more than the longest period fixed by law for which the crime is punishable of which the offender is convicted. The maximum limit of such sentence shall be so fixed as to expire during either of the following months: April, May, June, July, August, September and October. (*Thus amended by L. 1909, ch. 282, in effect May 4, 1909.*)

Amendment of 1909 inserted in first sentence the words "otherwise, the minimum of such sentence shall not be more than one-half the longest period" and struck out "of which" after "maximum", in same sentence.

**§ 2190. Sentence to imprisonment on two or more convictions.** Where a person is convicted of two or more offenses, before sentence has been pronounced upon him for either offense, the imprisonment, to which he is sentenced upon the second or other subsequent conviction, must commence at the termination of the first or other prior term or terms of imprisonment, to which he is sentenced.

Where a person, under sentence for a felony, afterward commits any other felony, and is thereof convicted and sentenced to another term of imprisonment, the latter term shall not begin until the expiration of all the terms of imprisonment, to which he is already sentenced.

**§ 2191. Sentence when punishment prescribed is imprisonment for not less than a specified time.**

When a crime is declared by statute to be punishable by imprisonment for not less than a specified number of years, and no limit of the duration of the imprisonment is declared, the court authorized to pronounce judgment upon conviction may, in its discretion,

\* Title of section inserted by the editors.

sentence the offender to imprisonment during his natural life, or for any number of years not less than the amount prescribed.

**§ 2192. Sentence where punishment prescribed is imprisonment for not more than a specified time.**

When a crime is declared by any of the provisions of this chapter to be punishable by imprisonment for not more than a specified number of years, the court authorized to pronounce judgment upon conviction may, in its discretion, sentence the offender to imprisonment for any time less than that prescribed by the provisions of this chapter.

**§ 2193. Calculating term of imprisonment.** When a convict is to be sentenced to imprisonment in a state prison or a penitentiary, the court before which the conviction was had must limit the term of the sentence, having reference to the probability of the convict earning a reduction of his term for good behavior, as provided by article nine of the prison law, and assuming that such reduction will be earned, so that the sentence will expire during either of the following months: April, May, June, July, August, September and October.

But the provisions of this section shall not apply in the following cases:

1. Where the sentence is to be for the term of one year or less.
2. Where the term of imprisonment for the crime of which the convict was convicted absolutely fixes a single definite period of time.
3. Where a judgment of conviction has been affirmed upon an appeal, and it becomes necessary for the court to impose the same sentence as that originally imposed.

The officers of every prison or penitentiary are hereby expressly prohibited from taking into their custody any convict sentenced in violation of the provisions of this section, and any convict so illegally sentenced shall be returned by the sheriff of the county where the conviction was had to the court to be re-sentenced in conformity to the provisions of this section. Provided that if it shall appear to the officers of any prison or penitentiary at the time it is sought to incarcerate a convict therein that the court which imposed the sentence has adjourned, then it shall be lawful for said officers to receive said convict and hold him in their custody until he can be re-sentenced as herein provided, and the second or re-sentence shall be deemed to have begun on the date of the convict's reception under his first sentence. The officers of any prison or penitentiary shall, in the case of a convict so illegally sentenced to imprisonment therein, immediately notify the court of their action.

**§ 2194. Sentence of minor under sixteen years of age.** When a person under the age of sixteen is convicted of a crime, he may, in the discretion of the court, instead of being sentenced to fine or imprisonment, be placed in charge of any suitable person or institution willing to receive him, and be thereafter, until majority or for a shorter term, subjected to such discipline and control of the person or institution receiving him as a parent or guardian may lawfully exercise over a minor. A child under sixteen years of age committed for misdemeanor, under any provision of this chapter, must be committed to some reformatory, charitable or other institution authorized by law to receive and take charge of minors. And when any such child is committed to an institution it shall, when practicable, be committed to an institution governed by persons of the same religious faith as the parents of such child.

**§ 2195. Imprisonment when sentenced to a reformatory.** When a person shall be sentenced to imprisonment in a reformatory as prescribed in section three hundred and seven of the prison law, the court imposing such sentence shall not fix or limit the duration thereof.

**§ 2196. Sentence to penitentiary under the provisions of § 320 of the prison law, of person not punishable by imprisonment in state prison.** It shall be the duty of every court, police justice, justice of the peace, or other magistrate, by whom any person may be sentenced, in the several counties of this state, for any term not less than sixty days, for any crime or misdemeanor not punishable by imprisonment in the state prison, during the continuance of the agreement mentioned in section three hundred and twenty of the prison law, to sentence such person to imprisonment in such penitentiary, there to be received, kept and employed in the manner prescribed by law, and the rules and discipline of such penitentiary; and it shall be the duty of such court, justice or magistrate, by a warrant, duly signed by the presiding judge, or justice or clerk of such court, or by such justice or other magistrate so giving such sentence, to cause such person so sentenced, to be forthwith and by the most direct route conveyed by some proper officer to such penitentiary. It shall be the duty of the sheriffs, deputy sheriffs, constables or policemen in and for the several counties of this state, to whom any warrant of commitment for that purpose may be directed by any court or magistrate in this section mentioned, to convey forthwith such person so sentenced, to such penitentiary, and there deliver such person to the keeper of such penitentiary, whose duty it shall be to receive such



persons, so sentenced, during the continuance of said agreement, authorized by said section three hundred and twenty of the prison law, to be there safely kept and employed, according to the rules and discipline of such penitentiary; and the officers thus conveying such convicts so sentenced, shall be paid such fees and expenses therefor, as the several boards of supervisors of the several counties of this state shall prescribe and allow.

**§ 2197. Sentence to penitentiary under the provisions of § 320 of the prison law when term of imprisonment is five years or less.** (*Repealed by L. 1909, ch. 467, in effect May 24, 1909.*)

Section repealed read as follows:

§ 2197. Sentence to penitentiary under the provisions of § 320 of the prison law when term of imprisonment is five years or less. Whenever any person shall be convicted of any offense punishable with imprisonment in the state prison for a term of five years or less, in any county of the state having a contract for the board, care and discipline of prisoners with any or either of the penitentiaries of Syracuse or Albany, or in any county situated in the third or fourth judicial department of this state, the court before which such conviction shall be had may in its discretion sentence the prisoner so convicted to imprisonment in such penitentiary.

**§ 2198. Sentence of convicts to state prisons.** All male convicts sentenced to imprisonment in a state prison in the first, second and ninth judicial districts shall be sentenced to the Sing Sing prison, and all so sentenced in the third and fourth judicial districts, shall be sentenced to the Clinton prison, and all so sentenced in the fifth, sixth, seventh and eighth judicial districts shall be sentenced to the Auburn prison. (*Added by L. 1909, ch. 240, § 59, in effect April 22, 1909.*)

## ARTICLE 198

### Sepulture

Section 2210. Right to direct disposal of one's own body after death.

2211. Duty of burial of the dead.

2212. Burial in other states.

2213. Right to dissect dead body of a human being.

2214. Unlawful dissection of the body of a human being.

2215. After dissection, remains must be buried.

2216. Body stealing.

2217. Receiving stolen body of a human being.

2218. Opening graves.

2219. Arresting or attaching a dead body of a human being.

2220. Disturbing funerals.

**§ 2210. Right to direct disposal of one's own body after death.** A person has the right to direct the manner in which his body shall be disposed of after his death; and also to direct the manner in which any part of his body, which becomes

separated therefrom during his lifetime, shall be disposed of; and the provisions of this article do not apply to any case where a person has given directions for the disposal of his body or any part thereof inconsistent with those provisions.

**§ 2211. Duty of burial of the dead.** Except in the cases in which a right to dissect it is expressly conferred by law, every dead body of a human being, lying within this state, must be decently buried within a reasonable time after death.

**§ 2212. Burial in other states.** The last section does not impair any right to carry the dead body of a human being through this state, or to remove from this state the body of a person dying within it, for the purpose of burying the same elsewhere.

**§ 2213. Right to dissect dead body of a human being.** The right to dissect the dead body of a human being exists in the following cases:

1. In the cases prescribed by special statutes; or,
2. Whenever a coroner is authorized by law to hold an inquest upon a body, so far as such coroner authorizes dissection for the purposes of the inquest, and no further; or,
3. Whenever and so far as the husband, wife or next of kin of the deceased, being charged by law with the duty of burial, may authorize dissection for the purpose of ascertaining the cause of death, and no further; or,
4. Whenever any district attorney in this state, in the discharge of his official duties, shall deem it necessary, he may exhume, take possession of, and remove the body of a deceased person, or any portion thereof, and submit the same to a proper physical or chemical examination, or analysis, to ascertain the cause of death, and the same shall be made on the order of any justice of the supreme court of this state, or the county judge of the county in which such dead body shall be, which order shall be made on the application of the district attorney with or without notice to the relatives of the deceased person or to any person or corporation having the legal charge of such body, as the court may direct. Said district attorney shall have power to direct the sheriff, constable, or other peace officer in this state, or to employ such person, or persons as he may deem necessary to assist him in exhuming, removing, obtaining possession of and examining physically or chemically such dead body or any portion thereof. The expense therefor shall be a county charge, to be paid by the county treasurer on the certificate of the district attorney.

**§ 2214. Unlawful dissection of the body of a human being.** A person who makes, or causes or procures to be made, any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a misdemeanor.

**§ 2215. After dissection, remains must be buried.**

In all cases in which a dissection has been made, the provisions of this article, requiring the burial of a dead body, and punishing interference with or injuries to it, apply equally to the remains of the body dissected, as soon as the lawful purposes of such dissection have been accomplished.

**§ 2216. Body stealing.** A person, who removes the dead body of a human being, or any part thereof, from a grave, vault, or other place, where the same has been buried, or from a place where the same has been deposited while awaiting burial, without authority of law, with intent to sell the same, or for the purpose of dissection, or for the purpose of procuring a reward for the return of the same, or from malice or wantonness, is punishable by imprisonment for not more than five years or by a fine not exceeding one thousand dollars, or both.

**§ 2217. Receiving stolen body of a human being.**

A person who purchases, or receives except for the purpose of burial, the dead body of a human being, or any part thereof, knowing that the same has been removed contrary to the last section, is punishable by imprisonment for not more than three years.

**§ 2218. Opening graves.** A person who opens a grave or other place of interment, temporary or otherwise, or a building wherein the dead body of a human being is deposited while awaiting burial, without authority of law, with intent to remove the body, or any part thereof, for the purpose of selling it or demanding money for the same, or for the purpose of dissection, or from malice or wantonness, or with intent to steal or remove the coffin or any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the dead body, is punishable by imprisonment for not more than two years, or by a fine of not more than two hundred and fifty dollars, or by both.

**§ 2219. Arresting or attaching a dead body of a human being.** A person who arrests or attaches the dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

**§ 2220. Disturbing funerals.** A person who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying the dead body of a human being to a place of burial, is guilty of a misdemeanor.

## ARTICLE 200

### Societies and Orders

Section 2240. Unauthorized wearing or use of badge, name, title of officers, insignia, ritual or ceremony of certain orders and societies.

**§ 2240. Unauthorized wearing or use of badge, name, title of officers, insignia, ritual or ceremony of certain orders and societies.** 1. Any person who wilfully wears the badge or the button of the Grand Army of the Republic, the insignia, badge or rosette of the Military Order of the Loyal Legion of the United States, or the Military Order of Foreign Wars of the United States, or the badge or button of the Spanish war veterans, or the Order of Patrons of Husbandry, or the Benevolent and Protective Order of Elks of the United States of America, or of any society, order or organization, of ten years' standing in the state of New York, or uses the same to obtain aid or assistance within this state, or wilfully uses the name of such society, order or organization, the titles of its officers, or its insignia, ritual or ceremonies, unless entitled to use or wear the same under the constitution and by-laws, rules and regulations of such order or of such society, order or organization, is guilty of a misdemeanor.

2. Any person who shall wilfully wear the shield of the Union Veteran Legion, or who shall use or wear the same to obtain aid or assistance thereby within this state, unless he shall be entitled to use or wear the same, under the rules and regulations of the Union Veteran Legion, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment for a term not to exceed thirty days in the county jail, or a fine not to exceed twenty dollars, or by both such fine and imprisonment.

## ARTICLE 202

### Suicide

Section 2300. Suicide defined.

2301. No forfeiture imposed for suicide.

2302. Attempting suicide.

2303. Punishment for attempting suicide.

2304. Abetting and advising suicide.

2305. Abetting and advising an attempt at suicide.

2306. Incapacity of person aided, no defense.

**§ 2300. Suicide defined.** Suicide is the intentional taking of one's own life.

§ 2301. **No forfeiture imposed for suicide.** Although suicide is deemed a grave public wrong, yet from the impossibility of reaching the successful perpetrator, no forfeiture is imposed.

§ 2302. **Attempting suicide.** A person who, with intent to take his own life, commits upon himself any act dangerous to human life, or which, if committed upon or towards another person and followed by death as a consequence, would render the perpetrator chargeable with homicide, is guilty of attempting suicide.

§ 2303. **Punishment for attempting suicide.** Every person guilty of attempting suicide is guilty of felony, punishable by imprisonment in a state prison not exceeding two years, or by a fine not exceeding one thousand dollars, or both.

§ 2304. **Abetting and advising suicide.** A person who wilfully, in any manner, advises, encourages, abets, or assists another person in taking the latter's life, is guilty of manslaughter in the first degree.

§ 2305. **Abetting and advising an attempt at suicide.** A person who wilfully, in any manner, encourages, advises, assists or abets another person in attempting to take the latter's life, is guilty of a felony.

§ 2306. **Incapacity of person aided, no defense.** It is not a defense to a prosecution under either of the last two sections, that the person who took, or attempted to take, his own life, was not a person deemed capable of committing crime.

## ARTICLE 204

### Taxes

Section 2320. Appraiser under taxable transfers law taking fee or reward.

2321. Making false statement in reference to taxes.

§ 2320. **Appraiser under taxable transfers law taking fee or reward.** An appraiser appointed by virtue of the taxable transfers law, who takes any fee or reward from an executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay such tax, or any portion thereof, is guilty of a misdemeanor.

§ 2321. **Making false statement in reference to taxes.** A person, who, in making any statement, oral or written, which is required or authorized by law to be made as the basis

of imposing any tax or assessment, or of an application to reduce any tax or assessment, wilfully makes, as to any material matter, any statement which he knows to be false, is guilty of a misdemeanor.

## ARTICLE 206

### Trade-Marks

- Section 2350. Trade-mark defined.  
2351. Affixing defined.  
2352. Article of merchandise defined.  
2353. Imitation of a trade-mark defined.  
2354. Offenses against trade-marks.  
2355. Refilling or selling trade-mark bottles and vessels.  
2356. Keeping trade-mark bottles and vessels with intent to refill or sell them.  
2357. Search for trade-mark bottles and vessels kept in violation of law authorized.

**§ 2350. Trade-mark defined.** A "trade-mark" is a mark used to indicate the maker, owner or seller of an article of merchandise, and includes, among other things, any name of a person, or corporation, or any letter, word, device, emblem, figure, seal, stamp, diagram, brand, wrapper, ticket, stopper, label or other mark, lawfully adopted by him, and usually affixed to an article of merchandise to denote that the same was imported, manufactured, produced, sold, compounded, bottled, packed or otherwise prepared by him; and also a signature or mark, used or commonly placed by a painter, sculptor or other artist, upon a painting, drawing, engraving, statue or other work of art, to indicate that the same was designed or executed by him.

**§ 2351. Affixing defined.** A trade-mark is deemed to be affixed to an article of merchandise, when it is placed in any manner in or upon:

1. The article itself; or,
2. A box, bale, barrel, bottle, case, cask, platter, or other vessel or package, or a cover, wrapper, stopper, brand, label or other thing, in, by or with which the goods are packed, inclosed, or otherwise prepared for sale or disposition.

**§ 2352. Article of merchandise defined.** The expression "article of merchandise," as used in sections twenty-three hundred and fifty and twenty-three hundred and fifty-one, signifies any goods, wares, work of art, commodity, compound, mixture or other preparation or thing, which may be lawfully kept or offered for sale.

**§ 2353. Imitation of a trade-mark defined.** An "imitation of a trade-mark" is that which so far resembles a genuine trade-mark as to be likely to induce the belief that it is genuine, whether by the use of words or letters, similar in appearance or in sound, or by any sign, device or other means whatsoever.

**§ 2354. Offenses against trade-marks.** A person who:

1. Falsely makes or counterfeits a trade-mark; or,
2. Affixes to any article of merchandise, a false or counterfeit trade-mark, knowing the same to be false or counterfeit, or the genuine trade-mark, or an imitation of the trade-mark of another, without the latter's consent; or,
3. Knowingly sells, or keeps or offers for sale, an article of merchandise to which is affixed a false or counterfeit trade-mark, or the genuine trade-mark, or an imitation of the trade-mark of another, without the latter's consent; or,
4. Has in his possession a counterfeit trade-mark, knowing it to be counterfeit, or a die, plate, brand or other thing for the purpose of falsely making or counterfeiting a trade-mark; or,
5. Makes or sells, or offers to sell or dispose of, or has in his possession with intent to sell or dispose of, an article of merchandise with such a trade-mark or label as to appear to indicate the quantity, quality, character, place of manufacture or production, or persons manufacturing, packing, bottling, boxing or producing the article, but not indicating it truly; or, (*Subd. 5 thus amended by L. 1909, ch. 240, § 60, in effect April 22, 1909.*)  
**Amendment of 1909 inserted "or label" after "trade-mark".**
6. Knowingly sells, offers or exposes for sale, any goods which are represented in any manner, by word or deed, to be the manufacture, packing, bottling, boxing or product of any person, firm or corporation, other than himself, unless such goods are contained in the original packages, box or bottle and under the labels, marks or names placed thereon by the manufacturer who is entitled to use such marks, names, brands or trade-marks; or,
7. Shall sell or shall expose for sale any goods in bulk, to which no label or trade-mark shall be attached, and shall by representation, name or mark written or printed thereon, represent that such goods are the production or manufacture of a person who is not the manufacturer,

Is guilty of a misdemeanor and punishable for the first offense by a fine not less than fifty dollars nor more than five hundred dollars or imprisonment for not more than one year, or both such fine and imprisonment, and for each subsequent offense by imprisonment for not less than thirty days or more than one year, or by both such imprisonment and a fine of not less than five hundred dollars or more than one thousand dollars.

**§ 2355. Refilling or selling trade-mark bottles and vessels.** Any person engaged in making, bottling, packing, selling or disposing of milk, ale, beer, cider, mineral water or other beverage, or in making, selling or disposing of articles of pastry, may register his title as owner of a trade-mark by filing with the secretary of state and the clerk of the county where the principal place of business of such person is situated, a description of the marks and devices used by him in his business, and in case the same has not been heretofore published according to the laws existing at the time of publication, causing the same to be published in a newspaper of the county, three weeks daily, if in the city of New York or Brooklyn, and weekly if in any other part of the state; but no trade-mark shall be filed which is not and can not become a lawful trade-mark, or which is merely the name of a person, firm or corporation unaccompanied by a mark sufficient to distinguish it from the same name when used by another person. After such registration, the use without the consent of the owner of the trade-mark so described, or the filling of any bottle, siphon, barrel, platter, vessel, or thing for the purpose of sale, or for the sale, therein, of any article of the same general nature and quality which said bottle, siphon, barrel, platter, vessel or other thing before contained, without the obliteration or defacement of the trade-mark upon it, when such trade-mark can be obliterated or defaced without substantial injury to the bottle, siphon, barrel, platter, vessel or other thing so as to prevent its wrongful use, shall be deemed a misdemeanor.

**§ 2356. Keeping trade-mark bottles and vessels with intent to refill or sell them.** Any person engaged in the business of buying and selling bottles, siphons, barrels, platters, or other vessels or things, who shall with intent to defraud the registered owner of the trade-mark, knowingly sell or offer for sale any bottle, siphon, barrel, platter, vessel, or other thing, to any person, who he has reason to believe wrongfully intends to use the trade-mark upon it, or to fill such bottle, siphon, barrel, platter, vessel or other thing in violation of section twenty-three hundred and fifty-five, shall be deemed guilty of a misdemeanor.

**§ 2357. Search for trade-mark bottles and vessels kept in violation of law authorized.** Whenever a registered owner of a trade-mark, or his agent, makes oath before a magistrate that he has reason to believe and does believe, stating the grounds of his belief, that a bottle, siphon, barrel, platter, vessel or other thing to which is affixed a trade-mark belonging to him is being used or filled, or has been sold or offered for sale,



by any person whomsoever, in violation of the preceding section, then the magistrate may issue a search warrant to discover the thing and cause the person having it in possession to be brought before him and may thereupon inquire into the circumstances, and if on examination, he finds that such person has been guilty of the offense charged, he may hold the offender to bail to await the action of the grand jury, and the offender shall also be liable to an action on the case for damages, for such wrongful use of such trade-mark at the suit of the owner thereof, and the party aggrieved, shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade-mark, and to recover compensation therefor, in any court having jurisdiction over the person guilty of such wrongful use.

## **ARTICLE 208**

### **Trading Stamps**

Section 2360. Issue of trading stamps and similar devices.

2361. Issue and redemption of trading stamps and similar devices.

**§ 2360. Issue of trading stamps and similar devices.** A person who shall:

1. Issue trading stamps or other devices to any person engaged in any trade, business or profession, with the promise, express or implied, that he will give to the person presenting to him such stamps or other devices, money or anything of value, without receiving from such person the value thereof, or make to any such person any concession or preference in any way, on account of the presentation of such trading stamps or other devices; or,

2. Being engaged in any trade, business or profession, shall distribute or present to any person dealing with him, any such trading stamp or other device, in consideration of any article or thing purchased of, or any services performed by him,

Shall be guilty of a misdemeanor.

3. It shall not be unlawful for any merchant or manufacturer to place his own tickets, coupons or other vouchers in or upon packages of goods sold or manufactured by him. Such tickets, coupons or other vouchers to be redeemed by such merchant or manufacturer either in money or merchandise, whether such packages are sold directly to the consumer or through retail merchants. Nor shall it be unlawful for any person to issue with such packages, tickets, coupons or other voucher so issued by such merchant or manufacturer.

**§ 2361. Issue and redemption of trading stamps and similar devices.**

1. No person shall sell or issue any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device, which will entitle the holder thereof, on presentation thereof either singly or in definite number to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, unless each of said stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices shall have legibly printed or written upon the face thereof the redeemable value thereof in lawful money of the United States.

2. Any person who shall sell or issue to any person engaged in any trade, business or profession, any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device, which will entitle the holder thereof, on presentation thereof either singly or in definite number to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise shall, upon presentation redeem the same either in goods, wares, or merchandise or in lawful money of the United States, at the option of the holder thereof, at the value in lawful money printed on the face thereof, provided the same be presented for redemption in number or quantity aggregating in money value not less than five cents in each lot.

3. Any person engaged in any trade, business, or profession who shall distribute, deliver or present to any person dealing with him, in consideration of any article or thing purchased, any stamp, trading stamp, cash discount stamp, check, ticket, coupon or other similar device which will entitle the holder thereof on presentation thereof either singly or in definite number, to receive either directly from the person issuing or selling same as set forth in the second paragraph hereof, or indirectly through any other person, shall, upon the refusal or failure of the said person issuing or selling same to redeem the same as set forth in the second paragraph hereof, be liable to the holder thereof for the face value thereof and shall upon presentation of the same in lots or number aggregating in money value not less than five cents in each lot, redeem the same either in goods, wares or merchandise, or in lawful money of the United States, at the option of the holder thereof, at the value in lawful money printed upon the face thereof.

4. No person, firm or corporation shall give, sell or deliver as an inducement for or in connection with the sale of merchandise, any coupon, check, ticket, stamp, token or similar device redeemable in money or merchandise by any other person, firm or corporation, without the consent of the person, firm or corporation originally issuing the same and responsible for the redemption thereof.

5. Any person, firm or corporation who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor.

6. This section shall not apply to tickets, coupons or other vouchers placed by any merchant or manufacturer in or upon packages or goods sold or manufactured by him if such tickets, coupons or other vouchers are issued by such merchant or manufacturer in his own name, to be redeemed by him.

## ARTICLE 210

### Tramps

Section 2370. Punishment of tramps.

2371. Punishment of tramps\* for certain offenses.

2372. Commutations of sentences of tramps.

**§ 2370. Punishment of tramps.** Every tramp, upon conviction as such shall be punished by imprisonment at hard labor in the nearest penitentiary for not more than six months, and the expense during such imprisonment shall be paid by the state at the rate of thirty cents per day per capita. Any act of vagrancy by any person not a resident of the state shall be evidence that the person committing the same is a tramp within the meaning of this article.

**§ 2371. Punishment of tramps guilty of certain offenses.** Any tramp who shall enter any building against the will of the owner or occupant thereof, under such circumstances as shall not amount to burglary, or willfully or maliciously injure the person or property of another, which injury under existing law does not amount to a felony, or shall be found carrying any fire-arms or other dangerous weapon, or burglar's tools, or shall threaten to do any injury to any person or to the real or personal property of another, when such offense is not now punishable by imprisonment in the state prison, shall be deemed guilty of felony, and on conviction, shall be punished by imprisonment in the state prison at hard labor for not more than three years. Any person being a resident of the town where the offense is committed may, upon view of any offense described in this section, apprehend the offender and take him before a justice of the peace or other competent authority.

**§ 2372. Commutations of sentences of tramps.** Any person convicted under this article shall be entitled to the same commutations of sentence as are now provided by law for any prisoners committed to the state prison or penitentiary.

\* So in original.

**ARTICLE 212****Treason**

Section 2380. Treason against the state defined.

2381. Levying war defined.

2382. Treason, how punished.

2383. Resistance to a statute when levying war.

§ 2380. **Treason against the state defined.** Treason against the people of the state consists in:

1. Levying war against the people of the state, within this state; or,

2. A combination of two or more persons by force to usurp the government of the state, or to overturn the same, shown by a forcible attempt, made within the state, to accomplish that purpose; or,

3. Adhering to the enemies of the state, while separately engaged in war with a foreign enemy, in a case prescribed in the constitution of the United States, or giving to such enemies aid and comfort within the state or elsewhere.

§ 2381. **Levying war defined.** To constitute levying war against the people of this state, an actual act of war must be committed. To conspire to levy war is not enough.

§ 2382. **Treason, how punished.** Treason is punishable by death.

§ 2383. **Resistance to a statute when levying war.** Where persons rise in insurrection with intent to prevent in general by force and intimidation, the execution of a statute of this state, or to force its repeal, they are guilty of levying war. But an endeavor, although by numbers and force of arms, to resist the execution of a law in a single instance, and for a private purpose, is not levying war.

**ARTICLE 214****Usury**

Section 2400. Taking security upon certain property for usurious loans.

§ 2400. **Taking security upon certain property for usurious loans.** A person who takes security, upon any household furniture, sewing machines, plate or silverware in actual use, tools or implements of trade, wearing apparel or jewelry, for

a loan or forbearance of money, or for the use or sale of his personal credit, conditioned upon the payment of a greater rate than six per centum per annum or, who as security for such loan, use or sale of personal credit as aforesaid, makes a pretended purchase of such property from any person, upon the like condition, and permits the pledger to retain the possession thereof is guilty of a misdemeanor.

## ARTICLE 216

### Weights and Measures

- Section 2410. Requiring more than the legal weight for a bushel  
2411. Using false weights and measures.  
2412. Keeping false weights and measures.  
2413. False weights and measures authorized to be seized  
2414. Weights and measures may be tested by committing magistrate and destroyed or delivered to district attorney.  
2415. False weights and measures to be destroyed after conviction of offender.  
2416. Stamping false weight or tare on casks or packages.  
2417. Regulations for sale of baled hay and straw.

**§ 2410. Requiring more than the legal weight for a bushel.** Where potatoes, grains or other agricultural products are sold by the bushel, without agreement as to the weight, any person requiring a greater number of pounds for a bushel than as prescribed by section eight of the general business law is guilty of a misdemeanor.

**§ 2411. Using false weights and measures.** A person who injures or defrauds another by using, with knowledge that the same is false, a false weight, measure, or other apparatus, for determining the quantity of any commodity, or article of merchandise, or by knowingly delivering less than the quantity he represents, is guilty of a misdemeanor.

**§ 2412. Keeping false weights and measures.** A person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used in violation of the last section, is guilty of a misdemeanor.

**§ 2413. False weights and measures authorized to be seized.** A person who is authorized or enjoined by law to arrest another person for a violation of the last two sections, is equally authorized and enjoined to seize any false weights or

measures found in the possession of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

**§ 2414. Weights and measures may be tested by committing magistrate and destroyed or delivered to district attorney.** The magistrate to whom any weight or measure is delivered pursuant to the last section, must, upon the examination of the defendant, or if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false, he must cause it to be destroyed, or to be delivered to the district attorney of the county in which the defendant is liable to indictment or trial, as the interests of justice in his judgment require.

**§ 2415. False weights and measures to be destroyed after conviction of offender.** Upon the conviction of the defendant, the district attorney must cause any weight or measure in respect whereof the defendant stands convicted, and which remains in the possession or under the control of the district attorney, to be destroyed.

**§ 2416. Stamping false weight or tare on casks or packages.** A person who knowingly marks or stamps false or short weights, or false tare on any cask or package, or knowingly sells or offers for sale any cask or package so marked, is guilty of a misdemeanor.

**§ 2417. Regulations for sale of baled hay and straw.** A person who:

1. Sells or offers for sale baled hay or straw containing more than twenty pounds of wood to the bale, the weight of which is two hundred pounds or upward, or more than ten pounds of wood to the bale the weight of which is less than two hundred pounds; or,

2. Sells or offers for sale any bale of hay or straw upon which the correct gross weight is not plainly marked or which weighs more than five pounds less than the gross weight so marked thereupon,

Is guilty of a misdemeanor.

## ARTICLE 218

### Witness

Section 2440. Bribing witness.

2441. Preventing or dissuading witness from attending.

Section 2442. Deceiving a witness.

2443. Restriction of witness' privilege.

2444. Convicted person a competent witness.

2445. Husband or wife as witness.

**§ 2440. Bribing witness.** A person who gives or offers or promises to give, to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony or to withhold true testimony, is guilty of a felony.

**§ 2441. Preventing or dissuading witness from attending.** A person who wilfully prevents or dissuades any person who has been duly summoned or subpoenaed as a witness from attending, pursuant to the summons or subpoena, is guilty of a misdemeanor.

**§ 2442. Deceiving a witness.** A person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation whatever, conducted by authority of law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

**§ 2443. Restriction of witness' privilege.** No person shall be excused from testifying, in any civil action or legal proceeding, to any facts showing that a thing in action has been bought, sold or received contrary to law, upon the ground that his testimony might tend to convict him of a crime. But no evidence derived from the examination of such person shall be received against him upon a criminal prosecution.

**§ 2444. Convicted person a competent witness.** A person heretofore or hereafter convicted of any crime is, notwithstanding, a competent witness, in any cause or proceeding, civil or criminal, but the conviction may be proved for the purpose of affecting the weight of his testimony, either by the record, or by his cross-examination, upon which he must answer any proper question relevant to that inquiry and the party cross-examining is not concluded by the answer to such question. (*Thus amended by L. 1909, ch. 240, § 61, in effect April 22, 1909.*)

Amendment of 1909 inserted "or hereafter" before "convicted".

**§ 2445. Husband or wife as witness.** The husband or wife of a person indicted or accused of a crime is in all cases a competent witness, on the examination or trial of such person;

but neither husband nor wife can be compelled to disclose a confidential communication, made by one to the other during their marriage.

## ARTICLE 220

### Women

Section 2460. Compulsory prostitution of women.

2461. Punishment of woman for concealing birth of issue.

#### § 2460. Compulsory prostitution of women.

1. Any person who shall place any female in the charge or custody of any other person for immoral purposes or in a house of prostitution with intent that she shall live a life of prostitution; or any person who shall compel any female to reside with him or with any other person for immoral purposes, or for the purposes of prostitution or shall compel any such female to reside in a house of prostitution or compel her to live a life of prostitution is punishable by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment for not less than one year nor more than three years or by both such fine and such imprisonment.

2. Any person who shall receive any money or other valuable thing for or on account of placing in a house of prostitution or elsewhere any female for the purpose of causing her to cohabit with any male person or persons to whom she is not married shall be guilty of a misdemeanor.

3. Any person who shall pay any money or other valuable thing to procure any female for the purpose of placing her for immoral purposes in any house of prostitution or elsewhere against her will, shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned for a period not less than one year, nor more than three years.

4. Every person who shall knowingly receive any money or other valuable thing for or on account of procuring and placing in the custody of another person for immoral purposes any woman, with or without her consent, is punishable by imprisonment not exceeding five years and a fine not exceeding one thousand dollars.

5. No conviction shall be had under this section upon the testimony of the female unless supported by other evidence.

§ 2461. Punishment of woman for concealing birth of issue. A woman, who, having been convicted of endeavoring to conceal the still-birth of an issue of her body, which, if born alive, would be a bastard, or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death, is punishable by im-



prisonment in a state prison not exceeding five years, and not less than two years. (*Former § 1943 thus renumbered and inserted in Art. 220 by L. 1909, ch. 524, in effect May 27, 1909.*)

**§ 2461. Seduction under promise of marriage.** (*Repealed by L. 1909, ch. 524, in effect May 27, 1909.*)

Section repealed is now embodied in new sections 2175 and 2176, without change.

## ARTICLE 222

### Wrecks

Section 2480. Keeping wrecked goods a misdemeanor.

2481. Defacing marks upon wrecked property.

2482. Officer unlawfully detaining wrecked property.

**§ 2480. Keeping wrecked goods a misdemeanor.**

A person, who takes away goods or other property not his own from a stranded vessel, or any goods or other property cast by the sea upon the land or found in a bay or creek, or who knowingly becomes possessed of any such goods or other property, and does not deliver the same, within forty-eight hours thereafter, to the sheriff or one of the coroners or wreck masters of the county where the same was found, is guilty of a misdemeanor.

**§ 2481. Defacing marks upon wrecked property.**

A person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership thereof, is guilty of a misdemeanor.

**§ 2482. Officer unlawfully detaining wrecked property.**

An officer, whose duties pertain in any way to wrecked property, who, without authority of law, detains such property or the proceeds thereof, after the salvage and expenses chargeable thereon have been paid or offered to him, or who is guilty of any fraud, embezzlement or extortion in the discharge of such duties, is guilty of a misdemeanor.

## ARTICLE 224

### Repeal of Provisions of Penal Law Must be Explicit; Laws Repealed; Time of Taking Effect

Section 2500. Repeal of provisions of penal law must be explicit.

2501. Laws repealed.

2502. Time of taking effect.

**§ 2500. Repeal of provisions of penal law must be explicit.** No provision of this chapter, or any part thereof, shall be deemed repealed, altered or amended by the passage of any subsequent statute inconsistent therewith, unless such statute shall explicitly refer thereto and directly repeal, alter or amend this chapter accordingly.

**§ 2501. Laws repealed.** All acts and parts of acts which are inconsistent with the provisions of this chapter are repealed, so far as they impose any punishment for crime, except as herein provided.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

**§ 2502. Time of taking effect.** This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

	Sections.
Revised Statutes. . . . Part 1, chapter 20, title 2, . . . . .	4
Revised Statutes. . . . Part 1, chapter 20, title 8, article 1, . . . . All	
Revised Statutes. . . . Part 1, chapter 20, title 8, article 2, . . . . All	
Revised Statutes. . . . Part 1, chapter 20, title 8, article 3, . . . . All	
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Revised Statutes. . . . Part 4, chapter 1, title 4, . . . . All	
Revised Statutes. . . . Part 4, chapter 1, title 5, . . . . All	
Revised Statutes. . . . Part 4, chapter 1, title 6, . . . . All	
Revised Statutes. . . . Part 4, chapter 1, title 7, . . . . All	
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1860.....	501.....	All
1861.....	303.....	All
1862.....	112.....	All
1862.....	197.....	All
1862.....	306.....	All
1862.....	374.....	All
1862.....	484.....	1, 2
1863.....	51.....	All
1863.....	209.....	All
1863.....	244.....	All
1864.....	391.....	All
1865.....	212.....	All
1865.....	222.....	All
1865.....	729.....	All
1866.....	440.....	All
1866.....	560.....	All
1866.....	682.....	All
1866.....	716.....	All
1866.....	783.....	All
1867.....	375.....	1-5, 7-10
1867.....	677.....	1
1867.....	871.....	All
1867.....	955.....	All
1868.....	280.....	All
1868.....	430.....	1-3
1868.....	645.....	All
1868.....	670.....	All
1868.....	793.....	All
1868.....	820.....	All
1869.....	478.....	All
1869.....	574.....	3
1869.....	631.....	1, 2, 4
1869.....	742.....	1-4, 8
1869.....	749.....	All
1869.....	873.....	All
1869.....	895.....	4, 5
1870.....	19.....	All
1870.....	151.....	4

Laws of	Chapter	Section
1870.....	299.....	All
1870.....	366.....	All
1870.....	423.....	All
1870.....	636.....	All
1871.....	77.....	All
1871.....	259.....	All
1872.....	113.....	All
1872.....	181.....	All
1872.....	411.....	All
1872.....	721.....	All
1872.....	747.....	1-3, 5, 6
1873.....	19.....	All
1873.....	644.....	All
1873.....	777.....	All
1874.....	12.....	1-6, 8, 9
1874.....	53.....	All
1874.....	116.....	All
1874.....	207.....	All
1874.....	209.....	2-4
1874.....	262.....	All
1874.....	340.....	All
1874.....	440.....	All
1874.....	570.....	2
1875.....	19.....	All
1875.....	24.....	All
1875.....	97.....	All
1875.....	107.....	All
1875.....	205.....	All
1875.....	246.....	All
1875.....	303.....	All
1876.....	1.....	All
1876.....	108.....	All
1876.....	122.....	All
1876.....	182.....	2, 3
1876.....	201.....	All
1876.....	333.....	All
1876.....	426.....	All
1877.....	178.....	All
1877.....	208.....	All
1877.....	261.....	All
1877.....	428.....	All
1877.....	451.....	All
1878.....	28.....	All



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Laws of	Chapter	Section
1878.....	189.....	All
1878.....	288.....	All
1878.....	401.....	All
1879.....	24.....	All
1879.....	186.....	All
1879.....	227.....	All
1879.....	328.....	2
1879.....	403.....	All
1879.....	474.....	All
1880.....	42.....	All
1880.....	176.....	7
1880.....	186.....	All
1880.....	209.....	All
1880.....	278.....	All
1880.....	283.....	All
1880.....	370.....	All
1880.....	449.....	All
1880.....	541.....	2
1881.....	87.....	All
1881.....	222.....	All
1881.....	419.....	All
1881.....	436.....	All
1881.....	496.....	All
1881.....	676.....	All
1882.....	102.....	All
1882.....	165.....	All
1882.....	384.....	All
1883.....	302.....	All
1883.....	358.....	All
1884.....	46.....	All
1884.....	369.....	All
1884.....	377.....	All
1884.....	378.....	All
1884.....	380.....	All
1885.....	8.....	All
1885.....	490.....	All
1885.....	513.....	All
1885.....	519.....	All
1885.....	523.....	All
1886.....	31.....	All
1886.....	68.....	All
1886.....	390.....	All
1886.....	547.....	All
1886.....	645.....	All

Laws of	Chapter	Section
1886.....	654.....	All
1886.....	663.....	All
1887.....	23.....	All
1887.....	153.....	All
1887.....	532.....	All
1887.....	535.....	All
1887.....	687.....	All
1887.....	688.....	All
1887.....	689.....	All
1887.....	690.....	All
1887.....	691.....	All
1887.....	692.....	All
1887.....	693.....	All
1887.....	711.....	9, part beginning "and the court" to end of sentence
1888.....	1.....	All
1888.....	144.....	All
1888.....	145.....	All
1888.....	219.....	All
1888.....	282.....	All
1888.....	490.....	5, 7
1888*.....	490.....	6
1888.....	491.....	All
1888.....	492.....	All
1888.....	493.....	All
1888.....	526.....	All
1889.....	8.....	All
1889.....	45.....	All
1889.....	46.....	All
1889.....	140.....	All
1889.....	141.....	All
1889.....	170.....	All
1889.....	267.....	All
1889.....	428.....	All
1889.....	497.....	All
1889.....	500.....	All
1890.....	41.....	All
1890.....	94.....	All
1890.....	220.....	All

\* Inserted and expressly repealed by L. 1909, Ch. 240, § 98, in effect April 22, 1909.

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Laws of	Chapter	Section
1890.....	280.....	All
1890.....	336.....	All
1890.....	340.....	All
1890.....	378.....	All
1890.....	417.....	All
1890.....	458.....	All
1891.....	115.....	All
1891.....	120.....	All
1891.....	327.....	All
1891.....	358.....	All
1892.....	186.....	All
1892.....	217.....	All
1892.....	218.....	All
1892.....	268.....	All
1892.....	272.....	All
1892.....	309.....	All
1892.....	325.....	All
1892.....	372.....	All
1892.....	406.....	All
1892.....	587.....	1
1892.....	622.....	All
1892.....	634.....	All
1892.....	662.....	All
1892.....	692.....	All
1892.....	693.....	All
1892.....	699.....	All
1893.....	114.....	All
1893.....	279.....	All
1893.....	292.....	All
1893.....	296.....	All
1893.....	461.....	All
1893.....	650.....	All
1893.....	681.....	All
1893.....	692.....	All
1893.....	708.....	All
1893.....	709.....	All
1894.....	77.....	All
1894.....	164.....	All
1894.....	171.....	All
1894.....	259.....	All
1894.....	265.....	All

Laws of	Chapter	Section
1894.....	282.....	All
1894.....	320.....	All
1894.....	426.....	2
1894*.....	426.....	3
1894.....	474.....	All
1894.....	505.....	All
1894.....	551.....	All
1894.....	626.....	All
1894.....	714.....	All
1894.....	726.....	All
1894.....	753.....	All
1895.....	72.....	All
1895.....	155.....	All
1895.....	287.....	All
1895.....	460.....	All
1895.....	571.....	All
1895.....	572.....	All
1895.....	721.....	All
1895.....	726.....	All
1895.....	727.....	All
1895.....	778.....	All
1895.....	823.....	All
1895.....	883.....	All
1895.....	885.....	All
1895.....	890.....	All
1895.....	892.....	All
1895.....	902.....	All
1896.....	112.....	40, 41
1896.....	301.....	All
1896.....	304.....	All
1896.....	366.....	All
1896.....	374.....	All
1896.....	410.....	All
1896.....	414.....	All
1896.....	549.....	All
1896.....	550.....	All
1896.....	551.....	All
1896.....	552.....	All
1896.....	553.....	All

\* Inserted and expressly repealed by L. 1909, Ch. 240, § 101, in effect April 22, 1909.

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Law of	Chapter	Section
1896.....	554.....	All
1896.....	648.....	All
1896.....	664.....	All
1896.....	931.....	5
1896.....	1002.....	All
1897.....	42.....	All
1897.....	183.....	All
1897.....	255.....	All
1897.....	256.....	All
1897.....	267.....	All
1897.....	312.....	28
1897.....	416.....	All
1897.....	506.....	All
1897.....	548.....	All
1897.....	549.....	All
1897.....	554.....	2, 3
1897.....	584.....	All
1897.....	613.....	1
1898.....	156.....	All
1898.....	165.....	4
1898.....	197.....	All
1898.....	325.....	All
1898.....	330.....	All
1898.....	394.....	All
1898.....	555.....	10
1898.....	657.....	All
1898.....	663.....	All
1898.....	664.....	5
1898.....	671.....	All
1899.....	12.....	All
1899.....	184.....	All
1899.....	225.....	2
1899.....	265.....	All
1899.....	316.....	All
1899.....	327.....	All
1899.....	338.....	All
1899.....	343.....	All
1899.....	475.....	All
1899.....	515.....	All
1899.....	529.....	All
1899.....	530.....	All

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Laws of	Chapter	Section
1899.....	603.....	All
1899.....	655.....	All
1899.....	724.....	All
1900.....	70.....	All
1900.....	109.....	All
1900.....	114.....	All
1900.....	171.....	All
1900.....	216.....	All
1900.....	222.....	All
1900.....	270.....	All
1900.....	494.....	All
1900.....	508.....	All
1900.....	584.....	All
1900.....	586.....	All
1900.....	588.....	All
1900.....	589.....	All
1900.....	731.....	All
1900.....	759.....	All
1900.....	768.....	All
1901.....	128.....	All
1901.....	190.....	All
1901.....	367.....	All
1901.....	371.....	All
1901.....	392.....	All
1901.....	425.....	All
1901.....	528.....	All
1901.....	560.....	1
1901.....	588.....	All
1901.....	636.....	All
1901.....	661.....	All
1902.....	61.....	All
1902.....	83.....	All
1902.....	103.....	All
1902.....	116.....	All
1902.....	148.....	All
1902.....	203.....	All
1902.....	266.....	All
1902.....	282.....	All
1902.....	333.....	All
1902.....	371.....	All
1902.....	486.....	All

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Laws of	Chapter	Section
1903.....	50.....	All
1903.....	272.....	All
1903.....	309.....	All
1903.....	326.....	All
1903.....	331.....	All
1903.....	332.....	All
1903.....	333.....	All
1903.....	349.....	All
1903.....	376.....	All
1903.....	380.....	All
1903.....	494.....	All
1904.....	388.....	All
1904.....	423.....	All
1904.....	489.....	All
1904.....	494.....	All
1904.....	539.....	All
1904.....	649.....	All
1904.....	657.....	All
1904.....	659.....	All
1904.....	661.....	All
1905.....	80.....	All
1905.....	92.....	All
1905.....	136.....	All
1905.....	168.....	All
1905.....	242.....	All
1905.....	248.....	All
1905.....	270.....	All
1905.....	279.....	1
1905.....	287.....	All
1905.....	326.....	All
1905.....	366.....	All
1905.....	440.....	All
1905.....	441.....	All
1905.....	442.....	All
1905.....	443.....	All
1905.....	556.....	All
1905.....	590.....	All
1905.....	625.....	All
1905.....	655.....	All
1905.....	692.....	All
1906.....	36.....	All

Laws of	Chapter	Section
1906.....	41.....	All
1906.....	138.....	All
1906.....	231.....	All
1906.....	286.....	All
1906.....	324.....	All
1906.....	353.....	All
1906.....	413.....	All
1906.....	453.....	All
1906.....	454.....	All
1906.....	485.....	All
1906.....	503.....	All
1906.....	516.....	All
1906.....	521.....	All
1907.....	192.....	All
1907.....	297.....	All
1907.....	398.....	All
1907.....	405.....	All
1907.....	417.....	All
1907.....	424.....	All
1907.....	506.....	All
1907.....	523.....	All
1907.....	544.....	All
1907.....	546.....	All
1907.....	581.....	All
1907.....	582.....	All
1907.....	583.....	All
1907.....	584.....	All
1907.....	626.....	All
1907.....	645.....	All
1907.....	649.....	All
1907.....	682.....	All
1907.....	683.....	All
1907.....	737.....	All
1907.....	738.....	All
1907.....	741.....	All
1908.....	93.....	All
1908.....	118.....	All
1908.....	133.....	All
1908.....	157.....	All
1908.....	276.....	All
1908.....	277.....	All



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Laws of	Chapter	Section
1908.....	427.....	All
1908.....	428.....	All
1908.....	449.....	All
1908.....	458.....	All
1908.....	507.....	All
Code Civil Procedure.....		13, 32, 33, 63, 64, 70, 71, 73-77, 78-81, 106; 125, part pre- scribing penalty for violation; 130, 159, 334, 851, 961, last sentence, 1120, 1122-1125 1158-1161, 1193, 1194

# PERSONAL PROPERTY LAW

## Laws 1909, Chap. 45.

AN ACT relating to personal property, constituting chapter forty-one of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

## CHAPTER 41 OF THE CONSOLIDATED LAWS

### PERSONAL PROPERTY LAW

- Article 1. Short title (§ 1).
2. Future estates; charitable uses; accumulation of income; trust estates (§§ 10-23).
  3. Agreements in writing; without consideration; fraudulent; factors (§§ 30-44).
  4. Contracts for the conditional sale of goods and chattels (§§ 60-67).
  5. Laws repealed; when to take effect (§§ 80, 81).

### ARTICLE 1

#### Short Title

Section 1. Short title.

§ 1. **Short title.** This chapter shall be known as the "Personal Property Law."

### ARTICLE 2

#### Future Estates; Charitable Uses; Accumulation of Income; Trust Estates

- Section 10. Definitions.
11. Suspension of ownership.
  12. Gifts and bequests of personal property for charitable purposes.
  13. Certain educational and other charitable uses authorized.

Section 13-a. Trusts for care of cemetery lots, etc.

14. Certain gifts for charitable and educational uses regulated.
15. When income of trust fund is not alienable.
16. Validity of directions for accumulation of income.
17. Anticipation of directed accumulation.
18. Power to bequeath executed by general provision in will.
19. Disaffirmance of fraudulent acts by executors and others.
20. When trust vests in supreme court.
21. Investment of trust funds.
22. Commissions of trustees.
23. Revocation of trusts upon consent of all persons interested.

**§ 10. Definitions.** The term "income of personal property," as used in this article, means the income or profits arising from personal property, and includes the interest of money and the produce of stock.

**§ 11. Suspension of ownership.** The absolute ownership of personal property shall not be suspended by any limitation or condition, for a longer period than during the continuance and until the termination of not more than two lives in being at the date of the instrument containing such limitation or condition; or, if such instrument be a last will and testament, for not more than two lives in being at the death of the testator. In other respects limitations of future or contingent interests in personal property, are subject to the rules prescribed in relation to future estates in real property.

**§ 12. Gifts and bequests of personal property for charitable purposes.** 1. No gift, grant, or bequest to religious, educational, charitable, or benevolent uses, which shall in other respects be valid under the laws of this state, shall be deemed invalid by reason of the indefiniteness or uncertainty of the persons designated as the beneficiaries thereunder in the instrument creating the same. If in the instrument creating such a gift, grant, or bequest there is a trustee named to execute the same, the legal title to the property given, granted, or bequeathed for such purposes shall vest in such trustee. If no person be named as trustee then the title to such property shall vest in the supreme court.

2. The supreme court shall have control over gifts, grants and bequests in all cases provided for by subdivision one of this

section, and, whenever it shall appear to the court that circumstances have so changed since the execution of an instrument containing a gift, grant or bequest to religious, educational, charitable or benevolent uses as to render impracticable or impossible a literal compliance with the terms of such instrument, the court may, upon the application of the trustee or of the person or corporation having the custody of the property, and upon such notice as the court shall direct, make an order directing that such gift, grant or bequest shall be administered or expended in such manner as in the judgment of the court will most effectually accomplish the general purpose of the instrument, without regard to and free from any specific restriction, limitation or direction contained therein; provided, however, that no such order shall be made without the consent of the donor or grantor of the property, if he be living. (*Subd. 2 thus amended by L. 1909, ch. 144, in effect April 3, 1909.*)

**Amendment of 1909** struck out the words "until the expiration of at least twenty-five years after the execution of the instrument or" which followed the words "order shall be made" near end of section.

3. The attorney-general shall represent the beneficiaries in all such cases, and it shall be his duty to enforce such trusts by proper proceedings in the courts.

**§ 13. Certain educational and other charitable uses authorized.** 1. Personal property may be granted, bequeathed, and conveyed to any incorporated college or other literary incorporated institution in this state, to be held in trust for any one or more of the following purposes:

- (1). To establish and maintain an observatory;
- (2). To found and maintain professorships and scholarships;
- (3). To provide and keep in repair a place for the burial of the dead; or
- (4). For any other specific purposes comprehended in the general objects authorized by their respective charters.

The said trusts may be created, subject to such conditions and visitations as may be prescribed by the grantor or donor, and agreed to by said trustees, and all property which shall hereafter be granted to any incorporated college or other literary incorporated institution in trust for any of the aforesaid purposes, may be held by such college or institution upon such trusts, and subject to such conditions and visitations as may be prescribed and agreed to as aforesaid.

2. Personal estate may be granted, bequeathed, and conveyed to the corporation of any city or village of this state, to be held in trust for any purpose of education, or the diffusion of knowledge, or for the relief of distress, or for parks, gardens, or other

ornamental grounds, or grounds for the purposes of military parades and exercise, or health and recreation, within or near such incorporated city or village, upon such conditions as may be prescribed by the grantor or donor, and agreed to by such corporation.

3. Personal estate may be granted, or bequeathed to commissioners of common schools of any town, and to trustees of any school district, in trust for the benefit of the common schools of such town, or for the benefit of the schools of such district.

4. The trusts authorized by this section may continue for such time as may be necessary to accomplish the purposes for which they may be created.

**§ 13-a. Trusts for care of cemetery lots, etc.** Gifts, grants and bequests of personal property, in trust for the purpose of perpetual care and maintenance, improvement or embellishment of private burial lots in cemeteries, and the walks, fences, monuments, structures and tombs thereon, are permitted and shall be deemed to be for charitable and benevolent uses; and shall not be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instrument erecting the same, nor shall they be deemed invalid as violating any existing laws against perpetuities or suspension of the power of alienation of title to property. But nothing herein contained shall affect any existing authority of the courts to pass upon the reasonableness of the amount of such gift, grant or bequest. (*Added by L. 1909, ch. 218, in effect April 20, 1909.*)

**§ 14. Certain gifts for charitable and educational uses regulated.** 1. Any person desiring, in his lifetime, to promote the public welfare by founding, endowing and having maintained a public library, museum or other educational institutions, or a chapel and crematory, within this state, may to that end and for such purposes by grant, in writing, convey to a trustee, or any number of trustees, named in such grant, and to their successors, any personal property belonging to such person.

2. The person making such grant may therein designate:

(1). The nature, object and purposes of the institution to be founded, endowed and maintained.

(2). The name by which it shall be known.

(3). The powers and duties of the trustee or trustees and the manner in which he or they shall account, and to whom, if accounting be required; but such powers and duties shall not be held to be exclusive of other powers which may be necessary to enable such trustee or trustees to fully carry out the object of such grant.

(4). The mode and manner, and by whom, the successors to the trustee or trustees named in the grant are to be appointed.

(5). Such rules and regulations for the management of the property conveyed as the grantor may elect to prescribe; but such rules shall, unless the grantor otherwise prescribe, be deemed advisory only, and shall not preclude such trustee or trustees from making such changes as new conditions may from time to time require.

(6). The place or places where, and the time when, the building or buildings necessary and proper for the institution shall be erected, and the character and extent thereof. The person making such grant may therein provide for all other things necessary and proper to carry out the purposes thereof, and especially may such person provide for such lectures, exhibitions, instruction or amusement in connection with such institution as he may deem desirable.

3. The trustee or trustees named in such grant and their successors, may in the name of the institution, as designated in such grant, sue and defend, in relation to the trust property and in relation to all matters affecting the institution endowed and established by such grant.

4. The person making such grant, by a provision therein, may elect, in relation to the property conveyed and in relation to the erection, maintenance and management of such institution, to perform, during his life, all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named. If the person making such grant, and making the election aforesaid, be a married person, such person may further provide that if the wife of such person survive him, then such wife, during her life, may, in relation to the property conveyed, and in relation to the erection, maintenance and management of such institution, perform all the duties and exercise all the powers, which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named, and in all such cases the powers and duties conferred and imposed by such grant upon the trustee or trustees therein named, shall be exercised and performed by the person making such grant, or by his wife during his or her life, as the case may be; provided, however, that upon the death of such person, or his surviving wife, as the case may be, such powers and duties shall devolve upon and shall be exercised by the trustee or trustees named in the grant and their successors.

5. The person making such grant may therein reserve the right to alter, amend or modify the terms and conditions thereof and the trusts therein created, in respect to any of the matters mentioned or referred to in paragraphs numbered one to six inclusive of subdivision two hereof; and may also therein reserve the

right, during the life of such person, of absolute dominion over the personal property conveyed, without liability to account therefor in any manner whatever, and without any liability over against the estate of such person; and if any such person be married, such person may, in said grant, further provide that if his wife survive him, then such wife, during her life, may have the same dominion over such personal property, without liability to account therefor in any manner whatever, and without liability over against the estate of either of the spouses.

6. Any such grant may be executed, acknowledged and recorded in the same manner as is now provided by law for the execution, acknowledging and recording of grants of real property.

7. No suit, action or proceedings shall be commenced or maintained by any person to set aside, annul or affect said conveyance, or to affect the title to the property conveyed, or the right to the possession, or to the issues and profits thereof, unless the same be commenced within two years after the date of filing such grant for record; nor shall any defense be made to any suit, action or proceeding commenced by the trustee or trustees named in said grant or their successors, privies or persons holding under them, which defense involves the legality of said grant, or affects the title to the property thereby conveyed, or the right to the possession or the issues and profits thereof, unless such defense is made in a suit, action or proceeding commenced within two years after such grant shall have been filed for record.

#### **§ 15. When income of trust fund is not alienable.**

1. The right of the beneficiary to enforce the performance of a trust to receive the income of personal property, and to apply it to the use of any person, can not be transferred by assignment or otherwise. But the right and interest of the beneficiary of any other trust in personal property may be transferred.

2. The provisions of this section shall not impair or affect any rights existing on March twenty-fifth, nineteen hundred and three.

#### **§ 16. Validity of directions for accumulation of income.**

An accumulation of the income of personal property, directed by any instrument sufficient in law to pass such property is valid:

1. If directed to commence from the date of the instrument, or the death of the person executing the same, and to be made for the benefit of one or more minors, then in being, or in being at such death, and to terminate at or before the expiration of their minority.

2. If directed to commence at any period subsequent to the date of the instrument or subsequent to the death of the person

executing it, and directed to commence within the time allowed for the suspension of the absolute ownership of personal property, and at some time during the minority of the persons for whose benefit it is intended, and to terminate at or before the expiration of their minority.

3. All other directions for the accumulation of the income of personal property, not authorized by statute, are void. In either case mentioned in subdivisions one and two of this section a direction for any such accumulation for a longer term than the minority of the persons intended to be benefited thereby, has the same effect as if limited to the minority of such persons, and is void as respects the time beyond such minority.

Provided that, the income arising from any personal property granted or conveyed, or bequeathed, in trust to any incorporated college or other incorporated literary institution, for any of the purposes specified in section thirteen of this chapter, or for the purpose of providing for the maintenance of any teacher in a grammar school or institute, may be permitted to accumulate until the same shall amount to a sum sufficient, in the opinion of the regents of the university, to carry into effect any of the charitable uses and trusts mentioned in either section thirteen of this chapter or in this paragraph of this section.

Provided, if any of the principal of any trust fund actually received by any incorporated college, or other incorporated literary institution, or by the corporation of any city or village, or by the commissioners of common schools of any town, or by the trustees of any school district, under any grant, conveyance, or bequest, for any of the purposes for which trusts are authorized under section thirteen of this chapter, shall subsequently become diminished from any cause, such diminution may be made up by the accumulation of the interest or income of the principal of such trust fund, in accordance with the directions, if any, contained in the grant, conveyance, or bequest of such trust fund; and if no directions for that purpose are contained in such grant, conveyance, or bequest, then such diminution may be made up in whole or in part by such accumulation, in the discretion of the trustees of such trust fund; but in no case shall such accumulation be allowed to increase the trust fund beyond the true amount or value thereof, actually received by the trustees, to be estimated after the deduction of all liens and incumbrances on such trust fund, and of all expenses incurred or paid by the trustees in the collection or obtaining the possession of the same.

**§ 17. Anticipation of directed accumulation.** When a minor, for whose benefit a valid accumulation of the income



of personal property has been directed, shall be destitute of other sufficient means of support or education, the supreme court, at special term in any case, or, if such accumulation shall have been directed by a will, the surrogate's court of the county in which such will shall have been admitted to probate, may, on the application of such minor or his guardian, cause a suitable sum to be taken from the moneys accumulated or directed to be accumulated, to be applied for the support or education of such minor.

**§ 18. Power to bequeath executed by general provision in will.** Personal property embraced in a power to bequeath, passes by a will or testament purporting to pass all the personal property of the testator; unless the intent, that the will or testament shall not operate as an execution of the power, appears therein either expressly or by necessary implication.

**§ 19. Disaffirmance of fraudulent acts by executors and others.** An executor, administrator, receiver, assignee or trustee, may, for the benefit of creditors or others interested in personal property, held in trust, disaffirm, treat as void and resist any act done, or transfer or agreement made in fraud of the rights of any creditor, including himself, interested in such estate, or property, and a person who fraudulently receives, takes or in any manner interferes with the personal property of a deceased person, or an insolvent corporation, association, partnership or individual is liable to such executor, administrator, receiver or trustee for the same or the value thereof, and for all damages caused by such act to the trust estate. A creditor of a deceased insolvent debtor, having a claim against the estate of such debtor, exceeding in amount the sum of one hundred dollars, may, without obtaining a judgment on such claim, in like manner, for the benefit of himself and other creditors interested in said estate, disaffirm, treat as void and resist any act done or conveyance, transfer or agreement made in fraud of creditors or maintain an action to set aside such act, conveyance, transfer or agreement. Such claim, if disputed, may be established in such action. The judgment in such action may provide for the sale of the property involved, when a conveyance or transfer thereof is set aside, and that the proceeds thereof be brought into court or paid into the proper surrogate's court to be administered according to law.

**§ 20. When trust vests in supreme court.** On the death of a last surviving or sole surviving trustee of an express trust, the trust estate does not pass to his next of kin or personal representative, but, if the trust be unexecuted, in the absence of

a contrary direction on the part of the person creating the same, it vests in the supreme court and shall be executed by some person appointed by the court, whom the court may invest with all or any of the powers and duties of the original trustee or trustees. The beneficiary or beneficiaries of the trust shall have such notice as the court may direct of the application for the appointment of such person; and the person so appointed shall give such security as the court may require, and shall be subject to the same requirement of law as to accounting and as to the administration of the trust as apply to testamentary trustees; and shall be entitled to such compensation for his services by way of commissions as the court appointing him shall determine, which shall in no case exceed that now allowed by law to executors and administrators, besides his just and reasonable expenses in the matter in which he is appointed.

**§ 21. Investment of trust funds.** A trustee or other person holding trust funds for investment may invest the same in the same kind of securities as those in which savings banks of this state are by law authorized to invest the money deposited therein, and the income derived therefrom, and in bonds and mortgages on unincumbered real property in this state worth fifty per centum more than the amount loaned thereon. A trustee or other person holding trust funds may require such personal bonds or guaranties of payment to accompany investments as may seem prudent, and all premiums paid on such guaranties may be charged to or paid out of income, providing that such charge or payment be not more than at the rate of one-half of one per centum per annum on the par value of such investments. But no trustee shall purchase securities hereunder from himself.

**§ 22. Commissions of trustees.** Any trustee, under a deed of trust to sell personal property for the benefit of creditors, shall be entitled to and allowed upon an accounting the same commissions as an assignee for the benefit of creditors.

**§ 23. Revocation of trusts upon consent of all persons interested.** Upon the written consent of all the persons beneficially interested in a trust in personal property or any part thereof heretofore or hereafter created, the creator of such trust may revoke the same as to the whole or such part thereof, and thereupon the estate of the trustee shall cease in the whole or such part thereof. (*Added by L. 1909, ch. 247, in effect April 23, 1909.*)

### ARTICLE 3

#### **Agreements in Writing; Without Consideration; Fraudulent; Factors**

Section 30. Definitions.

31. Agreements required to be in writing.
32. Transfers and mortgages of interests in decedents' estates to be in writing, and recorded.
33. Validity of certain agreements made without consideration.
34. Transfers in trust for the transferrer.
35. Transfers and charges with fraudulent intent.
36. Sales and charges other than chattel mortgages without delivery and change of possession.
37. Fraudulent intent a question of fact.
38. Transfers or charges without consideration.
39. Successors to rights of creditors and purchasers.
40. Bona fide purchasers.
41. Transfer of claims.
42. Lenders of money on salaries to file copies of agreement.
43. Factors' act.
44. Transfer of goods in bulk.

**§ 30. Definitions.** As used in this article, the term "transfer" includes sale, assignment, conveyance, deed and gift, and the term "agreement" includes promise and undertaking.

**§ 31. Agreements required to be in writing.** Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:

1. By its terms is not to be performed within one year from the making thereof;
2. Is a special promise to answer for the debt, default or mis-carriage of another person;
3. Is made in consideration of marriage, except mutual promises to marry;
4. Is a conveyance or assignment of a trust in personal property;
5. Is a subsequent or new promise to pay a debt discharged in bankruptcy;
6. Is a contract for the sale of any goods, chattels or things in

action for the price of fifty dollars or more, and the buyer does not accept and receive part of such goods, or the evidences, or some of them, of such things in action; nor at the time, pay any part of the purchase money.

If goods be sold at public auction, and the auctioneer at the time of the sale, enters in a sale book, a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale was made, such memorandum is equivalent in effect to a note of the contract or sale, subscribed by the party to be charged therewith.

**§ 32. Transfers and mortgages of interests in decedents' estates to be in writing, and recorded.** Every conveyance, assignment, or other transfer *et c.*, and every mortgage or other charge upon the interest, or any part thereof, of any person in the estate of a decedent which is situated within this state, shall be in writing, and shall be acknowledged or proved in the manner required to entitle conveyances of real property to be recorded. Any such instrument may also be recorded as hereinafter provided; and if not so recorded, it is void against any subsequent purchaser or mortgagee of the same interest or any part thereof, in good faith and for a valuable consideration, whose conveyance or mortgage is first duly recorded. If such interest is entirely in the personal property of a decedent, the conveyance or mortgage shall be recorded in the office of the surrogate issuing letters testamentary or letters of administration upon the said decedent's estate, or if no such letters have been issued, then in the office of the surrogate having jurisdiction to issue the same. If such interest is in both the personal and the real property of a decedent, the conveyance or mortgage shall be recorded in the office of the said surrogate and also in the office of the county clerk. Such a conveyance or mortgage when so recorded, shall be indexed under the name of the decedent in a book to be kept for that purpose by each recording officer. The person presenting any such instrument for record shall pay to the clerk of the surrogate's court a fee of ten cents for each folio.

**§ 33. Validity of certain agreements made without consideration.** An agreement for the purchase, sale, transfer or delivery of a certificate or other evidence of debt, issued by the United States or by any state, or a municipal or other corporation, or of any share or interest in the stock of any bank corporation or joint stock association, incorporated or organized under the laws of the United States or of any state, is not void

or voidable, for want of consideration, or because of the non-payment of consideration, or because the vendor, at the time of making such contract, is not the owner or possessor of the certificate or certificates or other evidence of debt, share or interest.

**§ 34. Transfers in trust for the transferrer.** A transfer of personal property, made in trust for the use of the person making it, is void as against the existing or subsequent creditors of such person.

**§ 35. Transfers and charges with fraudulent intent.** Every transfer of any interest in personal property, or the income thereof, and every charge on such property or income, made with the intent to hinder, delay or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suit commenced, or decree or judgment suffered, with such intent, is void as against every person so hindered, delayed or defrauded.

**§ 36. Sales and charges other than chattel mortgages without delivery and change of possession.** Every sale of goods and chattels in the possession or under the control of the vendor, and every assignment of goods and chattels by way of security or on any condition, but not constituting a mortgage nor intended to operate as a mortgage, unless accompanied by an immediate delivery followed by actual and continued change of possession, is presumed to be fraudulent and void as against all persons who are creditors of the vendor or person making the sale or assignment, including all persons who are his creditors at any time while such goods or chattels remain in his possession or under his control or subsequent purchasers of such goods and chattels in good faith; and is conclusive evidence of such fraud, unless it appear, on the part of the person claiming, under the sale or assignment, that it was made in good faith, and without intent to defraud such creditors or purchasers.

But this section does not apply to a contract of bottomry or respondentia, or to an assignment of a vessel or goods at sea or in a foreign port.

**§ 37. Fraudulent intent a question of fact.** The question of the existence of fraudulent intent in cases arising under this article, is a question of fact and not of law.

**§ 38. Transfers or charges without consideration.** A transfer or charge shall not be adjudged fraudulent as against

creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

**§ 39. Successors to rights of creditors and purchasers.** A transfer, charge, sale or assignment, or proceeding declared by this article, to be void, as against creditors or purchasers, is equally void as against the heirs, successors, personal representatives or assignees of such creditors or purchasers.

**§ 40. Bona fide purchasers.** This article does not affect or impair the title of a purchaser or incumbrancer for a valuable consideration, unless it appear that such purchaser or incumbrancer had previous notice of the fraudulent intent of his immediate vendor, or of the fraud rendering void the title of such vendor.

**§ 41. Transfer of claims.** 1. Any claim or demand can be transferred, except in one of the following cases:

(1) Where it is to recover damages for a personal injury, or for a breach of promise to marry.

(2) Where it is founded upon a grant, which is made void by a statute of the state; or upon a claim to or interest in real property, a grant of which, by the transferrer, would be void by such a statute.

(3) Where a transfer thereof is expressly forbidden by a statute of the state, or of the United States, or would contravene public policy.

2. A judgment for a sum of money, or directing the payment of a sum of money, recovered upon any cause of action, may be transferred; but if it is vacated or reversed, the transfer thereof does not transfer the cause of action unless the latter was transferable before the judgment was recovered.

3. Where a claim or demand can be transferred, the transfer thereof passes an interest, which the transferee may enforce by an action or special proceeding, or interpose as a defense or counter-claim, in his own name, as the transferrer might have done; subject to any defense or counter-claim, existing against the transferrer, before notice of the transfer, or against the transferee. But this section does not apply, where the rights or liabilities of a party to a claim or demand, which is transferred, are regulated by special provision of law; nor does it vary the rights or liabilities of a party to a negotiable instrument, which is transferred.

**§ 42. Lenders of money on salaries to file copies of agreement.** 1. Any person or persons, firm, corporation or company, who shall after March eighteenth, nineteen hundred and four, make to any employee an advance of money, or loan, on account of salary or wages due or to be earned in the future by such individual, upon an assignment or note covering such loans or advances, shall not acquire any right to collect or attach the same while in the possession or control of the employer, unless within a period of three days after the execution of such assignment or notes and the making of such loan or loans, the party making such loan and taking such assignment shall have filed with the employer or employers of the individual so assigning his present or prospective salary or wages, a duly authenticated copy of such agreement or assignment or notes under which the claim is made.

2. No action shall be maintained in any of the courts of this state, brought by the holder of any such contract, assignment or notes, given by an employee for moneys loaned on account of salary or wages, in which it is sought to charge in any manner the employer or employers, unless it shall appear to the satisfaction of the court that a copy of such agreement, assignment or notes, together with a notice of lien, was duly filed with the employer or employers of the person making such agreement, assignment or notes, by the person or persons, corporation or company making said loan within three days after the said loan was made and the said agreement, assignment or notes were given.

**§ 43. Factors' act.** 1. Every factor or other agent, intrusted with the possession of any bill of lading, custom-house permit, or warehouseman's receipt for the delivery of any merchandise, and every such factor or agent not having the documentary evidence of title, who shall be intrusted with the possession of any merchandise for the purpose of sale, or as a security for any advances to be made or obtained thereon, shall be deemed to be the true owner thereof, so far as to give validity to any contract made by such agent with any other person, for the sale or disposition of the whole or any part of such merchandise, for any money advanced, or negotiable instrument or other obligation in writing given by such other person upon the faith thereof.

2. Every person who shall hereafter accept or take any such merchandise in deposit from any such agent, as a security for any antecedent debt or demand, shall not acquire thereby, or enforce any right or interest in or to such merchandise or document, other than was possessed or might have been enforced by such agent at the time of such deposit.

3. Nothing contained in the preceding subdivisions of this sec-

tion shall be construed to prevent the true owner of any merchandise so deposited, from demanding or receiving the same, upon prepayment of the money advanced, or on restoration of the security given, on the deposit of such merchandise, and upon satisfying such lien as may exist thereon in favor of the agent who may have deposited the same; nor from recovering any balance which may remain in the hands of the person with whom such merchandise shall have been deposited, as the produce of the sale thereof, after satisfying the amount justly due to such person by reason of such deposit.

4. Nothing contained in this section shall authorize a common carrier, warehouseman, or other person to whom merchandise or other property may be committed for transportation or storage only, to sell or hypothecate the same.

**§ 44. Transfer of goods in bulk.** 1. The transfer of any portion of a stock of goods, wares or merchandise otherwise than in the ordinary course of trade, in the regular and usual prosecution of the transferer's business, or the transfer of an entire such stock in bulk, shall be presumed to be fraudulent and void as against the creditors of the transferer, unless the proposed transferee shall, at least five days before the transfer, in good faith, make full and explicit inquiry of the transferer as to the names and addresses of each and all of the creditors of the transferer, and unless such transferee shall at least five days before the transfer in good faith notify or cause to be notified of the proposed transfer personally or by registered mail each of the creditors of the transferer of whom such transferee has knowledge, or can with the exercise of reasonable diligence acquire knowledge.

2. The transferer shall at least five days before such transfer fully and truthfully answer in writing such transferee's inquiries as to the names and addresses of the transferer's creditors, and if such transferer shall knowingly or wilfully refuse so to answer or make or deliver or cause to be made or delivered to such transferee any false or incomplete answer to such inquiries, said transferer shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly.

3. Transfers under this section shall include sales, exchanges and assignments, but nothing contained in this section shall apply to transfers by executors, administrators, receivers, assignees under a voluntary assignment for the benefit of creditors, trustee in bankruptcy, or by any public officer under judicial process.



**ARTICLE 4****Contracts for the Conditional Sale of Goods and Chattels**

Section 60. Definitions.

61. Conditional sale of railroad equipment and rolling stock.
62. Conditions and reservations in contracts for the sale of goods and chattels.
63. Where contract to be filed.
64. Indorsement, entry, refileing and discharge of conditional contracts.
65. Sale of property retaken by vendor.
66. Notice of sale.
67. Disposition of proceeds.

**§ 60. Definitions.** The term "conditional vendor," when used in this article, means the person contracting to sell goods and chattels upon condition that the ownership thereof is to remain in such person, until such goods and chattels are fully paid for or until the occurrence of any future event or contingency; the term "conditional vendee," when so used, means the person to whom such goods and chattels are so sold.

**§ 61. Conditional sale of railroad equipment and rolling stock.** Whenever any railroad equipment and rolling stock is sold, leased or loaned under a contract which provides that the title to such property, notwithstanding the use and possession thereof by the vendee, lessee or bailee, shall remain in the vendor, lessor or bailor, until the terms of the contract as to the payment of instalments, amounts or rentals payable, or the performance of other obligations thereunder, are fully complied with, and that title to such property shall pass to the vendee, lessee or other bailee on full payment therefor, such contract shall be invalid as to any subsequent judgment creditor of or purchaser from such vendee, lessee or bailee for a valuable consideration, without notice, unless

1. Such contract is in writing, duly acknowledged and recorded in the book in which real estate mortgages are recorded in the office of the county clerk or register of the county in which is located the principal office or place of business of such vendee, lessee or bailee; and unless

2. Each locomotive or car so sold, leased or loaned, has the name of the vendor, lessor or bailor, or of the assignee of such vendor, lessor or bailor, plainly marked upon both sides thereof, followed by the word owner, lessor, bailor or assignee, as the case may be.

**§ 62. Conditions and reservations in contracts for the sale of goods and chattels.** Except as otherwise provided in this article, all conditions and reservations in a contract for the conditional sale of goods and chattels, accompanied by delivery of the thing contracted to be sold, to the effect that the ownership of such goods and chattels is to remain in the conditional vendor or in a person other than the conditional vendee, until they are paid for, or until the occurrence of a future event or contingency, shall be void as against subsequent purchasers, pledgees or mortgagees, in good faith, and as to them the sale shall be deemed absolute, unless such contract of sale, containing such conditions and reservations, or a true copy thereof, be filed as directed in this article, and unless the other provisions of the lien law applicable to such contracts are duly complied with. Every such contract for the conditional sale of any goods and chattels attached, or to be attached, to a building, shall be void as against subsequent bona fide purchasers or incumbrancers of the premises on which said building stands, and as to them the sale shall be deemed absolute, unless, on or before the date of the delivery of such goods or chattels at such building, such contract shall have been duly and properly filed and indexed as directed in this article and unless said contract shall contain a brief description, sufficient for identification, of the premises which said building occupies, or upon which said building stands, and if in a city or village its location by street number, if known, and if in a city or county where the block system of recording and indexing conveyances is in use, the section and block within which it is located.

**§ 63. Where contract to be filed.** Such contracts except contracts for the conditional sale of goods and chattels supplied for a building and attached or to be attached thereto, shall be filed in the city or town where the conditional vendee resides, if he resides within the state at the time of the execution thereof, and if not, in the city or town where such property is at such time. Such contract shall be filed in the city of New York, as follows, namely: in the borough of Brooklyn in said city, such instrument shall be filed in the office of the register of the county of Kings; in the borough of Queens in said city, in the office of the clerk of Queens county; in the borough of Richmond in said city, in the

office of the clerk of the county of Richmond, and in the borough of Manhattan and the borough of the Bronx in said city, in the office of the register of the county of New York; in every other city or town of the state, in the office of the city or town clerk, unless there is a county clerk's office in such city or town, in which case it shall be filed in such office. But all such contracts for the conditional sale of goods and chattels, attached or to be attached to a building, shall be filed with the register of the city or county or with the county clerk of the county, in case there is no register of such county, in which the premises whereon the said building stands are located.

**§ 64. Indorsement, entry, refiling and discharge of conditional contracts.** The provisions of article ten of the lien law relating to chattel mortgages apply to the indorsement, entry, refiling and discharge of contracts for the conditional sale of goods and chattels, except contracts for the conditional sale of goods and chattels, attached or to be attached to a building. The officers with whom such first mentioned contracts are filed shall enter the future contingency or event required to occur before the ownership of said goods and chattels shall pass from the vendor to the vendee, the amount due upon such contract and the time when due. The name of the conditional vendor shall be entered in the column of "mortgagees," and the name of the conditional vendee in the column of "mortgagors." Where such contracts are for goods and chattels, attached or to be attached to a building, the following provisions apply to the indorsement, entry, refiling and discharge thereof. The above named officers, with whom such contracts are directed to be filed, shall enter the future contingency or event required to occur before the ownership of said goods and chattels shall pass from the vendor to the vendee, the amount due upon such contract, and the time when due, and shall file every such contract presented to them for that purpose, and indorse thereon its number and time of receipt; they shall enter in a book provided for that purpose, in separate columns, the names of all the parties to each contract so filed, arranged in alphabetical order, under the head of "vendees" and "vendors," the number of such contract and the date of the filing thereof, and under a column headed "property," they shall enter a brief description sufficient for identification of the land upon which said building stands, and if in a city or village, its location by street and number, if known, and if in a city or county where the block system of recording and indexing conveyances is in use, the section and block in which the said land is situated. The said officers shall also keep an index, so as to afford correct and easy reference to the books

containing the entries in regard to such last named contracts. In all cities and counties where the block system of recording and indexing conveyances is in use, the index shall be arranged according to the block numbers. A contract for the conditional sale of goods and chattels, attached or to be attached to a building, shall be invalid as against creditors of the conditional vendee and against subsequent purchasers or mortgagees in good faith of such goods and chattels or of the premises upon which the said building stands, after the expiration of the first or any succeeding term of one year, reckoning from the time of the first filing, unless: (1) within thirty days preceding the expiration of such term a statement containing a description of such contract, the names of the parties, the time when and place where filed, the interest of the conditional vendor or of any person who has succeeded to his interest in the property, claimed by virtue thereof; or (2) a copy of such contract and its indorsements, together with a statement attached thereto or indorsed thereon, showing the interest of the conditional vendor or of any person who has succeeded to his interest in the contract, is filed in the office where the contract was originally required to be filed; and the officer with whom such contract was originally filed shall enter, in a separate column, in the book above provided for, in a column headed "date of refiling," the date of the refiling of the said contract. The officers performing services under this article are entitled to receive the same fees as for like services relating to chattel mortgages. Upon the title to the goods and chattels affected by any such last mentioned contract becoming absolute in the conditional vendee or his successor in interest by the payment of the full consideration for which any such contract was made, the conditional vendor, his assignee or legal representative, upon the request of the conditional vendee or of any person interested in the property covered by such contract, must sign and acknowledge a certificate setting forth such payment. The officer with whom such contract is filed must, on receipt of such certificate, file the same in his office and write the word "discharged" in the book where the contract is entered, opposite the entry thereof, and the contract is thereby discharged.

**§ 65. Sale of property retaken by vendor.** Whenever articles are sold upon the condition that the title thereto shall remain in the vendor, or in some other person than the vendee, until the payment of the purchase price, or until the occurrence of a future event or contingency, and the same are retaken by the vendor, or his successor in interest, they shall be retained for a period of thirty days from the time of such retaking, and during such period the vendee or his successor in interest, may

comply with the terms of such contract, and thereupon receive such property. After the expiration of such period, if such terms are not complied with, the vendor, or his successor in interest, may cause such articles to be sold at public auction. Unless such articles are so sold within thirty days after the expiration of such period, the vendee or his successor in interest may recover of the vendor the amount paid on such articles by such vendee or his successor in interest under the contract for the conditional sale thereof.

**§ 66. Notice of sale.** Not less than fifteen days before such sale, a printed or written notice shall be served personally upon the vendee, or his successor in interest, if he is within the county where the sale is to be held; and if not within such county, or he can not be found therein, such notice must be mailed to him at his last known place of residence.

Such notice shall state:

1. The terms of the contract.
2. The amount unpaid thereon.
3. The amount of expenses of storage.
4. The time and place of the sale, unless such amounts are sooner paid.

**§ 67. Disposition of proceeds.** Of the proceeds of such sale, the vendor or his successor in interest may retain the amount due upon his contract, and the expenses of storage and of sale; the balance thereof shall be held by the vendor or his successor in interest, subject to the demand of the vendee or his successor in interest, and a notice that such balance is so held shall be served personally or by mail upon the vendee or his successor in interest. If such balance is not called for within thirty days from the time of sale, it shall be deposited with the treasurer or chamberlain of the city or village, or the supervisor of the town where such sale was held, and there shall be filed therewith a copy of the notice served upon the vendee or his successor in interest and a verified statement of the amount unpaid upon the contract, expenses of storage and of sale and the amount of such balance. The officer with whom such balance was deposited shall credit the vendee or his successor in interest with the amount thereof and pay the same to him on demand after sufficient proof of identity. If such balance remains in possession of such officer for a period of five years, unclaimed by the person legally entitled thereto, it shall be transferred to the funds of the town, village or city, and be applied and used as other moneys belonging to such town, village or city.

**ARTICLE 5**

**Laws Repealed; When to Take Effect**

Section 80. Laws repealed.

81. When to take effect.

**§ 80. Laws repealed.** Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

**§ 81. When to take effect.** This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

Revised Statutes....	Part 1, chapter 20, title 19, article 2, ..	All
Revised Statutes....	Part 2, chapter 1, title 2, section.....	63
Revised Statutes....	Part 2, chapter 4, title 4, .....	All
Revised Statutes....	Part 2, chapter 7, title 2, .....	All
Revised Statutes....	Part 2, chapter 7, title 3, .....	All

Laws of	Chapter	Section
1787.....	44.....	Part relating to personal property
R. L. 1813...	19.....	1
1828.....	20.....	15, ¶¶ 31, 45 (2d meet.)
1830.....	179.....	3-6
1840.....	318.....	Part relating to personal property
1841.....	261.....	Part relating to personal property
1846.....	74.....	Part relating to personal property
1855.....	432.....	Part relating to personal property
1858.....	134.....	All
1858.....	314.....	All
1863.....	464.....	All
1882.....	185.....	All
1882.....	324.....	All
1889.....	65.....	All
1889.....	487.....	All
1891.....	173.....	All
1892.....	516.....	Part relating to personal property
1893.....	452.....	All
1893.....	701.....	Part relating to personal property
1894.....	740.....	All
1896.....	249.....	Part relating to personal property
1897.....	417.....	All, except pt. of § 9 relating to guardians and executors, administrators and other trustees of deceased persons

Laws of	Chapter	Section
1897.....	418.....	110-118
1898.....	354.....	All
1900.....	248.....	4
1900.....	762.....	All
1901.....	291.....	Part relating to personal property
1902.....	150.....	All
1902.....	295.....	All, except pt. relating to guardians and executors, administrators and other trustees of deceased persons
1902.....	528.....	All
1903.....	87.....	All
1904.....	77.....	All
1904.....	259.....	All
1904.....	569.....	All
1904.....	692.....	Part relating to personal property
1904.....	698.....	All
1905.....	393.....	Part relating to personal property
1905.....	503.....	All
1907.....	669.....	All
1907.....	722.....	All
1908.....	173.....	Part relating to personal property
Code Civil Procedure .....		1909, 1910, 1912

# POOR LAW

## Laws 1909, Chap. 46.

AN ACT in relation to the poor, constituting chapter forty-two of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

## CHAPTER 42 OF THE CONSOLIDATED LAWS

### POOR LAW

- Article 1. Short title; definitions (§§ 1, 2).
2. County superintendents of the poor (§§ 3-14).
3. Overseers of the poor (§§ 20-30).
4. Settlement and place of relief of poor persons (§§ 40-57).
5. Support of bastards (§§ 60-75).
6. Soldiers, sailors and marines (§§ 80-85).
7. State poor (§§ 90-104).
8. Duties of state board of charities; powers of state charities aid association (§§ 115-121).
9. Miscellaneous provisions (§§ 130-148).
10. Laws repealed; when to take effect (§§ 160, 161).

## ARTICLE 1

### Short Title; Definitions

- Section 1. Short title.  
2. Definitions.

§ 1. **Short title.** This chapter shall be known as the "Poor Law."

§ 2. **Definitions.** A "poor person" is one unable to maintain himself, and such person shall be maintained by the town, city, county or state, according to the provisions of this chapter. In counties having but one superintendent of the poor, the term "superintendents" or "superintendents of the poor," when used



in this chapter, means such superintendent; and in towns or cities having but one overseer of the poor, the term "overseers" or "overseers of the poor," when used in this chapter, means a town or city overseer of the poor. An "alms-house" is a place where the poor are maintained at the public expense.

The town poor are such persons as are required by law to be relieved or supported at the expense of the town or city; the county poor are such persons as are required by law to be relieved or supported at the expense of the county; and the state poor are such persons as are required by law to be relieved or supported at the expense of the state.

## ARTICLE 2

### County Superintendents of the Poor

Section 3. County superintendents of the poor.

4. Appointment of superintendent as keeper of alms-house.
5. When they may direct overseers of the poor to take charge of county poor.
6. Idiots and lunatics.
7. Pestilence in alms-house.
8. Accounts of county treasurer with towns.
9. Annual apportionment of town expenses.
10. Tax levy on towns.
11. Expense of county poor.
12. Superintendents' report to the state board of charities.
13. Supervisors and members of town boards may direct as to temporary or out-door relief to the poor.
14. Penalty for neglect or false report.

**§ 3. County superintendents of the poor.** The county superintendents of the poor shall:

1. Have the general superintendence and care of poor persons who may be in their respective counties.
2. Provide and keep in repair suitable alms-houses when directed by the board of supervisors of their county.
3. Establish rules and by-laws for the government and good order of such alms-houses, and for the employment, relief, management and government of the poor therein; but such rules and regulations shall not be valid until approved by the county judge of the county, in writing.
4. Unless a keeper be appointed by the board of supervisors, as provided by section four of this article, employ suitable persons to be keepers of such houses, and physicians, matrons and all

other necessary officers and servants, and vest such power in them for the government of such houses, and the poor therein, as shall be necessary, reserving to such poor persons who may be placed under the care of such keepers, matrons, officers or servants, the right of appeal to the superintendents.

5. Purchase all necessary furniture, implements, food and materials for the maintenance of the poor in such houses, and for their employment in labor, and use, sell and dispose of the proceeds of such labor as they shall deem expedient.

6. Prescribe the rate of allowance to be made for bringing poor persons to the county alms-house, subject to such alterations as the board of supervisors may by general resolution make.

7. Authorize the keepers of such houses to certify the amount due for bringing such poor persons; which amount shall be paid by the county treasurer on the production of such certificate, countersigned and allowed by the county superintendents of the poor.

8. Summarily decide any dispute that shall arise concerning the settlement of any poor person, upon a hearing of the parties, and for that purpose may issue subpoenas to compel the attendance of witnesses, with the like powers to enforce such process, as is given to a justice of the peace in an action pending before him; their decisions shall be filed in the office of the county clerk within thirty days after they are made, and shall be conclusive and final upon all parties interested, unless an appeal therefrom shall be taken, as provided in this chapter.

9. Direct the commencement of suits by any overseer of the poor who shall be entitled to prosecute for any penalties, or upon any recognizance, bonds, or securities taken for the indemnity of any town or of the county; and in case of the neglect of any such overseer, to commence and conduct such suits, without the authority of such overseer, in the name of such superintendents.

10. Draw on the county treasurer for all necessary expenses incurred in the discharge of their duties, which draft shall be paid by such treasurer out of the moneys placed in his hands for the support of the poor.

11. Audit and settle all accounts of overseers of the poor, justices of the peace, and all other persons, for services relating to the support, relief or transportation of the county poor; and draw on the county treasurer for the amount of the accounts which they shall so audit and settle.

12. Furnish necessary relief to such of the county poor as may require only temporary assistance, or are so disabled that they can not be safely removed to the county alms-house, or to the

county poor who can be properly provided for elsewhere than at the county alms-house at an expense not exceeding that of their support at such alms-house.

13. Render to the board of supervisors of their county, at their annual meeting, a verified account of all moneys received and expended by them, or under their direction, and of all their proceedings in such manner and form as may be required by the board.

14. Pay over all moneys remaining in their hands, within fifteen days after the expiration of their terms of office, to the county treasurer, or to their successors.

15. Administer oaths and take affidavits in all matters pertaining to their office, and elicit, by examination under oath, statements of facts from applicants for relief.

Expenditures by the superintendent of the poor in the administration of his department are subject to the following limitations: The board of supervisors, at its annual meeting, may fix the maximum sum which may be expended by the superintendent, at his discretion, during the next ensuing year, and may provide that expenditures in excess of that sum shall be made only with the written approval of the chairman of the board of supervisors, or of a committee of the board, composed of not exceeding three members. If such limitation is fixed and such provision made, the county treasurer shall not pay any draft or order of the superintendent in excess of the sum so fixed by the board, unless it is accompanied with the written approval of such chairman or committee.

**§ 4. Appointment of superintendent as keeper of alms-house.** The board of supervisors of any county may, by resolution, appoint as keeper of its county alms-house one of the superintendents of the poor of such county, who shall hold such office until the expiration of his term as superintendent or until the board of supervisors, by resolution, shall determine that he shall no longer act in such capacity. The board of supervisors may fix the compensation such superintendent shall receive for acting as such keeper, and such compensation shall be a county charge. While a resolution of the board of supervisors directing such superintendent to act as keeper of the county alms-house is in force, the superintendents shall not employ a keeper thereof.

**§ 5. When they may direct overseers of the poor to take charge of county poor.** Whenever the county superintendents take charge of the support of any county poor person, in counties where no alms-house is provided, they may authorize the overseers of the poor of the town in which such poor person

may be, to continue to support him, on such terms and under such regulations as they shall prescribe; and thereafter no moneys shall be paid to such overseers for the support of such poor person, without the order of the superintendents; or the superintendents may remove such poor person to any other town, and there provide for his support, in such manner as they shall deem expedient.

**§ 6. Idiots and lunatics.** The superintendents of the poor shall provide for the support of poor persons that may be idiots or lunatics, at other places than in the alms-house, in such manner as shall be provided by law for the care, support and maintenance of such poor persons.

**§ 7. Pestilence in alms-house.** Whenever any pestilence of infectious or contagious disease shall exist in any county alms-house or in its vicinity, and the physician thereof shall certify that such pestilence or disease is likely to endanger the health of the persons supported thereat, the superintendents of the poor of such county shall cause the persons supported at such alms-house or any of them, to be removed to such other suitable place in the same county as shall be designated by the board of health of the city, town or village within which such alms-house shall be, there to be maintained and provided for at the expense of the county, with all necessary medical care and attendance, until they can be safely returned to the county alms-house from which they were taken, or otherwise discharged.

**§ 8. Accounts of county treasurer with towns.** In counties where there are town poor, the county treasurer thereof shall open and keep an account with each town, in which the town shall be credited with all the moneys received from the same, or from its officers, and shall be charged with the moneys paid for the support of its poor. If there be a county alms-house in such county, the superintendents of the poor shall, in each year, before the annual meeting of the board of supervisors, furnish to the county treasurer a statement of the sums charged by them as herein directed, to the several towns for the support of their poor, which shall be charged to such towns, respectively, by the county treasurer in his account.

**§ 9. Annual apportionment of town expenses.** In counties having an alms-house, and where there are town poor, the superintendents shall annually, and during the week preceding the annual meeting of the board of supervisors, make out a statement of all the expenses incurred by them the preceding year for the support of town poor, and of the moneys received there-

for, exhibiting the deficiency, if any, in the funds provided for defraying such expenses, and they shall apportion the deficiency among the several towns in proportion to the number and expenses of the town poor of such towns respectively, who shall have been provided for by the superintendents, and shall charge the towns with such proportion; which statement shall be by them delivered to the county treasurer.

**§ 10. Tax levy on towns.** At the annual meeting of the board of supervisors, the county treasurer shall lay before them the account kept by him; and if it shall appear that there is a balance against any town, the board shall add the same to the amount of taxes to be levied and collected upon such town, with the other contingent expenses thereof, together with such sum for interest as will reimburse and satisfy any advances that may be made, or that may have been made, by the county treasurer for such town, which moneys, when collected, shall be paid to the county treasurer.

**§ 11. Expense of county poor.** The superintendents of the poor shall annually present to the board of supervisors, at their annual meeting, an estimate of the sum which, in their opinion, will be necessary during the ensuing year for the support of the county poor; and such board of supervisors shall cause such sum as they may deem necessary for that purpose, to be assessed, levied and collected, in the same manner as other contingent expenses of the county, to be paid to the county treasurer and to be by him kept as a separate fund, distinct from the other funds of the county.

**§ 12. Superintendents' report to the state board of charities.** [The superintendents of the poor of every county shall, on or before the first day of December in each year, make reports covering the year ending September thirtieth, to the state board of charities in such form as the board shall direct, showing the number of the town poor and of the county poor that have been relieved or supported in their county the year preceding October first; the whole expense of such support, the amount paid for transportation of poor persons, and any other items not part of the actual expenses of maintaining the poor, and the allowance made to superintendents, overseers, justices, keepers, matrons, officers and other employees of the superintendents; the actual value of the labor of the poor persons maintained, and the estimated amount saved in the expense of their support in consequence of their labor; the sex and native country of every such poor person, with the causes, either direct or indirect, which

have operated to render such persons poor, so far as the same can be ascertained; and shall include in such report a statement of the name and age of, and of the names and residence of the parents of, every poor child who has been placed by them in a family during the year, with the name and residence of the family with whom every such child was placed, and the occupation of the head of the family, together with such other items of information in respect to their character and condition as the state board of charities shall direct.

**§ 13. Supervisors and members of town boards may direct as to temporary or out-door relief to the poor.**

The board of supervisors of any county may make such rules and regulations as it may deem proper in regard to the manner of furnishing temporary or out-door relief to the poor in the several towns in said county, and provided the board of supervisors shall have failed to make any such rules and regulations the town board of any town may make such rules and regulations as it may deem proper in regard to furnishing temporary or out-door relief to the poor in their respective towns, by the overseer or overseers of the poor thereof, and also in regard to the amount such overseer or overseers of the poor may expend for the relief of each person or family, and after the board of supervisors of any county, or the town board of any town, shall have made such rules and regulations, it shall not be necessary for the overseers of the poor of the towns in said county, where such rules and regulations were made by the board of supervisors, or if in a town by the said town board, to procure an order from the supervisor of the town, or the sanction of the superintendent of the poor to expend money for the relief of any person or family, unless the board of supervisors of such county or the town board of such town shall so direct; but this section shall not apply to the counties of New York and Kings.

**§ 14. Penalty for neglect or false report.** Any superintendent of the poor or other officer or person having been an officer, who shall neglect or refuse to render any account, statement or report required by this chapter, or shall wilfully make any false report, or shall neglect to pay over any moneys within the time required by law, shall forfeit two hundred dollars to the town or county of which he is or was an officer, and shall be liable to an action for all moneys which shall be in his hands after the time the same should have been paid over, with interest thereon at the rate of ten per centum per annum from the time the same should have been paid over. The state board of charities shall

give notice to the district attorney of the county of every neglect to make the report required to be made to that board, and every officer or board to whom any such account, statement, report or payment should have been made, shall give notice to such district attorney of every neglect or failure to make the same; and such district attorney shall, on receiving such notice or in any way receiving satisfactory evidence of such default, prosecute for the recovery of such penalties or moneys in the name of the town, or county entitled thereto, and the sum recovered, if for the benefit of the town, shall be paid to the overseer of the poor thereof, and if for the benefit of the county, shall be paid into the county treasury, to be expended by the overseer or superintendent of the poor for the support of the poor of such town or county.

### ARTICLE 3

#### Overseers of the Poor

- Section 20. Relief in counties having alms-house.  
 21. Expense of removal, and temporary relief.  
 22. How supported and when discharged.  
 23. Temporary relief to persons who can not be removed to alms-house.  
 24. Relief in counties having no alms-house.  
 25. Overseer to make monthly examinations and audit accounts.  
 26. Overseers to keep books of accounts.  
 27. Annual report of overseers.  
 28. Accounts of town officers.  
 29. Overseers of the poor in cities.  
 30. Hospital accommodations for indigent persons.

**§ 20. Relief in counties having alms-house.** When any person shall apply for relief to an overseer of the poor, in a county having an alms-house, such overseer shall inquire into the state and circumstances of the applicant; and if it shall appear that he is a poor person, and requires permanent relief and support, and can be safely removed, the overseer shall, by written order, cause such poor person to be removed to the county alms-house, or to be relieved and provided for, as the necessities of the applicant may require. If the county be one where the respective towns are required to support their own poor, the overseer shall designate in such order of removal, whether such person be chargeable to the county or not; and if no such designation be made, such person shall be deemed to belong to the town whose overseer made such order.

**§ 21. Expense of removal, and temporary relief.**

Unless such poor person is properly chargeable to the town, the overseer, in addition to the expense of such removal, shall be allowed such sum as may have been necessarily paid out, or contracted to be paid, for the relief or support of such poor person, previous to such removal and as the superintendent shall judge was reasonably expended while it was improper or inconvenient to remove such poor person, which sum shall be paid by the county treasurer, on the order of the superintendent.

**§ 22. How supported and when discharged.** The person so removed shall be received by the superintendents, or their agents, and be supported and relieved in a county alms-house until it shall appear to them that such person is able to maintain himself, or, if a minor, until he is bound out or otherwise cared for, as hereinafter provided, when they may, in their discretion, discharge him.

**§ 23. Temporary relief to persons who can not be removed to alms-house.** If it shall appear that the person so applying requires only temporary relief, or is sick, lame or otherwise disabled so that he can not be conveniently removed to the county alms-house, or that he is a person who should be relieved and cared for at his home under article six of this chapter, the overseers shall apply to the supervisor of the town, who shall examine into the facts and circumstances, and shall, in writing, order such sum to be expended for the temporary relief of such poor person, as the circumstances of the case shall require, which order shall entitle the overseer to receive any sum he may have paid out or contracted to pay, within the amount therein specified, from the county treasurer, to be by him charged to the county, if such person be a county charge, if not, to be charged to the town where such relief was afforded; but no greater sum than ten dollars shall be expended or paid for the relief of any one poor person, or one family, without the sanction, in writing, of one of the superintendents of the poor of the county, which shall be presented to the county treasurer, with the order of the supervisor, except when the board of supervisors or town board has made rules and regulations as prescribed in section thirteen of this chapter.

**§ 24. Relief in counties having no alms-house.** If application for relief be made in any county where there is no county alms-house, the overseer of the poor of the town where such application is made shall inquire into the facts and circumstances of the case, and with the written approval of the supervisor of



such town, make an order in writing for such allowance, weekly or otherwise, as they shall think required by the necessities of such poor person. If such poor person has a legal settlement in such town, or in any other town in the same county, the overseer shall apply the moneys so allowed to the relief and support of such poor person. The money so paid by him, or contracted to be paid, when the poor person had no legal settlement in the town, and charged to the town in which he had a legal settlement, shall be drawn by such overseer from the county treasurer on producing such order. If such person has no legal settlement in such county, the overseer shall, within ten days after granting to him any relief, give notice thereof, and that such person has no legal settlement in such county, to one of the county superintendents, and until the county superintendents shall take charge of the support of such poor person, the overseer shall provide for his relief and support, and the expense thereof from the time of giving such notice shall be paid to such overseer by the county treasurer, on the production of such order and of proof by affidavit of the time of the giving of such notice, and shall be by him charged to the county.

**§ 25. Overseer to make monthly examinations and audit accounts.** The overseer of the poor of a town or city shall at least once each month, examine into the condition and necessities of each person supported by the town or city out of the county alms-house, and provide within the provisions of this chapter for such allowances, weekly or otherwise, as the circumstances may in his judgment require. All accounts for care, support, supplies or attendance, connected with the maintenance of such poor person or family, shall be settled once in three months, and paid if there be funds for that purpose. No bill, claim or account for care, support, supplies or attendance, furnished to poor persons, by order of the overseer of the poor, or otherwise, shall be audited or allowed by the overseer, unless such bill, claim or account be verified by the claimant, to the effect that such care, support, supplies or attendance have been actually furnished for such poor persons, that such poor persons have actually received the same, and that the prices charged therefor are reasonable and not above the usual market rates.

**§ 26. Overseers to keep books of accounts.** Overseers of the poor, who receive and expend money for the relief and support of the poor in their respective towns and cities, shall keep books to be procured at town or city expense, in which they shall enter the name, age, sex and native country of every poor person who shall be relieved or supported by them, together with a statement of the causes, either direct or indirect, which shall have

operated to render such relief necessary, so far as the same can be ascertained. They shall also enter upon such books a statement of the name and age, and of the names and residences of the parents of every child who is placed by them in a family, with the name and address of the family with whom every such child is placed, and the occupation of the head of the family. They shall also enter upon books so procured, a statement of all moneys received by them, when and from whom, and on what account received, and of all moneys paid out by them, when and to whom paid and on what authority, and whether to town, city or county poor; also a statement of all debts contracted by them as such overseers, the names of the persons with whom such debts were contracted, the amount and consideration of each item, the names of the persons for whose benefit the debts were contracted, and if the same have been paid, the time and manner of such payment. The overseers shall lay such books before the board of town auditors or the common council of the city, at its first annual meeting in each year and, upon being given ten days' notice thereof, at any adjourned or special meeting of such board or council, together with a just, true and verified itemized account of all moneys received and expended by them for the use of the poor since the last preceding annual meeting of said board, and a verified statement of debts contracted by them as such overseers and remaining unpaid. The board or council shall compare said account with the entries in the book, and shall examine the vouchers in support thereof, and may examine the overseers of the poor, under oath, with reference to such account. They shall thereupon audit and settle the same, and state the balance due to or from the overseer, as the case may be. Such account shall be filed with the town or city clerk, and at every annual town meeting, the town clerk shall produce such town account for the next preceding year, and read the same, if it be required by the meeting. The overseers of the town shall have such books present each year at the annual town meeting, subject to the inspection of the voters of the town, and the entries thereon for the preceding year shall there be read publicly at the time reports of other town officers are presented, if required by a resolution of such meeting. No credit shall be allowed to any overseers for moneys paid, unless it shall appear that such payments were made necessarily or pursuant to a legal order.

**§ 27. Annual report of overseers.** Such overseers shall make to the town board, at its second annual meeting in each year, a written report, stating their account as provided in the last section, continued to that date, and any deficiency that may then exist in the town poor fund, with their estimate of the sum which

they shall deem necessary for the temporary and out-door relief and support of the poor in their town for the ensuing year, and in counties where there is no county almshouse, their estimate of such sum as they shall deem necessary to be raised and collected therein for the support of the poor for the ensuing year. If such board shall approve the statement and estimate so made or any part thereof, they shall so certify in duplicate, one of which certificates shall be filed in the office of the town clerk, and the other shall be laid by the supervisor of the town, before the board of supervisors of the county, on the first day of its next annual meeting. If such overseers of any town shall fail or neglect to estimate the sum to be raised and collected for the support of the poor of their town for the ensuing year, or the supervisor of any town shall fail or neglect to present such estimate for the support of the poor of their town to the board of supervisors, the board of supervisors shall estimate the sum to be raised and collected by such town for the support of the poor of such town, which estimate shall be based upon the amount of the cost of the support of the poor of such town for the preceding year. The board of supervisors shall cause the amount of such deficiency and estimates, as so certified, or the sum estimated by such board of supervisors, together with the sums voted by such town for the relief of the poor therein to be levied and collected in such town, in the same manner as other town charges, to be paid to the overseers of the poor of such town, and the warrants attached to the tax-rolls in such county shall direct accordingly. The moneys so raised shall be received by such overseers, and applied toward the payment of such deficiency, and for the maintenance and support of the poor, for whose relief such estimates were made. The town board shall also, on or before the first day of December, annually certify to the county superintendents, the name, age, sex and native country, of every poor person relieved and supported by such overseers during the preceding year, with the causes which shall have operated to render them such poor persons, the amount expended for the use of such person, as allowed by the board, and the amount allowed to each overseer for services rendered in relation to temporary or town relief. The town board shall include in such annual statement to the county superintendents and the county superintendents shall include in their own report to the state board of charities a statement of the name and age, and of the names and residence of the parents of every child who has been placed by such overseers in a family during the preceding year, with the name and address

of the family with whom such child is placed, and the occupation of the head of the family. (*Thus amended by L. 1909, ch. 429, in effect May 21, 1909.*)

Amendment of 1909 inserted third sentence and the clause in the fourth sentence beginning with the word "or" and ending with the word "supervisors," and changed "each" to "such" before the last word "child" in last sentence.

**§ 28. Accounts of town officers.** The accounts of any town officer for personal or official services rendered by him, in relation to the town poor, shall be audited and settled by the town board and charged to such town. But no allowance for time or services shall be made to any officer for attending any board solely for the purpose of having his account audited or paid.

**§ 29. Overseers of the poor in cities.** This chapter shall apply to overseers of the poor in cities, except where otherwise specially provided by law. In the absence of such special provision, overseers of the poor in each city shall make their report to the auditing board of such city, by whatever name known, at the beginning of the fiscal year of such city, if such time be fixed, otherwise on the first day of January in each year; the common councils of said cities as shall be liable for the support of their own poor shall yearly determine the sum of money to be appropriated for the ensuing year, and a certified copy of such determination shall be laid before the board of supervisors of the county, who shall cause the same to be assessed, levied, collected and paid to the county treasurer. If such common council of any city shall fail to determine the sum of money to be appropriated for the support of their own poor for the ensuing year, the board of supervisors shall determine the sum necessary to be raised and collected by such city for the support of the poor of such city and shall cause the same to be assessed, levied, collected and paid to the county treasurer. (*Thus amended by L. 1909, ch. 380, in effect May 17, 1909.*)

Amendment of 1909 added last sentence.

**§ 30. Hospital accommodations for indigent persons.** 1. Any city or county, in which a hospital duly incorporated is situated, may send to and support, in the same, such sick and disabled indigent persons as require medical or surgical treatment, and when admitted the authorities of such city or county shall pay to the directors of such hospital such sum per week as may be agreed upon or found to be just during the period in which such person shall remain in such hospital.

2. In all counties of this state in which there are not adequate hospital accommodations for indigent persons requiring medical or surgical care and treatment, or in which no appropriations of money are made for this specific purpose, it shall be the duty of county superintendents of the poor, upon the certificate of a physician approved by the board of supervisors, or of the overseers of the poor in the several towns of such counties, upon the certificate of a physician approved by the supervisor of the town, as their jurisdiction over the several cases may require, to send all such indigent persons requiring medical or surgical care and treatment to the nearest hospital, the incorporation and management of which have been approved by the state board of charities, provided transportation to such hospital can be safely accomplished. The charge for the care and treatment of such indigent persons in such hospitals, as herein provided, shall not exceed one dollar per day for each person, except that in the counties of Nassau and Suffolk a charge of not to exceed two dollars per day may be made therefor, which shall be paid by the several counties or towns from which such persons are sent, and provision for which shall be made in the annual budgets of such counties and towns.

#### ARTICLE 4

#### Settlement and Place of Relief of Poor Persons

- Section 40. Settlements, how gained.
41. Qualification of last section.
  42. Poor persons not to be removed, and how supported.
  43. Proceedings to determine settlement.
  44. Hearing before superintendents.
  45. How to compel towns to support poor persons.
  46. Proceedings to determine who are county poor.
  47. In counties without almshouse.
  48. Decisions to be entered and filed.
  49. Appeal to the county court.
  50. Penalty for removing.
  51. Proceedings to compel support.
  52. Liability, how contested.
  53. Neglect to contest.
  54. Actions, when and how to be brought.
  55. Penalty for bringing foreign poor into this state.
  56. Poor children under sixteen years of age.
  57. Recovery from pauper who has property.

§ 40. **Settlements, how gained.** Every person of full age, who shall be a resident and inhabitant of any town or city for

one year, and the members of his family who shall not have gained a separate settlement, shall be deemed settled in such town or city, and shall so remain until he shall have gained a like settlement in some other town or city in this state, or shall remove from this state and remain therefrom one year. A minor may be emancipated from his or her father or mother and gain a separate settlement:

1. If a male, by being married and residing one year separately from the family of his father or mother.

2. If a female, by being married and having lived with her husband; in which case the husband's settlement shall be deemed that of the wife.

3. By being bound as an apprentice and serving one year by virtue of such indentures.

4. By being hired and actually serving one year for wages, to be paid such minor.

**§ 41. Qualification of last section.** A woman of full age, by marrying, shall acquire the settlement of her husband. Until a poor person shall have gained a settlement in his or her own right, his or her settlement shall be deemed that of the father, if living, if not, then of the mother; but no child born in any alms-house shall gain any settlement merely by reason of the place of such birth; neither shall any child born while the mother is such poor person, gain any settlement by reason of the place of its birth. No residence of any such poor person in any alms-house, while such person, or any member of his or her family, is supported or relieved at the expense of any other town, city, county or state, shall operate to give such poor person a settlement in the town where such actual residence may be.

**§ 42. Poor persons not to be removed, and how supported.** No person shall be removed as a poor person from any city or town, to any other city or town of the same or any other county, nor from any county to any other county except as herein-after provided; but every poor person, except the state poor, shall be supported in the town or county where he may be, as follows:

1. If he has gained a settlement in any town or city in such county, he shall be maintained by such town or city.

2. If he has not gained a settlement in any town or city in the county in which he shall become poor, sick or infirm, he shall be supported and relieved by the superintendents of the poor at the expense of the county.

3. If such person be in a county where the distinction between town and county poor is abolished, he shall, in like manner, be supported at the expense of the county, and in both cases, proceedings for his relief shall be had as herein provided.

4. If such poor person be in a county where the respective towns are liable to support their poor, and has gained a settlement in some town of the same county other than that in which he may then be, he shall be supported at the expense of the town or city where he may be, and the overseers shall, within ten days after the application for relief, give notice in writing to an overseer of the town to which he shall belong, requiring him to provide for the support and relief of such poor person.

**§ 43. Proceedings to determine settlement.** If, within ten days after the service of such notice, the overseer to whom the same was directed, shall not proceed to contest the allegation of the settlement of such poor person, by giving the notice hereinafter directed, he or his successors, and the town which he or they represent, shall be precluded from contesting or denying such settlement. He may, within the time mentioned, give written notice to the overseer of the town where such person may be, and from whom he has received the notice specified in the last section, that he will appear before the county superintendents, at a place and on a day therein to be specified, which day shall be at least ten days and not more than thirty days from the time of the service of such notice of hearing, to contest the alleged settlement. If the county superintendents fail to appear at the time and place so appointed, they shall at the request of the overseers of either town appoint some place, and some other day, for the hearing of such allegations, and cause at least five days' notice thereof to be given to such overseers; and no poor person shall be deemed to have gained a settlement, when the proper notices to contest the settlement have been served, until there has been a hearing before the superintendents thereof, and an order by them made and filed in the office of the county clerk, fixing the settlement of such poor person.

**§ 44. Hearing before superintendents.** The county superintendents shall convene whenever required by any overseer pursuant to such notice, and shall hear and determine the controversy, and may award costs, not exceeding fifteen dollars, to the prevailing party, which may be recovered in an action in a court of competent jurisdiction. Witnesses may be allowed fees as in courts of record. The decision of the superintendents shall be final and conclusive, unless an appeal therefrom shall be taken as provided by this chapter.

**§ 45. How to compel towns to support poor persons.** The overseers of the poor of the town in which it may be alleged

any poor person has gained a settlement, may, at any time after receiving such notice requiring them to provide for such person, take and receive such poor person to their town, and there support him; if they omit to do so, or shall fail to obtain the decision of the county superintendents, so as to exonerate them from the maintenance of such poor person, the charge of giving such notice, and the expense of maintaining such person, after being allowed by the county superintendents, shall be laid before the board of supervisors at their annual meetings from year to year, as long as such expenses shall be incurred, and the supervisors shall annually add the amount of such charges to the tax to be laid upon the town to which such poor person belongs, together with such sum in addition thereto, as will pay the town incurring such expense, the interest thereon, from the time of expenditure to the time of repayment, which sum shall be assessed, levied and collected in the same manner as other charges of such town. Such moneys when collected shall be paid to the county treasurer and be by him credited to the account of the town which incurred the expenses.

**§ 46. Proceedings to determine who are county poor.** The support of any poor person shall not be charged to the county, without the approval of the superintendents. If a poor person be sent to the county alms-house as a county poor person, the superintendents, in counties where there are town poor, shall immediately inquire into the facts, and if they are of opinion that such person has a legal settlement in any town of the county, they shall, within thirty days after such poor person shall have been received, give notice to the overseers of the poor of the town to which such poor person belongs that the expenses of such support will be charged to such town, unless the overseers within such time as the superintendents shall appoint, not less than twenty days thereafter, show that such town ought not to be so charged. On the application of the overseers, the superintendents shall re-examine the matter and take testimony in relation thereto, and decide the question; which decision shall be conclusive, unless an appeal therefrom shall be taken in the manner provided in this chapter.

**§ 47. In counties without alms-house.** In counties having no alms-house, no person shall be supported as a county poor person, without the direction of at least one superintendent. In such cases the overseers of the poor, where such person may be, shall, within ten days after granting him relief, give notice thereof and that such person is not chargeable to their town, to one of



the superintendents who shall inquire into the circumstances, and if satisfied that such poor person has not gained a legal settlement in any town of the county, and is not a state poor person, he shall give a certificate to that effect, and that such poor person is chargeable to the county. He shall report every such case to the board of superintendents at their next meeting, who shall affirm such certificate, or, on giving at least eight days' notice to the overseers of the poor of the town interested, may annul the same. After hearing the allegations and proofs in the premises, if the superintendent to whom the overseers have given such notice shall neglect or refuse to give such certificate, the overseers may apply to the board of superintendents, who shall summarily hear and determine the matter, and whose decision shall be conclusive, unless an appeal therefrom shall be taken in the manner provided in this chapter. Such appeal may also be taken from the refusal of one superintendent to grant such certificate when there is but one superintendent in the county.

**§ 48. Decisions to be entered and filed.** The decisions of county superintendents in relation to the settlement of poor persons, or to their being a charge upon the county, shall be entered in books to be provided for that purpose, and certified by the signature of such of the superintendents as make the same; and a duplicate thereof, certified in the same manner, shall be filed in the office of the county clerk within thirty days after making such decision.

**§ 49. Appeal to the county court.** Any or either of the parties interested in a decision of the superintendent of the poor, or in any dispute that shall arise concerning the settlement of any poor person, may appeal from such decision to the county court of the county in which such decision shall be made, by serving upon the other parties interested therein, within thirty days after service upon the appellant of a notice of the same, a notice of appeal, which shall be signed by the appellant or his attorney, and which shall specify the grounds of the appeal. The hearing of such appeal may be brought on by either party in or out of term, upon notice of fourteen days. Upon such appeal a new trial of the matters in dispute shall be had in the county court without a jury, and a decision of the county court therein shall be final and conclusive, and the same costs shall be awarded as are allowed on appeals to said court.

For the purposes of this chapter the county court shall be deemed open at all times.

**§ 50. Penalty for removing.** Any person who shall send, remove or entice to remove, or bring, or cause to be sent, removed or brought, any poor or indigent person, from any city, town or county, to any other city, town or county, without legal authority, and there leave such person for the purpose of avoiding the charge of such poor or indigent person upon the city, town or county from which he is so sent, removed or brought, or enticed to remove, shall forfeit fifty dollars, to be recovered by and in the name of the town, city or county to which such poor person shall be sent, brought or removed, or enticed to remove, and shall be guilty of a misdemeanor.

**§ 51. Proceedings to compel support.** A poor person so removed, brought or enticed, or who shall of his own accord come or stray from one city, town or county into any other city, town or county not legally chargeable with his support, shall be maintained by the county superintendents of the county where he may be. They may give notice to either of the overseers of the poor of the town or city from which he was brought or enticed, or came as aforesaid, if such town or city be liable for his support, and if there be no town or city in the county from which he was brought or enticed or came liable for his support, then to either of the county superintendents of the poor of such county, within ten days after acquiring knowledge of such improper removal, informing them of such improper removal, and requiring them forthwith to take charge of such poor person. If there be no overseers or superintendents of the poor in such town, city or county, such notice shall be given to the person, by whatever name known, who has charge and care of the poor in such locality.

**§ 52. Liability, how contested.** The county superintendents, or overseers, or other persons to whom such notice may be directed may, after the service of such notice, take and remove such poor person to their county, town or city, and there support him, and pay the expense of such notice, and of the support of such person; or they shall, within thirty days after receiving such notice, by a written instrument under their hands, notify the county superintendents from whom such notice was received, or either of them, that they deny the allegation of such improper enticing or removal, or that their town, city or county is liable for the support of such poor person.

**§ 53. Neglect to contest.** If there shall be a neglect to take and remove such poor person, and to serve notice of such denial

within the time above prescribed, the county superintendents and overseers, respectively, whose duty it was so to do, their successors, and their respective counties, cities or towns, shall be deemed to have acquiesced in the allegations contained in such first notice, and shall be forever precluded from contesting the same, and their counties, cities and towns, respectively, shall be liable for the expenses of the support of such poor person, which may be recovered from time to time, by county superintendents incurring such expenses, in the name of their county in actions against the county, city or town so liable.

**§ 54. Actions, when and how to be brought.** Upon service of any such notice of denial, the county superintendents upon whom the same may be served, shall, within three months, commence an action in the name of their county, against the town, city or county so liable for the expenses incurred in the support of such poor person, and prosecute the same to effect; if they neglect to do so, their town, city or county, shall be precluded from all claim against the town, city or county to whose officers such first notice was directed.

**§ 55. Penalty for bringing foreign poor into this state.** Any person who shall knowingly bring or remove, or cause to be brought or removed, any poor person from any place without this state, into any county, city or town within it, and there leave or attempt to leave such poor person, with intent to make any such county, city or town, or the state, wrongfully chargeable with his support, shall forfeit fifty dollars, to be recovered by an action in a court of competent jurisdiction in the county, and in the name of the county, city or town into which such poor person shall be brought, and shall be obliged to convey such person out of the state, or support him at his own expense, and shall be guilty of a misdemeanor, and the court or magistrate before whom any person shall be convicted for a violation of this section shall require of such person satisfactory security that he will within a reasonable time, to be named by the court or magistrate, transport such person out of the state, or indemnify the town, city or county for all charges and expenses which may be incurred in his support; and if such person shall refuse to give such security when so required, the court or magistrate shall commit him to the common jail of the county for a term not exceeding three months.

**§ 56. Poor children under sixteen years of age.** No justice of the peace, board of charities, police justice, or other

magistrate, or court, shall commit any child under sixteen years of age, as a vagrant, truant or disorderly person, to any jail or county almshouse, but to some reformatory, or other institution, as provided for in the case of juvenile delinquents; and when such commitments are made, the justice of the peace, board of charities, police justice, or other magistrate or court making the same, shall immediately give notice to the superintendents of the poor or other authorities having charge of the poor of the county in which the commitment was made, giving the name and age of the person committed, to what institution, and the time for which committed; nor shall any county superintendents, overseers of the poor, board of charity, or other officer, send any child under the age of sixteen years, as a poor person, to any county almshouse, for support and care, or retain any such child in such almshouse, but shall provide for such child or children in families, orphan asylums, hospitals, or other appropriate institutions for the support and care of children as provided by law, except that a child under two years of age may be sent with its mother, who is a poor person, to any county almshouse, but not longer than until it is two years of age. The boards of supervisors of the several counties, and board of estimate and apportionment of the city of New York, and the appropriate board or body in other cities and towns shall take such action in the matter as may be necessary to carry out the provisions of this section. When any such child is committed to an orphan asylum or reformatory, it shall, when practicable, be committed to an asylum or reformatory that is governed or controlled by persons of the same religious faith as the parents of such child. When any child who shall have been placed in an asylum, or other institution, as a poor person, in pursuance of this section, shall remain therein at the expense of the county or town to which such poor child is chargeable, the superintendents of the poor of such county, or the overseer of the poor of such town, may remove such child from such asylum or other institution and place such child in some similar institution or make such other disposition of such child as is provided by law. (*Thus amended by L. 1909, ch. 347, in effect May 13, 1909.*)

Amendment of 1909 changed the word "county" to "city" preceding the words "of New York" in the second sentence, struck out the words "the county of Kings" and inserted the words "other cities and towns," in same sentence.

**§ 57. Recovery from pauper who has property.** If it shall at any time be ascertained that any person, who has been assisted by or received support from any town, city or county, has real or personal property, or if any such person shall die, leaving

real or personal property, an action may be maintained in any court of competent jurisdiction, by the overseer of the poor of the town or city, or the superintendent of the poor of any county which has furnished or provided such assistance or support, or any part thereof, against such person or his or her estate, to recover such sums of money as may have been expended by their town, city or county in the assistance and support of such person during the period of ten years next preceding such discovery or death.

## **ARTICLE 5**

### **Support of Bastards**

- Section 60. Penalty for removing mother of bastard; how supported after removal.
61. Mother and child poor persons; proceedings against county or town from which she was removed.
62. Mother and bastard; how to be supported.
63. Mother and child not to be removed without her consent.
64. Overseers to notify superintendents of cases of bastardy; when county chargeable.
65. Duty of superintendents to provide for mother and child.
66. Until taken charge of by superintendents, to be supported by overseers.
67. Overseers of towns to support bastard and mother, whether chargeable or not.
68. Moneys received by overseers from parents of bastard, how applied and accounted for.
69. When moneys received on account of bastard chargeable to county; how to be disposed of.
70. Disputes concerning settlement of bastard, how determined.
71. Proceedings when bastard is chargeable to another town.
72. Mode of ascertaining sum to be allowed for support of bastard.
73. When mother and child to be removed to county alms-house.
74. Compromise with father of bastard; when mother may receive money.
75. Compromise with putative fathers in New York.

**§ 60. Penalty for removing mother of bastard; how supported after removal.** If the mother of any bastard, or of any child likely to be born a bastard, shall be removed, brought or enticed into any county, city or town from any other county, city or town of this state, for the purpose of avoiding the charge of such bastard or child upon the county, city or town from which she shall have been brought or enticed to remove, the same penalties shall be imposed on every such person so bringing, removing or enticing such mother to remove, as are provided in the case of the fraudulent removal of a poor person. Such mother, if unable to support herself, shall be supported during her confinement and recovery therefrom, and her child shall be supported, by the county superintendents of the poor of the county where she shall be, if no provision be made by the father of such child.

**§ 61. Mother and child poor persons; proceedings against county or town from which she was removed.** Such mother and her child shall, in all respects, be deemed poor persons; and the same proceedings may be had by the county superintendents to charge the town, city or county from which she was removed or enticed, for the expense of supporting her and her child, as are provided in the case of poor persons fraudulently or clandestinely removed; and an action may be maintained in the same manner for said expenses and for all expenses properly incurred in apprehending the father of such child, or in seeking to compel its support by such father or its mother.

**§ 62. Mother and bastard; how to be supported.** The mother of every bastard, who shall be unable to support herself, during her confinement and recovery therefrom, and every bastard, after it is born, shall be supported as other poor persons are required to be supported by the provisions of this chapter, at the expense of the city or town where such bastard shall be born, if the mother have a legal settlement in such city or town, and if it be required to support its own poor; if the mother have a settlement in any other city or town of the same county, which is required to support its own poor, then at the expense of such other city or town; in all other cases, they shall be supported at the expense of the county where such bastard shall be born.

**§ 63. Mother and child not to be removed without her consent.** The mother and her child shall not be removed from any city or town to any other city or town in the same county, nor from one county to any other county, in any case whatever, unless voluntarily taken to the county, city or town liable for **their support**, by the county superintendents of such county or the overseers of the poor of such city or town.

**§ 64. Overseers to notify superintendents of cases of bastardy; when county chargeable.** The overseers of the poor of any city or town where a woman shall be pregnant with a child, likely to be born a bastard, or where a bastard shall be born, which child or bastard shall be chargeable, or likely to become chargeable to the county, shall, immediately on receiving information of such fact, give notice thereof to the county superintendents, or one of them.

**§ 65. Duty of superintendents to provide for mother and child.** The county superintendents shall provide for the support of such bastard and its mother, in the same manner as for the poor of such county.

**§ 66. Until taken charge of by superintendents, to be supported by overseers.** Until the county superintendents take charge of and provide for the support of such bastard and its mother so chargeable to the county, the overseers of the poor of the city or town shall maintain and provide for them; and for that purpose, the same proceedings shall be had as for the support of a poor person chargeable to the county, who can not be conveniently removed to the county alms-house.

**§ 67. Overseers of towns to support bastard and mother, whether chargeable or not.** Where a woman shall be pregnant with a child likely to be born a bastard, or to become chargeable to a city or town, or where a bastard shall be born chargeable, or likely to become chargeable to a city or town, the overseers of the poor of the city or town where such bastard shall be born, or likely to be born, whether the mother have a legal settlement therein or not, shall provide for the support of such child and the sustenance of its mother during her confinement and recovery therefrom, in the same manner as they are authorized by this chapter to provide for and support the poor of their city or town.

**§ 68. Moneys received by overseers from parents of bastard, how applied and accounted for.** Where any money shall be paid to any overseer, pursuant to the order of any two justices, by any putative father, or by the mother of any bastard, the overseers may expend the same directly, in the support of such child, and the sustenance of its mother as aforesaid, without paying the same into the county treasury. They shall annually account, on oath, to the board of town auditors, or to the proper auditing board of a city, at the same time that other town or city officers are required to account for expenditures of all moneys so received by them, and shall pay over the balance in

their hands, and under like penalties, as are provided by this chapter, in respect to the poor moneys in their hands.

**§ 69. When moneys received on account of bastard chargeable to county; how to be disposed of.** All moneys which shall be ordered to be paid by the putative father, or by the mother of a bastard chargeable to any county, shall be collected for the benefit of such county; and all overseers of the poor, superintendents, sheriffs, and other officers, shall within fifteen days after the receipt of any such moneys, pay the same into the county treasury. Any officer neglecting to make such payment shall be liable to an action by and in the name of the county, for all moneys so received and withheld, with interest from the time of receipt, at the rate of ten per centum; and shall forfeit a sum equal to that so withheld, to be sued for and recovered by and in the name of the county.

**§ 70. Disputes concerning settlement of bastard, how determined.** When a dispute shall arise concerning the legal settlement of the mother of a bastard, or of a child born or likely to be born a bastard, in any city or town, the same shall be determined by the county superintendents of the poor, upon a hearing of the parties interested, in the same manner and with the same effect as they are authorized to determine the settlement of a poor person under this chapter.

**§ 71. Proceedings when bastard is chargeable to another town.** When a bastard shall be born, or be likely to be born in a town or city, when the legal settlement of the mother is in another town or city of the same county, which is required by law to support its own poor, the overseers of the poor of the town or city where such bastard shall be born, or be likely to be born, shall give the like notice to the overseers of the town or city where the mother's settlement may be, as is required in the case of a person becoming a poor person, under the like circumstances, and the same proceedings shall be had, in all respects, to determine the liability of such town or city as in the case of poor persons.

The overseers of the town or city to which the mother of such bastard belongs may, before the confinement of such mother, or at any time after the expiration of two months after her delivery, if her situation will permit it, take and support such mother and her child.

If they omit to do so, and fail to obtain the determination of the county superintendents in their favor on the question of settlement, the town or city to which the mother belongs shall be



liable to pay all the expenses of the support of such bastard, and of its mother during her confinement and recovery therefrom; which expenses, after being allowed by the county superintendents, shall be assessed, together with the lawful interest on the moneys expended, on the town or city to which such mother belongs, and shall be collected in the same manner as provided for poor persons supported under the same circumstances, and the moneys so collected shall be paid to the county treasurer, for the benefit of, and to be credited to, the town which incurred such expenses.

**§ 72. Mode of ascertaining sum to be allowed for support of bastard.** When any town is required to support a bastard, and its mother, whether the mother have a settlement in such town or not, and no moneys shall be received from the putative father or from the mother, to defray the expense of such support, the overseers of the poor shall apply to the supervisor of the town and obtain an order for the support of such bastard, and the sustenance of its mother during her confinement and recovery therefrom, and the sum to be allowed therefor, in the same manner as is required in the case of poor persons, and the moneys paid or contracted to be paid by the overseer, pursuant to such order, shall be paid by the county treasurer in the same manner as for poor persons, and be charged to the town to whose officers such payment shall be made.

**§ 73. When mother and child to be removed to county alms-house.** If there be a county alms-house in any county where the towns are required to support their own poor, the overseers of the poor of a town where a bastard shall be born, or shall be likely to be born, may, with the approval of the county superintendents or any two of them, and when the situation of the mother will allow it, remove the mother of such bastard, with her child, to such alms-house, in the same manner as poor persons may be removed; the expenses of which removal shall be defrayed in like manner, and such mother and her child shall be considered as poor of the town so liable for their support, and the expense shall in like manner be estimated and paid.

**§ 74. Compromise with father of bastard; when mother may receive money.** Superintendents and overseers of the poor may make such compromise and arrangements with the putative father of any bastard child within their jurisdiction, relative to the support of such child, as they shall deem equitable and just, and thereupon discharge such putative father from all further liability for the support of such bastard.

Whenever a compromise is made with the putative father of a bastard child, the mother of such child, on giving security for the support of the child, and to indemnify the city and county or the town and county, from the maintenance of the child, to the satisfaction of the officers making the compromise, shall be entitled to receive the moneys paid by such putative father as the consideration of such compromise. If the mother of such child shall be unable to give the security, but shall be able and willing to nurse and take care of the child, she shall be paid the same weekly allowance for nursing and taking care of the child, out of the moneys paid by the father on such compromise, as he shall have been liable to pay by the order of filiation; such weekly sum to be paid the mother, may be prescribed, regulated or reduced, as in the case of an order of filiation.

**§ 75. Compromise with putative fathers in New York.** The commissioners of public charities of the city of New York, or any two of them, may make such compromise and arrangements with the putative fathers of bastard children in said city, relative to the support of such children, as they shall deem equitable and just, and thereupon may discharge such putative fathers from all further liability for the support of such bastards.

## ARTICLE 6

### Soldiers, Sailors and Marines

Section 80. Relief of soldiers, sailors and marines, and their families.

81. Post to give notice that it assumes charge.

82. Posts to appoint joint relief committees in certain cities.

83. Poor or indigent soldiers, sailors or marines without families.

84. Burial of soldiers, sailors or marines.

85. Headstones to be provided.

**§ 80. Relief of soldiers, sailors and marines, and their families.** No poor or indigent soldier, sailor or marine who has served in the military or naval service of the United States, nor his family nor the families of any who may be deceased, shall be sent to any alms-house, but shall be relieved and provided for at their homes in the city or town where they may reside, so far as practicable, provided such soldier, sailor or marine or the families of those deceased, are, and have been, residents of the state for one year; and the proper auditing board of such city or town or in those counties where the poor are a county charge, the

superintendent, if but one, or superintendents of the poor, as such auditing board in those counties, shall provide such sum or sums of money as may be necessary to be drawn upon by the commander and quartermaster of any post of the Grand Army of the Republic of the city or town, made upon the written recommendation of the relief committee of such post; or if there be no post in a town or city in which it is necessary that such relief should be granted, upon the like request of the commander and quartermaster and recommendation of the relief committee of a Grand Army post located in the nearest town or city, to the town or city requested to so furnish relief, and such written request and recommendation shall be a sufficient authority for the expenditures so made.

**§ 81. Post to give notice that it assumes charge.** The commander of any such post which shall undertake to supervise relief of poor veterans or their families, as herein provided, before his acts shall become operative in any town, city or county, shall file with the clerk of such town, city or county, a notice that such post intends to undertake such supervision of relief, which notice shall contain the names of the relief committee, commander and other officers of the post; and also an undertaking to such city, town or county, with sufficient and satisfactory sureties for the faithful and honest discharge of his duties under this article; such undertaking to be approved by the treasurer of the city or county, or the supervisor of the town, from which such relief is to be received. Such commander shall annually thereafter, during the month of October, file a similar notice with said city or town clerk, with a detailed statement of the amount of relief requested by him during the preceding year, with the names of all persons for whom such relief shall have been requested, together with a brief statement in each case, from the relief committee, upon whose recommendation the relief was requested, provided, however, that in cities of the first class said notice and said detailed statement shall be filed with the comptroller of such city, and said undertaking shall be approved by him, and provided further that in any city of the first class which is now or may hereafter be divided into boroughs, a duplicate of such notice and of such detailed statement shall be filed with the commissioner of charities for the borough in which the headquarters of such post is situated, and it shall be the duty of such commissioner to annually include in his estimate of the amount necessary for the support of his department such sum or sums of money as may be necessary to carry into effect the provisions of sections eighty, eighty-one, eighty-three, eighty-four and eighty-five of this chapter, and the proper officers

charged with the duty of making the budget of any such city shall annually include therein such sum or sums of money as may be necessary for that purpose. Moneys actually laid out and expended by any such post for the relief specified in section eighty of this chapter shall be reimbursed quarterly to such post by the comptroller on vouchers duly verified by the commander and quartermaster of said post, showing the date and amount of each payment, the certificate of the post relief committee, signed by at least three members, none of whom shall have received any of the relief granted by the post for which reimbursement is asked, showing that the person relieved was an actual resident of such city, and that they recommended each payment, and the receipt of the recipient for each payment, or in case such receipt could not be obtained, a statement of such fact, with the reason why such receipt could not be obtained. Such vouchers shall be made in duplicate on blanks to be supplied by the comptroller and shall be presented to the commissioner of charities for the borough in which the headquarters of the post is situated, and if such commissioner is satisfied that such moneys have been actually expended as in said voucher stated, he shall approve the same, and file one of said duplicates in his office and forward the other to the comptroller, who shall pay the same by a warrant drawn to the order of the said commander. And provided further, that in any city, county or borough in which Grand Army posts have organized or may organize a memorial and executive committee, the latter shall be regarded as a post of the Grand Army of the Republic. And the chairman, treasurer or almoner and bureau of relief or relief committee referred to, shall exercise the same privileges and powers as the commander, quartermaster and relief committee of a post, on complying with the requirements of this and the preceding section. Wilful false swearing to such voucher shall be deemed perjury and shall be punishable as such.

**§ 82. Posts to appoint joint relief committees in certain cities.** In all cities of this state containing less than one hundred thousand inhabitants, where there are more than one post of the Grand Army of the Republic, there shall be appointed and constituted a joint relief committee, consisting of one member from each post of the Grand Army of the Republic in said city, which shall have complied with the provisions of law as hereinafter provided, to be chosen in such manner as such post shall direct, and one member appointed by the auditing board of said city, to which all orders for relief drawn by the commander or quartermaster of any post of the Grand Army of the Republic in

said city shall be referred; and no relief shall be furnished under the provisions of sections eighty or eighty-one of this chapter, except upon the approval and recommendation of said committee or a majority of the members thereof. No post of the Grand Army of the Republic shall be entitled to membership in said committee unless such post shall have complied with the provisions of the preceding section, and in case such post shall fail to so comply with the provisions of said section and to select a member of said committee, the commander or quartermaster shall not be entitled to draw upon the fund provided by the auditing board of said city as provided in section eighty of this chapter.

**§ 83. Poor or indigent soldiers, sailors or marines without families.** Poor or indigent soldiers, sailors or marines provided for in this article, who are not insane, and who have no families or friends with whom they may be domiciled, may be sent to a soldiers' home. Any poor or indigent soldier, sailor or marine provided for in this chapter, or any member of the family of any living or deceased soldier, sailor or marine, who may be insane, shall, upon recommendation of the commander and relief committee of such post of the Grand Army of the Republic, within the jurisdiction of which the case may occur, be sent to the proper state hospital for the insane.

**§ 84. Burial of soldiers, sailors or marines.** The board of supervisors in each of the counties shall designate some proper person or authority, other than that designated for the care of poor persons, or the custody of criminals, who shall cause to be interred the body of any honorably discharged soldier, sailor or marine, who has served in the military or naval service of the United States, or the body of the wife or widow of any soldier, sailor or marine, married to him previous to eighteen hundred and ninety, who shall die such widow, and who shall hereafter die without leaving sufficient means to defray his or her funeral expenses, but such expenses shall in no case exceed fifty dollars. If the deceased has relatives or friends who desire to conduct the burial, but are unable or unwilling to pay the charge therefor, such sum shall be paid by the county treasurer, upon due proof of the claim, and of the death and burial of the soldier, sailor or marine, or of the wife or widow of such soldier, sailor or marine to the person so conducting such burial. Such interment shall not be made in a cemetery or cemetery plot used exclusively for the burial of poor persons deceased.

**§ 85. Headstones to be provided.** The grave of any such deceased soldier, sailor or marine, and the grave of any honorably

discharged soldier, sailor or marine who served in the army or navy of the United States during the late rebellion, who shall have been heretofore buried in any of the counties of this state, but whose grave is not marked by a suitable headstone, and who died without leaving means to defray the expense of such headstone; and the grave of any honorably discharged soldier, sailor or marine who served in the army or navy of the United States during the revolutionary war, the war of eighteen hundred and twelve, or the war with Mexico, and who shall have been heretofore buried in any of the counties of this state, but whose grave is not now marked by a suitable headstone, shall be marked by a headstone containing the name of the deceased, and, if possible, the organization to which he belonged or in which he served. Such headstone shall not cost more than fifteen dollars, and shall be of such design and material as shall be approved by the board of supervisors, and the expense of such burial and headstone as above provided for shall be a charge upon and shall be paid by the county in which the said soldier, sailor or marine shall have died; and the board of supervisors or other board or officer vested with like powers, of the county of which such deceased soldier, sailor or marine was a resident at the time of his death, is hereby authorized and directed to audit the account and pay the expense of such burial and headstone in the same manner in which the accounts of such officer as shall be charged with the performance of such duty as above provided shall be audited and paid; provided, however, that in case such deceased soldier, sailor or marine shall be at the time of his death an inmate of any state institution, including state hospitals and soldiers' homes, or any institution supported by the state and supported at public expense therein, the expense of such burials and headstones shall be a charge upon the county of his legal residence.

## ARTICLE 7

### State Poor

- Section 90. Who are state poor, and how relieved.
91. Notice to be given to county clerks of location of state alms-house.
92. State poor to be conveyed to state alms-house.
93. Punishment for leaving alms-house.
94. Expenses for support.
95. Duty of keeper; superintendent of state and alien poor to keep record of names.
96. Visitation of alms-house.
97. Insane poor.

- Section 98. Care and binding out of state poor children.  
99. Transfer to other states or countries.  
100. Powers of superintendent of state and alien poor.  
101. Indian poor persons; removal to county alms-house.  
102. Contracts for support of Indian poor persons.  
103. Expenses for support of Indian poor persons.  
104. Duty of keepers; superintendent of state and alien poor to keep record.

**§ 90. Who are state poor, and how relieved.** Any poor person who shall not have resided sixty days in any county in this state within one year preceding the time of an application by him for aid to any superintendent or overseer of the poor, or other officer charged with the support and relief of poor persons, shall be deemed to be a state poor person, and shall be maintained as in this article provided. The state board of charities shall, from time to time, on behalf of the state, contract for such time, and on such terms as it may deem proper, with the authorities of not more than fifteen counties or cities of this state, for the reception and support, in the alms-houses of such counties or cities respectively, of such poor persons as may be committed thereto. Such board may establish rules and regulations for the discipline, employment, treatment and care of such poor persons, and for their discharge. Every such contract shall be in writing, and filed in the office of such board. Such alms-houses, while used for the purposes of this article, shall be appropriately designated by such board and known as state alms-houses. Such board may from time to time, direct the transfer of any such poor person from one alms-house to another, and may give notice from time to time to counties, to which alms-houses they shall send poor persons.

**§ 91. Notice to be given to county clerks of location of state alms-house.** Such board shall give notice to the county clerks of the several counties of the location of each of such alms-houses, who thereupon shall cause such notice to be duly promulgated to the superintendents and overseers of the poor, and other officers charged with the support and relief of poor persons in their respective counties. A circular from the superintendent of state and alien poor appointed by such board shall accompany such notice, giving all necessary information respecting the commitment, support and care of the state poor in such alms-houses, according to the provisions of this article.

**§ 92. State poor to be conveyed to state alms-house.** County superintendents of the poor, or officers exercising like

powers, on satisfactory proof being made that the person so applying for relief as a state poor person, as defined by this chapter, is such poor person, shall, by a warrant issued to any proper person or officer, cause such person, if not a child under sixteen years of age, to be conveyed to the nearest state alms-house, where he shall be maintained until duly discharged, but a child under two years of age may be sent with its mother, who is a state poor person, to such state alms-house, but not longer than until it is two years of age. All testimony taken in any such proceeding shall be forwarded, within five days thereafter, to the superintendent of state and alien poor, and a verified statement of the expenses incurred by the person in making such removal shall be sent to such superintendent. Such board shall examine and audit the same, and allow the whole, or such parts thereof, as have been actually and necessarily incurred; provided that no allowance shall be made to any person for his time or service in making such removal. All such accounts for expense, when so audited and allowed, shall be paid by the state treasurer, on the warrant of the comptroller, to the person incurring the same.

**§ 93. Punishment for leaving alms-house.** An inmate of a state alms-house, who shall leave the same without being duly discharged, and within one year thereafter is found in any city or town of this state soliciting public or private aid, shall be punished by confinement in the county jail of the county in which he is so found, or in any work-house of this state in such county, for a term not exceeding three months, by any court of competent jurisdiction; and it shall be the duty of every superintendent and overseer of the poor and other officers charged with the support and relief of poor persons, to cause, as far as may be, the provisions of this section to be enforced.

**§ 94. Expenses for support.** The expenses for the support, treatment and care of all poor persons who shall be sent as state poor to such alms-houses, shall be paid quarterly, on the first day of January, April, July and October in each year, to the treasurer of the county, or proper city officers incurring the same, by the treasurer of the state, on the warrant of the comptroller; but no such expenses shall be paid to any county or city until an account of the number of persons thus supported, and the time that each shall have been respectively maintained, shall have been rendered in due form and approved by the state board of charities.

**§ 95. Duty of keeper; superintendent of state and alien poor to keep record of names.** The keeper or principal officer in charge of such alms-house shall enter the



names of all persons received by him pursuant to this article, with such particulars in reference to each as the board from time to time may prescribe, together with the name of the superintendent by whom the commitment was made, in a book to be kept for that purpose. Within three days after the admission of any such person, such keeper or principal officer shall transmit the name of such person, with the particulars hereinbefore mentioned, to the superintendent of state and alien poor; and notice of the death, discharge or absconding of any such person shall in like manner and within the time above named, be thus sent to such superintendent. Such superintendent shall cause the names of such persons in each such alms-house furnished as above provided for, to be entered in a book to be kept for that purpose in the office of such board, and he shall verify the correctness thereof by comparison with the books kept in such alms-house, and by personal examination of the several inmates thereof, and in any other manner the board may from time to time direct; and he shall furnish the board, in tabulated statements, on or before the second Tuesday in January, annually, the number of inmates maintained in each and all of such alms-houses during the preceding year, the number discharged, transferred to other institutions, bound out, or removed from the state, and the number who died, or left without permission, during the year, with such other particulars and information as the board may require.

**§ 96. Visitation of alms-houses.** The superintendent of state and alien poor shall visit and inspect each of such alms-houses at least once in each three months, and at such other times as he may deem expedient, or as the board may direct. And he shall also visit and inspect all alms-houses in which are Indians who are poor persons, at least once a year. For the purposes of all such inspections, the superintendent shall possess all the powers of a member of the board and the further powers herein-after mentioned. The officer in charge of each and every alms-house shall give to such superintendent free access to all parts of the ground, buildings, hospitals and other arrangements connected therewith, and to every inmate thereof, and extend to him the same facilities for the inspection of such alms-house and its inmates, as is required by law to be extended to such board of commissioners; and, in default thereof, such officer shall be subject to the same penalty as if access were denied to any member of the board. Such board shall also cause each of such alms-houses to be visited periodically by some of its members, who shall examine into their condition and management, respectively, and make such report thereof to the board as may be deemed proper.

**§ 97. Insane poor.** If any inmate of any such alms-house becomes insane, such superintendent of state and alien poor shall cause his removal to the appropriate state hospital for the insane, and he shall be received by the officer in charge of such hospital, and be maintained therein until duly discharged.

**§ 98. Care and binding out of state poor children.** Such superintendent of state and alien poor shall cause the state poor children, under sixteen years of age, unless committed with the mother as hereinbefore provided by this chapter, to be maintained and cared for at such orphan asylums in this state as he may deem proper; and the expenses thereof shall be paid by the state treasurer on the certificate of such superintendent and the warrant of the comptroller. Such superintendent, in his discretion, may bind out a state poor orphan or indigent child which may be committed to any such state alms-house, or placed in any orphan asylum, if a male child under twenty-one years, if a female under the age of eighteen, to be clerks, apprentices or servants, until such child, if a male, be twenty-one years old, or if a female, shall be eighteen years old, which binding shall be as effectual as if such child had bound himself with the consent of his parents or other legal guardian.

**§ 99. Transfer to other states or countries.** When any person becomes an inmate of any such alms-house, and expresses a preference to be sent to any state or country where he may have a legal settlement, or friends willing to support him or to aid in supporting him, the superintendent of state and alien poor may cause his removal to such state or country, provided, in the judgment of the superintendent, the interest of the state and the welfare of such poor person will be thereby promoted.

**§ 100. Powers of superintendent of state and alien poor.** The superintendent of state and alien poor shall possess and exercise the like powers, and be subject to the like duties as to the state poor as superintendents of the poor exercise and are subject to in the care and support of county poor. In the absence or illness of the superintendent such powers and duties may be performed and discharged by any person appointed by the state board of charities for such purpose.

**§ 101. Indian poor persons; removal to county alms-house.** Every Indian residing within this state or upon any of the Indian reservations of this state, who is a poor person within the meaning of this chapter, shall be maintained as provided in this article. Upon application being made by such In-

dian poor person to the superintendent of the poor of the county where such Indian resides, or to any other officer charged with the support and relief of the poor, and on satisfactory proof being made that such Indian is a poor person as defined in this chapter, such superintendent or other officer shall by warrant, cause such Indian to be conveyed to the alms-house of the county where such Indian resides, where he shall be maintained at state expense. Immediately upon the removal of such Indian who is a poor person to such alms-house, all testimony taken and all facts relating thereto, together with a verified statement of the expenses incurred in making such removal, shall be transmitted to the state board of charities. Such board shall examine all matters relating thereto, and if satisfied that such removal was proper, and that the expenses thereof were actually and necessarily incurred, shall audit and allow the amount of such expenses, which when so audited and allowed shall be paid by the state treasurer, on the warrant of the comptroller, to the person incurring the same.

If, however, it shall appear to the satisfaction of such superintendent that the Indian poor person making application for relief is in such physical condition as to make it improper to remove him to the alms-house, the superintendent may, subject to such rules and regulations as may be prescribed by the state board of charities, provide for the care and support of such Indian poor person, without removing him to the alms-house, and the expenses incurred in such care and support shall be paid by the state treasurer on the warrant of the comptroller, upon the order and allowance thereof by the state board of charities as in cases of support of Indian poor persons in alms-houses.

**§ 102. Contracts for support of Indian poor persons.** The state board of charities shall from time to time, on behalf of the state, contract with the proper officers of the county within which such Indians who are poor persons reside, on such terms and for such times as it may deem proper, for the reception and support in the alms-house of such counties of such Indians who are poor persons as may be committed thereto. Such board may establish rules and regulations for the discipline, treatment and care of such Indians and provide for their discharge. Every such contract shall be in writing and filed in the office of such board.

**§ 103. Expenses for support of Indian poor persons.** The expenses for the support, treatment and care of all Indians who are poor persons and shall be sent to such county alms-house pursuant to this chapter, shall be paid quarterly on the first day of January, April, July and October in each year, to the

treasurer of the county wherein such Indians are supported, by the state treasurer, on the warrant of the comptroller, but no such expenses shall be paid until an account of the number of Indians thus supported and the time that each shall have been respectively maintained shall have been rendered in due form and approved by the state board of charities.

**§ 104. Duty of keepers; superintendent of state and alien poor to keep record.** The keeper or principal officer in charge of such alms-house shall enter the names of all Indians committed thereto, with such particulars in relation thereto as the state board of charities may prescribe. Immediately upon the admission of any such Indian, such keeper or principal officer shall transmit by mail the names of such Indians, with the particulars hereinbefore mentioned, to the superintendent of state and alien poor; and notice of the death, discharge or absconding of any such Indian shall in like manner be transmitted to such superintendent. Such superintendent shall cause the names of such Indians in such county alms-house to be entered in a book to be kept for that purpose in the office of such board, and he shall verify the correctness thereof by comparison with the books kept in the alms-house, by personal examination of such Indians or in such other manner as the board may direct; and he shall furnish the board in tabulated statements, annually on or before the second Tuesday in January, the number of Indians maintained in all such county alms-houses during the preceding year, the number discharged, bound out, removed from the state, and the number who died or left without permission during the year, with such other information as the board may require.

## ARTICLE 8

### **Duties of State Board of Charities; Powers of State Charities Aid Association**

- Section 115. Duties of the state board of charities relating to the poor.
- 116. Visitation and inspection of alms-house.
  - 117. Investigations by board or committee; orders thereon.
  - 118. Alms-house construction and administration.
  - 119. Duties of the attorney-general and district attorneys.
  - 120. State, nonresident and alien poor.
  - 121. Visits by the state charities aid association.

**§ 115. Duties of the state board of charities relating to the poor.** The state board of charities shall:

1. Investigate the condition of the poor seeking public aid and devise measures for their relief.

2. Administer the laws providing for the care, support and removal of state and alien poor and the support of Indian poor persons.

3. Advise the officers of alms-houses in the performance of their official duties.

4. Collect statistical information in respect to the property, receipts and expenditures of all alms-houses, and the number and condition of the inmates thereof.

**§ 116. Visitation and inspection of alms-house.** Any commissioner or officer of the state board of charities, or any inspector duly appointed by it for that purpose, may visit and inspect any alms-house in this state. On such visits inquiry shall be made to ascertain:

1. Whether the rules and regulations of the board, in respect to such alms-house, are fully complied with.

2. Its methods of industrial, educational and moral training, if any, and whether the same are best adapted to the needs of its inmates.

3. The condition of its finances generally.

4. The methods of government and discipline of its inmates.

5. The qualifications and general conduct of its officers and employees.

6. The condition of its grounds, buildings and other property.

7. Any other matter connected with, or pertinent to, its usefulness and good management.

Any commissioner or officer of the board, or inspector duly appointed by it, shall have free access to the grounds, buildings, books and papers relating to such alms-house, and may require from the officers and persons in charge, any information it may deem necessary. Such board may prepare regulations according to which, and provide blanks and forms upon which, such information shall be furnished, in a clear, uniform and prompt manner for the use of the board; any such officer or inspector who shall divulge or communicate to any person without the knowledge and consent of such board, any facts or information obtained in pursuance of the provisions of this chapter, shall be guilty of a misdemeanor, and shall at once be removed from office. The annual reports of each year shall give the results of such inquiry, with the opinion and conclusions of the board relating to the same. Any officer, superintendent or employee of any such alms-house who shall wilfully refuse to admit any

member, officer or inspector of the board, for the purpose of visitation and inspection, and who shall refuse or neglect to furnish the opinion required by the board, or any of its members, officers or inspectors, shall be guilty of a misdemeanor, and subject to a fine of one hundred dollars for each such refusal or neglect. The rights and powers hereby conferred may be enforced by an order of the supreme court after such notice as the court may prescribe, and an opportunity to be heard thereon, or by indictment by the grand jury of the county, or both.

**§ 117. Investigations by board or committee; orders thereon.** The board may, by order, direct an investigation by a committee of one or more of its members, of the officers and managers of any alms-house, or of the conduct of its officers and employees; and the commissioner or commissioners so designated to make such investigation may issue compulsory process for the attendance of witnesses and the production of books and papers, administer oaths, examine persons under oath, and exercise the same powers in respect to such proceeding as belong to referees appointed by the supreme court.

If it shall appear, after such investigation, that the inmates of the alms-house are cruelly, negligently or improperly treated, or inadequate provision is made for their sustenance, clothing, care and supervision, or other condition necessary to their comfort and well being, such board may issue an order in the name of the people, and under its official seal, directed to the proper officer of such alms-house, requiring him to modify such treatment or apply such remedy, or both, as shall therein be specified. Before such order is issued it must be approved by a justice of the supreme court, after such notice as he may prescribe, and an opportunity to be heard thereon, and any person to whom such an order is directed who shall wilfully refuse to obey the same shall, upon conviction, be deemed guilty of a misdemeanor.

**§ 118. Alms-house construction and administration.** No alms-house shall be built or reconstructed, in whole or in part, except on plans and designs approved in writing by the state board of charities. It shall be the duty of such board to call the attention, in writing or otherwise, of the board of supervisors and the superintendent of the poor, or other proper officer, in any county, of any abuses, defects or evils, which, on inspection, it may find in the alms-house of such county, or in the administration thereof, and such county officer shall take proper action thereon, with a view to proper remedies, in accordance with the advice of such board.

**§ 119. Duties of the attorney-general and district attorneys.** If, in the opinion of the state board of charities, or any three members thereof, any matter in regard to the management or affairs of any such alms-house, or any inmate or person in any way connected therewith, require legal investigation or action of any kind, notice thereof may be given by the board, or any three members thereof, to the attorney-general, who shall thereupon make inquiry and take such proceedings in the premises as he may deem necessary and proper. It shall be the duty of the attorney-general and of every district attorney when so required to furnish such legal assistance, counsel or advice as the board may require in the discharge of its duties under this chapter.

**§ 120. State, nonresident and alien poor.** The state board of charities, and any of its members or officers, may, at any time, visit and inspect any alms-house to ascertain if any inmates are state charges, nonresidents, or alien poor; and it may cause to be removed to the state or country from which he came, any such nonresident or alien poor found in any such alms-house.

**§ 121. Visits by the state charities aid association.** Any justice of the supreme court, on written application of the state charities aid association, through its president or other officer designated by its board of managers, may grant to such persons as may be named in such application, orders to enable such persons, or any of them, as visitors of such association, to visit, inspect and examine, in behalf of such association, any alms-house within the state. The person so appointed to visit, inspect and examine such alms-house or alms-houses, shall reside in the county or counties from which such alms-house or alms-houses receive their or some of their inmates, and such appointment shall be made by a justice of the supreme court of the judicial district in which such visitors reside. Each order shall specify the alms-house to be visited, inspected and examined, and the name of each person by whom such visitation, inspection and examination shall be made, and shall be in force for one year from the date on which it shall have been granted, unless sooner revoked.

All persons in charge of any such alms-house shall admit each person named in any such order into every part of such alms-house, and render to such person every possible facility to enable him to make in a thorough manner such visit, inspection and examination, which are hereby declared to be for a public purpose and to be made with a view to public benefit. Obedience to the orders herein authorized shall be enforced in the same manner

as obedience is enforced to an order or mandate of a court of record.

Such association shall make an annual report to the state board of charities upon matters relating to the alms-house subject to its visitation. Such reports shall be made on or before the first day of November for each preceding fiscal year.

## ARTICLE 9

### Miscellaneous Provisions

- Section 130. When property of absconding persons to be applied to support of families; how application made.
131. Guardians for minors; proceeds not to be mingled with other funds; officer to give security and to account.
132. Notice of accounting.
133. Penalties, how applied.
134. Superintendents and overseers may redeem on sheriff's sale.
135. Redemption, how made.
136. Moneys therefor, and how paid.
137. When warrant of seizure may be discharged.
138. Boards of supervisors may abolish or revive distinction between town and county poor.
139. Overseers, when to pay money to county treasurer.
140. Invested town money.
141. Report by supervisors.
142. Register of sex and age.
143. Care of poor persons not to be put up at auction.
144. Reports of certain other officers.
145. Alms-house commissioners to report.
146. Reports with relation to children placed in family homes.
147. Report of state board of charities.
148. Deed or mortgage may be accepted by supervisor to secure town for maintenance of poor person.

**§ 130. When property of absconding persons to be applied to support of families; how application made.** Whenever the father, or the mother being a widow or living separate from her husband, has absconded or shall abscond from his or her children, or a husband from his wife, leaving any of such children or such wife chargeable, or likely to become chargeable upon the public for their support, and any real or personal estate of such father, or mother, or husband, has been or



shall be seized by a superintendent of the poor or an overseer of the poor, or by a board of charities, or by other officers authorized to make such seizure, by warrant of the justices of the peace of the county where such real or personal property may be situated; and the court of sessions or county court of the county wherein such superintendent or overseer of the poor, or board of charities, or other officers authorized to make such seizure resides, has confirmed, or shall confirm said warrant and seizure, and has heretofore directed or shall hereafter direct what part if any of said personal property shall be sold, and how much if any of the proceeds of such sale and of the rents and profits of the real estate, if any, be applied toward the maintenance of the children or wife of the person so absconding; then the said superintendent or overseer of the poor, board of charities or other officers so authorized and directed, shall apply the said proceeds of sale of said personal property, or rents and profits of the real estate as the case may be, first, to the payment of such taxes and assessments as may be outstanding and existing liens upon the said real estate, and repairs necessary to be made upon said real estate, and premiums for insurance on the buildings on said real estate; and the balance, if any, directly to the maintaining, bringing up and providing for the wife, child or children so left and abandoned, as the same may be required from time to time; and for all such expenditures they shall take proper vouchers, and from the rents and profits thereafter received from any real estate so seized they shall first pay all legal taxes and assessments, as they shall be assessed against said real estate, and such premiums for insurances and expenses for such repairs thereon as they may deem necessary for the protection and preservation of said real estate, and the balance of said rents and profits shall be applied by said overseers, superintendents, boards of charities, or other persons authorized to make such seizures, to the maintaining, bringing up, and providing for the wife, child, or children so left and abandoned, and proper vouchers shall be taken thereof.

**§ 131. Guardians for minors; proceeds not to be mingled with other funds; officer to give security and to account.** Whenever any child or children, entitled to the benefits provided by this article, shall be a minor or minors whose mother is dead and whose father has absconded from his children, or whose mother, being a widow or living apart from her husband, has absconded from her children, and such minor or minors shall have no guardian, the court of sessions or county court having jurisdiction of this matter shall appoint some suitable person guardian ad litem or next friend of such minor or

minors, whose duty it shall be to see that the provisions of this article are carried into effect. The proceeds of the sale of said personal property and the rents and profits of said real estate shall not be mingled or placed with any other funds held or owned by the officer or officers receiving the same, but shall be kept separate and distinct. Such superintendent, overseer of the poor, board of charities or other authorized officer shall give security for the faithful performance of the duties hereby imposed in such form and in such sum as the aforesaid court may direct, and shall account to the court of sessions for all moneys so received by them and for the application thereof from time to time and may be compelled by the said court to render such account at any time.

**§ 132. Notice of accounting.** Notice of such accounting shall be given to the wife or children, so left and abandoned, as the case may be, and to the guardian of such children, if any of them be minors. And in the event that no guardian or next friend has been appointed, as hereinbefore provided, the said court shall, prior to such accounting being had, appoint some suitable person to attend upon such accounting in behalf of said minors, and notice of such appointment and of such accounting shall be given to the person so appointed.

**§ 133. Penalties, how applied.** All penalties received from the prosecution of any recognizance given by any person who shall have abandoned or neglected his wife or children, or who shall have threatened to run away and leave his wife or children a burden on the public, shall be retained by the officer at whose instance such recognizance was prosecuted, and applied for the same purpose and in the same manner as in section one hundred and thirty of this chapter provided for the disposition of the proceeds of the sale of personal property and the rents and profits of real estate seized under the provisions of this article.

**§ 134. Superintendents and overseers may redeem on sheriff's sale.** County superintendents and overseers of the poor may redeem real property, which may have been seized by them pursuant to sections nine hundred and twenty-one to nine hundred and twenty-six of the code of criminal procedure, the same as judgment creditors under sections fourteen hundred and thirty to fourteen hundred and seventy-eight of the code of civil procedure. No such redemption shall be made, unless at the time of such redemption the seizure of the property sought to be redeemed shall have been confirmed by the county court of the county where the premises may be situated, nor unless such property shall, at the time of making such redemption, be held by the superintendents or overseers, under and by virtue of such seizure.

**§ 135. Redemption, how made.** To entitle such superintendents or overseers to acquire the title of the original purchaser, or to be substituted as purchaser from any other creditor, they shall present to and leave with such purchaser or creditor, or the officer who made the sale, the following evidence of their right:

1. A copy of the order of the county court, confirming the warrant and seizure of such property, duly verified by the clerk of the court.

2. An affidavit of one of the superintendents or overseers that such property is held by them under such warrant and seizure, and that the same have not been discharged, but are then in full force.

**§ 136. Moneys therefor, and how paid.** The superintendents or overseers of the poor may, for the purpose of making such redemption, use any moneys in their hands belonging to the poor funds of their respective towns or counties, which moneys shall be replaced, together with the interest thereon, out of the first moneys which may be received by them from the rent or sale of the premises so redeemed.

**§ 137. When warrant of seizure may be discharged.** If such redemption shall be made, and the person against whom the warrant was issued and seizure made shall apply to have the warrant discharged, he shall, before such warrant and seizure are discharged, in addition to the security required to be given by section nine hundred and twenty-four of the code of criminal procedure, pay to such superintendents or overseers the sum paid by them to redeem such property, together with interest thereon, from the time of such redemption.

**§ 138. Boards of supervisors may abolish or revive distinction between town and county poor.** The board of supervisors of any county may, at an annual meeting or at a special meeting called for that purpose, by resolution, abolish or revive the distinction between town and county poor of such county, by a vote of two-thirds of all the members elected to such board, and until such abolition or revival, such county, or the towns therein, shall continue to maintain and support their poor as at the time when this chapter shall take effect. The clerk of the board shall, within thirty days after such determination, serve, or cause to be served, a copy of the resolution upon the clerk of each town, village or city within such county, and upon each of the superintendents and overseers of the poor therein. Upon filing such determination to abolish the distinction between town

and county poor, duly certified by the clerk of the board, in the office of the county clerk, the poor of the county shall thereafter be maintained, and the expense thereof defrayed by the county; and all costs and charges attending the examinations, conveyance, support and necessary expenses of poor persons therein, shall be a charge upon the county. Such charges and expenses shall be reported by the superintendent of the poor, to the board of supervisors, and shall be assessed, levied and collected the same as other county charges.

**§ 139. Overseers, when to pay money to county treasurer.** Within three months after notice shall have been served upon the overseers of the poor, that the distinction between town and county poor has been abolished, they shall pay over all moneys which shall remain in their hands as overseers for the use of their town, after discharging all demands against them, to the county treasurer, to be applied by him toward the future taxes of such town; and all moneys thereafter received by them, as such overseers, for the use of the poor of their town, shall be paid by them to the county treasurer within three months after receiving the same, and by him credited to the town whose overseers shall have paid the same. It shall be the duty of all officers or persons to pay to the county treasurer all moneys which shall be received for, or owing by them to the overseers of the poor of any such town, for the use of the poor thereof, pursuant to any law or obligation requiring the same to be paid to such overseers, and credited by such county treasurer to the town for whose use such moneys were received or owing. Any overseer or other person having received or owing such moneys, who shall neglect or refuse to pay the same within thirty days after demand thereof, shall be liable to an action therefor, with interest at the rate of ten per centum thereon, by such county treasurer, in the name of his county.

**§ 140. Invested town money.** When any town shall have any moneys raised for the support of the poor, invested in the name of the overseers of the poor of such town, such overseers shall continue to have the control thereof, and shall apply the interest arising therefrom to the support of the poor of their town, so long as such town shall be liable to support its own poor, but when relieved from such liability by a vote of the supervisors of the county, the money so raised and invested shall be applied to the payment of such taxes upon the town, as the inhabitants thereof shall at an annual town meeting, or a special town meeting called for that purpose, determine.

**§ 141. Report by supervisors.** The supervisor of every town in counties where all the poor are not a county charge, shall report to the clerk of the board of supervisors, within fifteen days after the accounts of the overseers of the poor have been settled by the town board at its first annual meeting in each year, an abstract of all such accounts, which shall exhibit the number of poor persons that have been relieved or supported in such town the preceding year, specifying the number of county poor, and town poor, the whole expense of such support, the allowance made to overseers, justices, constables or other officers, which shall not comprise any part of the actual expenses of maintaining the poor.

**§ 142. Register of sex and age.** In addition to the general register of the inmates of the various alms-houses, there shall be kept a record of the sex, age, birthplace, birth of parents, education, habits, occupation, condition of ancestors and family relations, and cause of dependence of each person at the time of admission, with such other facts and particulars in relation thereto as may be required by the state board of charities, upon forms prescribed and furnished by such board. Superintendents and overseers of the poor, and other officers charged with the relief and support of poor persons, shall furnish to the keepers or other officers in charge of such alms-houses, as full information as practicable in relation to each person sent or brought by them to such alms-house, and such keepers or other officers shall record the information ascertained at the time of the admission of such person, on the forms so furnished. All such records shall be preserved in such alms-houses, and the keepers and other officers in charge thereof shall make copies of the same on the first day of each month, and immediately forward such copies to the state board of charities.

**§ 143. Care of poor persons not to be put up at auction.** No officer or persons whose duty it may be to provide for the maintenance, care or support of poor persons at public expense, shall put up at auction or sale, the keeping, care or maintenance of any such poor person to the lowest bidder, and every contract which may be entered into in violation of this provision shall be void.

**§ 144. Reports of certain other officers.** The provisions of this chapter, relating to reports by superintendents of the poor, to the state board of charities, and the penalties applicable thereto, are hereby extended to, and made applicable to the commissioners of public charities for the city and county of

New York, the superintendent of the alms-house of the county of Albany, the keeper of the alms-house of the county of Putnam, the commissioners of the alms-house elected in the cities of Newburgh and Poughkeepsie, and all poor officials elected or appointed in other cities of this state, under general or special acts of the legislature.

**§ 145. Alms-house commissioners to report.** The commissioners of the alms-house of the cities of Newburgh and Poughkeepsie, and the poor officers of other cities chosen under special acts of the legislature, shall annually, on the first day of December, report to the superintendent of the poor of their respective counties such statistics as, from time to time, may be required to be reported in the other cities and towns under the provisions of this chapter.

**§ 146. Reports with relation to children placed in family homes.** The superintendents of the poor of counties, the overseers of the poor of cities and towns, and all other public officers by whatsoever name or title known who are authorized by law to place out dependent children in family homes by adoption, indenture or otherwise, are hereby required to report to the state board of charities on blanks provided by such board, the particulars with relation to each child so placed out. Such report shall state the name, age and sex of the child so placed out, together with the father's full name and residence, the mother's full name and residence, and the religious faith of the parents. The report shall also state the full names and residences of the heads of the family with whom such child is placed, their relationship to the child, if any, the religious faith of the heads of such family, and their occupation or occupations, together with such further information as the state board of charities may require on the blanks provided. Such reports for the preceding month shall be filed with the state board of charities on or before the tenth day of each month.

**§ 147. Report of state board of charities.** The state board of charities shall include in its annual report to the legislature the results of the information obtained from the reports to be made to it as herein provided. It shall also, from time to time, furnish to the officials so required to report to it, necessary forms, blanks and instructions required in making up such reports.

**§ 148. Deed or mortgage may be accepted by supervisor to secure town for maintenance of poor person.** The supervisor of a town may as such official accept a

deed or conveyance of real property or mortgage thereon in behalf of the town, and sell and convey such real property or mortgage the same after the expiration of one year from the date of such conveyance or mortgage, for the care and maintenance of a poor person. No such deed or conveyance shall be accepted by him, unless by the written consent of the town board given at any regular meeting thereof. Such consent shall be filed in the office of the town clerk. The person or persons giving such deed or mortgage may within one year from the date of such conveyance or mortgage secure a conveyance or cancellation of said deed or mortgage upon payment to said supervisor of the expense incurred by such town for taxes and necessary repairs on said property and also in maintaining such person or persons.

## ARTICLE 10

### Laws Repealed; When to Take Effect

Section 160. Laws repealed.

161. When to take effect.

**§ 160. Laws repealed.** Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

**§ 161. When to take effect.** This chapter shall take effect immediately.

#### SCHEDULE OF LAWS REPEALED.

Revised Statutes.... Part 1, chapter 20, title 1, .....All  
 Revised Statutes.... Part 1, chapter 20, title 6, .....All

Laws of	Chapter	Section
1782.....	46.....	4, ¶ 1
1784.....	35.....	1-17, 22, 24, 26, 29, 30
1788.....	14.....	All
1788.....	62.....	1-22, 26-37
1792.....	17.....	All
1793.....	41.....	All
1797.....	101.....	All

Laws of	Chapter	Section
1798.....	80.....	9
1801.....	18.....	All
1801.....	184.....	1-21, 25-29, 41
1802.....	52.....	All
1806.....	150.....	All
1808.....	192.....	All
1809.....	90.....	All
1809.....	139.....	All
1810.....	109.....	All
1811.....	202.....	17
R. L. 1813...	12.....	All
R. L. 1813...	78.....	All
R. L. 1813...	86.....	251-258
1814.....	13.....	All (38th sess.)
1816.....	45.....	1
1817.....	177.....	1-4
1820.....	37.....	All
1820.....	51.....	10
1820.....	222.....	All
1821.....	70.....	1
1821.....	117.....	All
1821.....	203.....	3
1821.....	220.....	All
1823.....	233.....	1, 2
1824.....	37.....	All
1824.....	331.....	All
1825.....	2.....	All
1825.....	122.....	All
1825.....	190.....	All
1826.....	200.....	All
1827.....	245.....	All
1828.....	155.....	2-7
1828.....	6.....	All (2d meet.)
1828.....	7.....	3, pt. affecting L. 1824, Ch. 331 (2d meet.)
1828.....	20.....	15, ¶¶ 19-21 (2d meet.)
1828.....	21.....	1, ¶¶ 80, 82, 294, 324, 335, 338, 425, 440, 518 (2d meet.)
1829.....	110.....	1
1829.....	287.....	1



Laws of	Chapter	Section
1830.....	320.....	8, 9
1831.....	277.....	All
1832.....	26.....	All
1834.....	236.....	All
1838.....	202.....	All
1842.....	214.....	All
1845.....	331.....	All
1846.....	245.....	All
1847.....	195.....	1-13
1847.....	431.....	All
1847.....	483.....	3
1848.....	176.....	All
1849.....	100.....	All
1849.....	350.....	1-5, 7
1849.....	405.....	All
1850.....	339.....	1, 2
1851.....	116.....	All
1851.....	523.....	2-4, 7
1851.....	532.....	All
1853.....	70.....	All
1854.....	188.....	All
1855.....	269.....	All
1855.....	426.....	All
1857.....	61.....	All
1862.....	473.....	All
1863.....	514.....	All
1864.....	8.....	21
1865.....	15.....	All
1865.....	382.....	All
1866.....	185.....	All
1869.....	411.....	All
1870.....	424.....	All
1872.....	38.....	All
1872.....	48.....	All
1872.....	733.....	2, pt. providing that incorpo- rated hospitals must receive indigent sick persons
1873.....	661.....	All
1874 <sup>p</sup> .....	461.....	All
1875.....	140.....	All

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Laws of	Chapter	Section
1875.....	173.....	All
1875.....	308.....	All
1876.....	266.....	All
1878.....	304.....	All
1878.....	404.....	All
1879.....	240.....	All
1881.....	203.....	All
1881.....	393.....	All
1881.....	574.....	All
1883.....	247.....	All
1884.....	319.....	All
1884.....	438.....	2, 4, pt. first sentence, 14
1885.....	34.....	All
1885.....	546.....	All
1887.....	216.....	All
1887.....	655.....	All
1887.....	706.....	All
1888.....	261.....	All
1888.....	486.....	All
1890.....	420.....	All
1892.....	698.....	All
1893.....	42.....	All
1894.....	436.....	All
1894.....	663.....	All
1895.....	783.....	All
1896.....	225.....	All
1896.....	598.....	All
1897.....	48.....	All
1897.....	203.....	All
1897.....	222.....	All
1897.....	507.....	All
1898.....	327.....	All
1898.....	411.....	All
1899.....	83.....	All
1899.....	462.....	All
1900.....	24.....	All
1900.....	345.....	All
1900.....	475.....	All
1901.....	103.....	All
1901.....	664.....	All

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Laws of	Chapter	Section
1902.....	117.....	All
1903.....	96.....	All
1903.....	340.....	All
1905.....	273.....	All
1908.....	328.....	All
1908.....	501.....	All

# PRISON LAW

## Laws 1909, Chap. 47.

AN ACT relating to prisons, constituting chapter forty-three of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

## CHAPTER 43 OF THE CONSOLIDATED LAWS

### PRISON LAW

- Article
1. Short title (§ 1).
  2. General provisions (§§ 10-21).
  3. Commission of prisons (§§ 40-53).
  4. State prisons (§§ 70-74).
  5. State prison for women (§§ 90-100).
  6. Management of state prisons (§§ 110-160).
  7. Prison labor (§§ 170-194).
  8. Paroles (§§ 210-219).
  9. Commutations (§§ 230-248).
  10. Executive clemency (§§ 260-266).
  11. Reformatories (§§ 280-308).
  12. Penitentiaries (§§ 320-324).
  13. Jails (§§ 340-360).
  14. Care of property of person confined for life (§§ 370-375).
  15. Care of property of person confined for less than life (§§ 390-401).
  16. Laws repealed; when to take effect (§§ 420, 421).

### ARTICLE 1

#### Short Title

Section 1. Short title.

§ 1. **Short title.** This chapter shall be known as "Prison Law."

**ARTICLE 2****General Provisions**

- Section 10. Certain prison officers to administer oaths.
11. Delivery of commitment with prisoner; payment of fees for transportation.
  12. Fees of sheriff for transporting convicts.
  13. Rendering accounts on delivery of convicts.
  14. Payment of accounts for transporting convicts.
  15. Convicts sentenced at one session of court to be transported at same time.
  16. State to pay expenses of trial of convicts committing crime in prison.
  17. Detailed statement of expense of trial of convict for crime committed in prison made by district attorney and forwarded to comptroller.
  18. Audit by comptroller and attorney-general of statement of expense of trial of convict for crime committed in prison.
  19. Inquest of coroner on death of prisoner.
  20. Freedom of worship.
  21. Bertillon system.

**§ 10. Certain prison officers to administer oaths.**

The superintendent of state prisons and his clerk may administer oaths and take affidavits in all matters relating to the affairs of the state prisons under his charge. The agent and warden, clerk, assistant clerk and principal keeper of each prison are authorized and required to take affidavits, in all matters of accounts against their respective prisons, and also in relation to fees of sheriffs in bringing convicts to any of said prisons.

**§ 11. Delivery of commitment with prisoner; payment of fees for transportation.** Whenever any convict shall be delivered to the agent and warden of any of said state prisons, in pursuance of such sentence, the officer so delivering such convict shall deliver to such agent and warden, the certified copy of the sentence received by such officer from the clerk of the court by which such convict shall have been sentenced, and such agent and warden shall deliver to such officer a certificate of the delivery of such convict, and the fees of such officer for transporting such convict shall be paid by the treasurer upon the warrant of the comptroller.

**§ 12. Fees of sheriff for transporting convicts.** The compensation to sheriffs for conveying one convict to a state

prison from the county prison, for each mile actually traveled, shall be twenty cents; for conveying two convicts, for each mile so traveled, thirty-five cents; for conveying three convicts, for each mile so traveled, forty cents; and for conveying four or more convicts, for each mile so traveled, twelve cents each; with one dollar per day for the maintenance of each convict while on the way to a state prison but not exceeding one dollar for every thirty miles of travel, in full of all charges and expenses in the premises.

**§ 13. Rendering accounts on delivery of convicts.**

On the delivery of any such convicts to the agent and warden of such prison, the sheriff or other person having charge of the same, shall make and render to the agent and warden of the prison, an account of the number of days spent in coming, and the estimated time necessary in returning home, the number of miles traveled, and of the amount due therefor as prescribed by the preceding section; which account shall then by him be certified under oath to be correct, to which shall be added the certificate of the agent and warden of such prison, setting forth the number of convicts so delivered, and the distance from such prison to the place of their conviction.

**§ 14. Payment of accounts for transporting convicts.** The account, certified and attested as provided in the preceding section, shall be audited by the comptroller, and paid out of the treasury, unless otherwise provided.

**§ 15. Convicts sentenced at one session of court to be transported at same time.** All the convicts who shall be sentenced to imprisonment in the same state prison, at one session of a criminal court, shall be transported at the same time, unless said court shall expressly direct otherwise.

**§ 16. State to pay expenses of trial of convicts committing crime in prison.** Whenever any convict in any of the state prisons of this state shall be indicted and tried for any offense committed by such convict during the time of his imprisonment in any state prison in this state, the expenses of such trial, and in case of conviction for murder in the first degree, the expenses of executing the judgment or sentence of the court, shall be paid by the state.

**§ 17. Detailed statement of expense of trial of convict for crime committed in prison made by district attorney and forwarded to comptroller.** It shall be the duty of the district attorney of any county in which such convict shall be indicted and tried to make out a detailed statement under oath of all the necessary expenses incurred

by any such trial, including the expenses of procuring witnesses to attend before the grand jury and at the trial of the indictment, and also the amount which shall or may be paid for petit jurors for and during the time occupied by such trial, and forward the same to the comptroller of the state of New York.

**§ 18. Audit by comptroller and attorney-general of statement of expense of trial of convict for crime committed in prison.** It shall be the duty of the comptroller and attorney-general to examine such statement and to correct the same by striking therefrom any and all items which are not intended to be paid by the provisions of this section and the two preceding sections of this article, and after correcting such statement as aforesaid, the comptroller shall draw his draft upon the treasurer for the amount of such expenses in favor of the county treasurer of the county in which such trial and indictment shall be had, which sum shall be paid to said county treasurer out of any moneys in the treasury not otherwise appropriated.

**§ 19. Inquest of coroner on death of prisoner.** Whenever a prisoner shall die in any state prison, it shall be the duty of the superintendent of state prisons, and of the agent and warden, physician and chaplain of the prison, if they or either of them shall have reason to believe that the death of the prisoner arose from any other cause than ordinary sickness, to call upon the coroner having jurisdiction to hold an inquest upon the body of such deceased prisoner.

**§ 20. Freedom of worship.** All persons who may have been or may hereafter be committed to or taken charge of by any of the institutions mentioned in this section, are hereby declared to be and entitled to the free exercise and enjoyment of religious profession and worship, without discrimination or preference.

This section shall be deemed to apply to every incorporated or unincorporated society for the reformation of its inmates, as well as houses of refuge, penitentiaries, protectories, reformatories or other penal institutions, continuing to receive for its use, either public moneys, or a per capita sum from any municipality for the support of inmates.

The rules and regulations established for the government of the institutions mentioned in this section shall recognize the right of the inmates to the free exercise of their religious belief, and to worship God according to the dictates of their consciences, in accordance with the provisions of the constitution; and shall allow religious services on Sunday and for pri-

vate ministration to the inmates in such manner as may best carry into effect the spirit and intent of this section and be consistent with the proper discipline and management of the institution; and the inmates of such institutions shall be allowed such religious services and spiritual advice and spiritual ministration from some recognized clergyman of the denomination or church which said inmates may respectively prefer or to which they may have belonged prior to their being confined in such institutions; but if any of such inmates shall be minors under the age of sixteen years, then such services, advice and spiritual ministration shall be allowed in accordance with the methods and rites of the particular denomination or church which the parents or guardians of such minors may select; such services to be had and such advice and ministration to be given within the buildings or grounds where the inmates are required by law to be confined, in such manner and at such hours as will be in harmony, as aforesaid, with the discipline and the rules and regulations of the institution and secure to such inmates free exercise of their religious beliefs in accordance with the provisions of this section. In case of a violation of any of the provisions of this section any person feeling himself aggrieved thereby may institute proceedings in the supreme court of the district where such institution is situated, which is hereby authorized and empowered to enforce the provisions of this section.

**§ 21. Bertillon system.** The superintendent of state prisons shall cause the prisoners in the state prisons to be measured and described in accordance with the system commonly known as the Bertillon method for identification of criminals. The said superintendent shall cause such measurements to be made by a person or persons in official service of the state, and shall prescribe rules and regulations for keeping accurate records of such measurements at such prisons and in duplicate at his office in Albany and for classifying and indexing the same. It shall also be the duty of the officials having charge of the New York state reformatory at Elmira, and the Eastern New York reformatory at Napanoch, and of the penitentiaries in which prisoners shall be confined, or shall be hereafter received under sentence of thirty days or more, to cause said prisoners to be measured and described in accordance with said Bertillon system by such person or persons in the official service of the state or of any such county or institution as may be designated by the superintendent of state prisons for the purpose, which measurements shall be made according to the rules and methods prescribed by the superintendent of state prisons. And it shall be the duty of the



officials in charge of such reformatories and penitentiaries to cause duplicate records of such measurements to be transmitted to the superintendent of state prisons to be by him indexed and classified according to said Bertillon system.

The superintendent of state prisons is also authorized to file, index and classify Bertillon descriptive cards received from other sources. The necessary expenses incurred by the superintendent of state prisons in indexing and classifying prisoners, as provided in this section, shall be payable by the treasurer from the moneys appropriated for the maintenance and support of the several state prisons, on the warrant of the comptroller, and on bills approved by the superintendent of state prisons, but such expenses shall not exceed five thousand dollars per year.

### ARTICLE 3

#### Commission of Prisons

- Section 40. State commission of prisons; appointment and terms.  
 41. Officers of the commission.  
 42. Compensation and expenses of commissioners.  
 43. Meetings and effect of non-attendance.  
 44. Office room and supplies.  
 45. Official seal, certificate and subpoenas.  
 46. General powers and duties of commission.  
 47. Visitation and inspection of institutions.  
 48. Orders of the commission directed to institutions or officers in charge thereof.  
 49. Reports of commission.  
 50. Reports of prison officers.  
 51. Estimates to be furnished by certain officers.  
 52. Enforcement of rights and powers of commission; duties of the attorney-general and district attorneys.  
 53. Misdemeanor.

**§ 40. State commission of prisons; appointment and terms.** There shall continue to be a state commission of prisons, composed of seven members, who shall be appointed by the governor, by and with the advice and consent of the senate. They shall be known as commissioners of prisons, and, except as herein otherwise provided, shall hold office for four years and until the appointment and qualification of their respective successors. In case of any vacancy in the office of any commissioner, the appointment shall be for the remainder of the unexpired term. No commissioner shall qualify or enter upon the

duties of his office, or remain therein, while he is the superintendent of state prisons or the superintendent, manager, agent and warden or other administrative officer of one or more of the institutions subject to the visitation and inspection of such commission.

**§ 41. Officers of the commission.** The commission may elect a president and vice-president from its own members, and appoint a secretary who shall perform such duties as may be required of him. He shall receive a salary to be fixed by the commission at not to exceed three thousand dollars per annum and hold office during the pleasure of the commission. The commission may likewise appoint such other officers, inspectors and clerks as may be necessary, for which an appropriation shall have been made, and fix their compensation, within any appropriation so made, and they shall hold their office during the pleasure of the commission.

**§ 42. Compensation and expenses of commissioners.** Each commissioner shall be entitled to receive ten dollars for each day's attendance at meetings of the commission, or of any of its committees, not exceeding in any one year the sum of five hundred dollars, and also to his actual expenses, necessarily incurred while engaged in the performance of the duties of his office.

**§ 43. Meetings and effect of non-attendance.** The commission may adopt rules and regulations for the discharge of its functions and defining the duties of its officers. It shall, by rule, provide for holding stated and special meetings, which meetings shall however be held at least as often as once each month. Four members regularly convened shall constitute a quorum. The failure on the part of any commissioner to attend three consecutive meetings of the commission during any calendar year, unless excused by a formal vote of the commission, shall be treated by the governor as a resignation by such non-attending commissioner and the governor shall appoint his successor. The annual reports of the commission shall give the names of the commissioners present at each meeting.

**§ 44. Office room and supplies.** The trustees of public buildings shall furnish and assign to such commission, in the capitol at Albany, suitably furnished rooms for its office and place of holding meetings, and the comptroller shall furnish it with all necessary journals, account books, blanks and stationery.

**§ 45. Official seal, certificates and subpoenas.** The commission shall cause a record to be kept of its proceedings, and it shall have and use an official seal; and the records of its proceed-

ings and copies of all papers and documents in its possession and custody may be authenticated in the usual form, under such seal and the signature of its president or secretary. In making investigations as herein authorized said commission or any member thereof is hereby empowered to issue compulsory process for the attendance of witnesses and the production of papers, to administer oaths and to examine persons under oath.

**§ 46. General powers and duties of commission.**

The state commission of prisons shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors, excepting such reformatories as are subject to the visitation and inspection of the state board of charities; and shall:

1. Aid in securing the just, humane and economic administration of all institutions subject to its supervision.
2. Advise the officers of such institutions or in control thereof in the performance of their official duties.
3. Aid in securing the erection of suitable buildings for the accommodation of the inmates of such institutions, and approve or reject plans for their construction or improvement.
4. Investigate the management of all institutions made subject to the visitation of the commission, and the conduct and efficiency of the officers or persons charged with their management.
5. Secure the best sanitary conditions of the buildings and grounds of all such institutions, and protect and preserve the health of the inmates.
6. Collect statistical information in respect to the property, receipts and expenditures of said institutions and of any department of the state or any subdivision thereof in charge of the same, and the number and condition of the inmates thereof.
7. Ascertain and recommend such system of employing said inmates as may, in the opinion of said commission, be for the best interest of the public and of said inmates and not in conflict with the provisions of the constitution relating to the employment of prisoners.

**§ 47. Visitation and inspection of institutions.** The institutions subject to the visitations of said commission may be visited and inspected by it or by any member thereof or by its secretary, when authorized, or by any officer or inspector duly appointed by it for that purpose, at any and all times. Such commission or any member thereof may take proof and hear testimony relating to any matter before it, or before such member, upon any such visit or inspection. Any member or the secretary of such

commission, when authorized, or any officer or inspector duly appointed by it, shall have full access to the grounds, buildings, books and papers relating to any such institution, and may require from the officers and persons in charge or control thereof any information he may deem necessary in the discharge of his duties. Said commission may prepare regulations according to which, and provide blanks and forms upon which, such information shall be furnished, in a clear, uniform and prompt manner, for the use of the commission. Any superintendent, commissioner, officer or employee of such institution, or in charge or control thereof, who shall refuse or cause admission to be refused to any member, officer or inspector of the commission, for the purpose of visitation and inspection, or who shall refuse or neglect to furnish, or to cause to be furnished, the information required by the commission or by any of its members, officers or inspectors, shall be guilty of a misdemeanor.

**§ 48. Orders of the commission directed to institutions or officers in charge thereof.** If it shall appear, after any such investigation, that the laws relating to the construction, management and affairs of any such institution and the care, treatment and discipline of its inmates, are being violated, or that inmates of any such institution are cruelly, negligently or improperly treated, or inadequate provision is made for their sustenance, clothing, care, supervision or other condition necessary to their suitable and proper well being, said board may apply for an order of the supreme court, directed to the proper superintendent, commissioner, agent and warden, manager, keeper or other officer of such institution or in control thereof, requiring him to modify such treatment or apply such remedy, or both, as shall therein be specified. The application for such order shall be made as prescribed in section fifty-two of this chapter and the court may thereupon make such order as may be just; a failure to comply with the terms of such order shall be a contempt of court and punishable as such. Any person to whom such an order is directed who shall wilfully refuse to obey the same, shall likewise, upon conviction, be adjudged guilty of a misdemeanor.

**§ 49. Reports of commission.** The state commission of prisons shall annually report to the legislature, in January of each year, its acts and proceedings for the preceding year, with results and recommendations, which report shall include the information obtained in its inquiries and investigations, and such other matters relating to the institutions subject to its visitations as it may deem necessary or proper. It may, in its discretion, and shall, when required by the governor, or either house of the legislature, make other and special reports.

**§ 50. Reports of prison officers.** The agent and warden of every prison, the superintendent or manager of every penitentiary, the keeper of every jail or other institution used for the detention of sane adults charged with or convicted of crime or detained as witnesses or debtors, subject to the visitation of the commission, shall, besides such information as may from time to time be required of him by the state commission of prisons pursuant to the powers hereinbefore conferred, on or before the first day of November in each and every year, report to said commission the number of male and female persons charged with crime and awaiting trial, the number convicted of crime, the number detained as witnesses and as debtors in his custody on the first day of October last past, together with a statistical exhibit of the number of admissions, discharges and deaths which have occurred within the past year, the nature of the charge, the period of detention or sentence, and such other facts and information as the commission may require.

**§ 51. Estimates to be furnished by certain officers.** The said commission shall have the further duty and authority to require the proper officials of the state and the political divisions thereof, and of all public institutions of the state, and political divisions thereof, supported wholly or in part by the state, or any political division thereof, to furnish to said commission, annually, estimates for each ensuing year of the articles which may be manufactured in penal institutions, required for the use of the state or such political divisions, or said institutions in their charge or under their management.

**§ 52. Enforcement of rights and powers of commission; duties of the attorney-general and district attorneys.** The rights and powers conferred by this article upon the state commission of prisons, its members, officers and inspectors and each of them, may be enforced by an order of the supreme court, or by indictment by the grand jury of the county, or both. The application for such order shall be to a special term of the supreme court of the judicial district in which the institution complained of is situated after at least twenty days' notice to the officer or board having charge of such institution, of the time and place of making such application. A copy of all the papers upon which the application is based shall be served with the notice of such application. On such hearing the court may make such order as may be just, and a failure to comply with the terms thereof shall be a contempt of court and punishable as such. If, in the opinion of the commission, any matter in regard to the

management or affairs of any such institution, or any inmate or person in any way connected therewith, require legal investigation or action of any kind, notice thereof may be given by the commission, to the attorney-general, or to the district attorney of the county, or both, and he or they shall thereupon make inquiry and take such proceeding in the premises as he or they may deem necessary and proper. It shall be the duty of the attorney-general and of every district attorney when so required to furnish such legal assistance, counsel or advice as the commission may require in the discharge of its duties.

**§ 53. Misdemeanor.** Except as in this article otherwise expressly provided, any person who wilfully violates any of the provisions of this article shall be guilty of a misdemeanor.

#### **ARTICLE 4**

##### **State Prisons**

Section 70. Names and locations of state prisons.

71. Clinton prison water-works.

72. Lands retained for use of Clinton prison.

73. Southern boundary of lands at Clinton prison.

74. Sing Sing prison farm.

**§ 70. Names and locations of state prisons.** There shall continue to be maintained for the security and reformation of convicts in this state, three state prisons for men: one at Ossining, in Westchester county; one at Auburn, in Cayuga county; and one at Dannemora, in Clinton county, which prisons shall respectively be denominated the Sing Sing Prison, the Auburn Prison and the Clinton Prison. The prison for women, located on the grounds of Auburn Prison, and provided for by article five of this chapter, shall continue to be maintained and to be known as the State Prison for Women. No state prison shall hereafter be located within the boundaries of any city. (*Thus amended by L. 1909, ch. 479, in effect May 25, 1909.*)

**Amendment of 1909** added last sentence.

**§ 71. Clinton prison water-works.** The agent and warden of the Clinton prison is authorized to appropriate to the use thereof, all waters upon the tract purchased for the establishment of said prison; and any person claiming damages in consequence of such appropriation of water, shall, within six months thereafter, make application to the county judge of the county of Clinton, who shall appoint three commissioners not interested in lands through which the stream or streams of water so appropriated may have previously run, who shall personally examine the lands of the applicant and make an estimate of the damages he has sustained by reason of such appropriation of water, which estimate shall be reduced to writing, subscribed and sworn to by said commissioners, and then transmitted to the comptroller of

this state, who shall thereupon pay the estimated damages of the applicant out of the funds appropriated for said prison.

**§ 72. Lands retained for use of Clinton prison.**

All lands belonging to the state of New York, or which may hereafter become the property of said state, and which shall be situated within ten miles of the Clinton prison, shall be withdrawn from sale, and shall be retained by the state for the use of said prison and the Dannemora hospital for insane convicts. The superintendent of state prisons shall designate the portion of said lands to be used by each institution.

**§ 73. Southern boundary of lands at Clinton prison.**

The southerly bounds of the two hundred acres of land conveyed to the state of New York by St. John B. L. Skinner and others, in eighteen hundred and forty-four, for a prison site at Dannemora, is fixed and determined as and at the center of Cook street in the said village of Dannemora, and it is hereby declared that the said two hundred acres do not extend, and the state has no right or title, south of the said center of Cook street aforesaid.

**§ 74. Sing Sing prison farm.** The agent and warden of the Sing Sing prison shall continue to have charge of the farm and premises on which the same is situated and it shall be his duty to rent or otherwise use or improve the same to the best advantage of the state, but no lease shall be made by him for a longer term than three years.

## ARTICLE 5

### State Prison for Women

- Section 90. Establishment.
91. Agent and warden.
92. Matron, assistant matrons, guards and store-keeper.
93. Residence and maintenance of matron.
94. Salaries.
95. Physician and chaplain. (*Title as inserted by editors.*)
96. Bond of store-keeper.
97. Commitment of women; notice; transportation; attendants.
98. Children of women convicts.
99. Department of Auburn prison.
100. Separate accounts and records.

**§ 90. Establishment.** The buildings on the prison grounds at Auburn, recently known as the asylum for insane criminals, shall be known and designated as a "state prison for women," and shall be maintained as such for the security and reformation of women convicts in this state.

**§ 91. Agent and warden.** The agent and warden of Auburn prison, under the direction of the superintendent of state

prisons, shall have the like management and control of the state prison for women and the inmates thereof that is now conferred upon him by law over the Auburn prison and the prisoners confined therein.

**§ 92. Matron, assistant matrons, guards and store-keeper.** The superintendent of state prisons shall appoint a matron of said state prison for women, and he may remove her from office whenever, in his judgment, the public interest shall so require. He shall designate such number of assistant matrons, not exceeding one for each twenty prisoners, and such number of guards not exceeding four, as he shall deem necessary for the safe-keeping and improvement of the prisoners and the maintenance of discipline. Such assistant matrons and guards shall be appointed by the agent and warden of the Auburn prison, with the approval of the superintendent of state prisons. The agent and warden shall also have power to remove the assistant matrons, guards and other employees so appointed by him. Such agent and warden shall appoint a store-keeper of said prison, who shall have charge of the stores and perform the like duties in the said prison for women that are now performed by the store-keeper in the Auburn prison, and also such other duties as the agent and warden may direct.

**§ 93. Residence and maintenance of matron.** The matron shall be allowed rations for herself from the prison stores, and shall reside in the house connected with the said prison for women, and shall be provided with proper furniture, fuel and lights.

**§ 94. Salaries.** The salary of the matron shall be fixed by the superintendent of state prisons, but shall not exceed twelve hundred dollars per annum. Each assistant matron shall board and lodge in the state prison and shall receive as compensation, in addition to such board and lodging, not to exceed the sum of three hundred dollars per annum. The store-keeper shall receive a salary not to exceed one thousand dollars per annum. Each guard shall receive a salary not to exceed annually six hundred dollars. Such salaries shall be paid monthly and shall be fixed and rated by the superintendent of state prisons.

**§ 95. \*Physician and chaplain.** The physician and chaplain respectively of Auburn prison shall be the physician and chaplain of said state prison for women, and shall perform the duties appertaining to said respective offices thereat, and three hundred dollars additional annual compensation shall be allowed and paid to each of them for the same. (*Thus amended by L. 1909, ch. 527, in effect May 27, 1909.*)

Amendment of 1909 materially changed former section which read as follows:

\* Title of section inserted by editors.



§ 95. **Physician and chaplain.** The physician and chaplain respectively of Auburn prison shall be the physician and chaplain of said state prison for women, and shall perform the duties appertaining to said respective offices thereat, and no additional compensation shall be allowed or paid to them for the same.

§ 96. **Bond of store-keeper.** The store-keeper of said prison shall, before entering on the duties of his office, execute and file in the office of the comptroller of this state, a bond to the people of the state of New York, with sufficient sureties to be approved by the superintendent of state prisons, in the penal sum of twenty-five hundred dollars, conditioned for the faithful performance of his duties according to law.

§ 97. **Commitment of women; notice; transportation; attendants.** Any woman over the age of sixteen years who shall be convicted of felony in any of the courts of this state, shall, when the sentence imposed is one year or more, be sentenced to imprisonment in the state prison for women except as provided by section twenty-one hundred and eighty-seven of the penal law. The clerk of the court imposing such sentence shall immediately notify the agent and warden of the Auburn prison thereof, and such agent and warden shall cause such convict to be transported in the company of at least one other woman to such state prison for women, and the expenses of such transportation shall be paid as a part of the expenses of the maintenance of the prison. (*Thus amended by L. 1909, ch. 240, § 62, in effect April 22, 1909.*)

Amendment of 1909 inserted that part of first sentence beginning with the word "except" and ending with the word "law."

§ 98. **Children of women convicts.** If any woman committed to any state prison, at the time of such commitment is a mother of a nursing child in her care under one year of age, or if a child shall be born to any woman after such commitment to a state prison such child may accompany its mother to and remain in such institution until it is two years of age, and must then be removed therefrom, unless the term of imprisonment of such woman will expire within two years from the time said child thus reaches two years of age. The agent and warden, superintendent or officer in charge of any state prison, shall cause such child when he attains the age of two years to be placed in an asylum for children in this state or may commit such child to the care and custody of some relative or proper person willing to assume such care. If such woman, at the time of such commitment, shall be the mother of and have under her exclusive care a child more than one year of age, which might otherwise be left without proper care or guardianship, the justice or magistrate committing such woman shall cause such child to be committed to such asylum as may be provided by law for such purposes, or to the care and custody of some relative or proper person willing to assume such care.

**§ 99. Department of Auburn prison.** For the purposes of the government and management of such state prison for women, other than as provided for by this article, such state prison for women shall be deemed a department of the Auburn prison.

**§ 100. Separate accounts and records.** The accounts and records of the state prison for women shall be kept separate and distinct from those of the Auburn prison.

## ARTICLE 6

### Management of State Prisons

- Section 110. Officers and employees of prisons.
111. Salary and expenses of superintendent.
112. Salary and expenses of agent and warden.
113. Salaries of physicians, clerks and chaplains.
114. Compensation of other officers.
115. Salaries to be paid monthly.
116. Oath of office and bond of superintendent.
117. Oaths of other officers.
118. Bond of agent and warden.
119. Bonds of other officers.
120. Office, powers and duties of superintendent.
121. Annual report of superintendent.
122. Powers and duties of agent and warden.
123. Daily journal.
124. Account books.
125. Deposit of convicts' deposits and earnings.
126. Estimate of expenses; revision by comptroller.
127. Monthly financial statement of agent and warden to comptroller.
128. Monthly report as to inmates.
129. Annual financial report.
130. Annual inventory.
131. Agent and warden to control fiscal transactions; recovery of debts to prison.
132. Agent and warden to purchase supplies.
133. Bills and receipts for supplies and services.
134. Convicts' money and other property; what to be furnished them on their release.
135. Neglect of duty by agent and warden, punishable.
136. General duties of clerk.
137. Duties of assistant clerk and of assistant foreman of construction at Clinton prison.
138. Duties of physician.

- Section 139. Duties of chaplain.
140. Duties of principal keeper.
141. Duties of store-keeper.
142. Duties of kitchen-keeper.
143. Notes, drafts and other evidences of debt not to be given.
144. Imprisonment of convict sentenced to death and commuted by governor.
145. Transfer from one prison to another.
146. Escaped prisoners, reward for; increased imprisonment because of escape.
147. Agent and warden to report as to prisoner believed insane when crime was committed.
148. Prisoners, how graded.
149. Promotions and reductions in grade.
150. Prison instruction.
151. Single cells.
152. Clothing, bedding and food of prisoners.
153. Prison punishment.
154. Solitary confinement on short rations.
155. Contagious disease in prison.
156. Fire in prison.
157. Imprisonment of criminals convicted of crime against the United States.
158. Restrictions on imprisonment of United States prisoners.
159. Penalty for neglect or violation of duty as to United States prisoners.
160. Persons authorized to visit prisons.

**§ 110. Officers and employees of prisons.** The superintendent of state prisons shall appoint the agent and warden, physician, and chaplain of each of the said prisons, as provided in the constitution; and he may remove them from office whenever in his judgment the public interests shall so require. He shall designate such number of guards, teachers and other employees at each of said prisons as he may deem necessary for the safe-keeping and improvement of the prisoners or for the maintenance of discipline, and he shall also designate which of them shall reside at the prison. But the number of guards shall not exceed the proportion of one guard to fourteen prisoners at each of said prisons.

1. The comptroller shall appoint a clerk of each of said prisons as provided by the constitution, and is authorized to appoint an assistant clerk of each of said prisons whenever in his judgment the public interests shall so require.

2. The agent and warden of each of said prisons shall appoint, subject to the approval of the superintendent of state prisons, a principal keeper, a store-keeper, a kitchen-keeper, a hall-keeper, a yard-keeper, a sergeant of the guard, and so many other guards, teachers and employees of such prison as shall be designated by the superintendent of state prisons as aforesaid, and such agent and warden shall have the power to remove such subordinate officers and employees so appointed by him.

3. No appointment shall be made in any of the state prisons of this state on the grounds of political partisanship; but honesty, capacity and adaptation shall constitute the rule for appointments, and any violation of this rule shall be sufficient cause for the removal from office of the officer committing such violation. No person under twenty-one years of age shall be appointed to or hold any office at any state prison, nor shall any subordinate officer be appointed at any of said prisons by the agent and warden, unless such subordinate officer is a citizen of this state.

**§ 111. Salary and expenses of superintendent.** The superintendent of state prisons shall receive an annual salary of six thousand dollars, payable monthly by the treasurer on the warrant of the comptroller, and in addition thereto, all reasonable and necessary traveling expenses by him actually incurred and paid in the discharge of his official duties, not exceeding the sum of five hundred dollars per annum, and a further sum of four thousand nine hundred and fifty dollars per annum, or so much thereof as may be necessary, for clerk hire, copying and messenger, postage, stationery and other incidental expenses, of all which expenses he shall keep an account by items and verify the same by his oath to be filed with the comptroller.

**§ 112. Salary and expenses of agent and warden.** The agent and warden of each of said prisons shall receive an annual salary of three thousand five hundred dollars, and in addition thereto he shall be allowed rations from the prison stores for himself and family. The agent and warden of each of said prisons shall reside in the house connected therewith. The house for the agent and warden shall be provided with household furniture, fuel and lights for him and his family in addition to his salary, and also in addition thereto he shall be entitled to the services of such prisoners as may be reasonably necessary for household service. The comptroller is hereby authorized to audit and allow from time to time all necessary expenses and subsistence of the agent and warden, when necessarily traveling on official business, or when the attendance of such agent and warden is required at

the seat of government, the necessity of such traveling and attendance to be decided by the comptroller, and the accounts therefor when so audited to be paid by the treasurer on the warrant of the comptroller.

**§ 113. Salaries of physicians, clerks and chaplains.** The physician, clerk and chaplain of each of said prisons shall each receive an annual salary of two thousand dollars; each assistant clerk of said prisons shall receive such annual salary as shall be fixed by the comptroller, not exceeding one thousand five hundred dollars. They shall keep their offices at their respective prisons, and they shall be furnished with fuel and lights for their offices.

**§ 114. Compensation of other officers.** The superintendent of state prisons shall, from time to time, prescribe the compensation of the other officers of said prisons, but the compensation so fixed and prescribed for the following officers in each of such prisons shall not in any case exceed the rate of an annual salary, as follows: To the principal keeper, two thousand dollars; to the kitchen-keeper, store-keeper, hall-keeper and yard-keeper, each twelve hundred dollars; to the sergeant of the guard, nine hundred dollars; to the state detective at Sing Sing prison, eighteen hundred dollars. Officers designated as keepers prior to June first, nineteen hundred and four, shall be classified as guards. The several guards shall be paid only for services actually rendered, and their annual compensation shall be subject to pro rata deduction for time not served. The compensation of guards appointed after said date, shall be as follows: For the first year's service, six hundred and sixty dollars; for the second year's service, seven hundred and forty dollars; for the third year's service, eight hundred and twenty dollars; for the fourth year's service, and thereafter, nine hundred dollars. The annual compensation of guards in service on said date shall be, for services thereafter rendered, as follows: To those serving their first year as prison officers, seven hundred and eighty dollars; to those serving their second year as prison officers, eight hundred and twenty dollars; to those serving their third year as prison officers, eight hundred and sixty dollars; to those who have served three or more years as prison officers, nine hundred dollars.

**§ 115. Salaries to be paid monthly.** The salaries of the officers specified in sections one hundred and eleven, one hundred and twelve, one hundred and thirteen, and one hundred and fourteen shall be payable at the end of each month. None of such officers mentioned shall receive any perquisites or emoluments for his services other than the compensation provided therefor by law.

**§ 116. Oath of office and bond of superintendent.**

Within ten days from the time of notice of his appointment, the superintendent of state prisons shall subscribe and take the oath of office prescribed by the constitution and file the same in the office of the secretary of state, and within such ten days he shall give to the people of the state of New York a bond in the penal sum of twenty-five thousand dollars, with two good sureties to be approved by the comptroller, conditioned for the faithful discharge of the duties of the office.

**§ 117. Oaths of other officers.** Each of the officers of said prisons shall, before entering on the duties of his office, take and subscribe the oath of office prescribed by the constitution of this state, which oath may be taken and subscribed before any officer authorized by law to administer an oath. The said oath shall be filed in the office of the comptroller.

**§ 118. Bond of agent and warden.** Each agent and warden of a state prison and each other officer or person, when required to perform the duties of an agent and warden, before entering on the duties of his office, shall execute a bond to the people of this state with sufficient sureties, to be approved by the superintendent of state prisons and the comptroller, in the penal sum of fifty thousand dollars, conditioned for the honest and faithful performance of his duties, and accounting for all moneys received by him as such agent and warden according to law, which bond when executed and approved shall be filed in the office of the comptroller of this state. Said comptroller may at any time require such agent and warden to execute a new bond as such, with new sureties, in the same form and with the same conditions, to be approved and filed as aforesaid.

**§ 119. Bonds of other officers.** The clerk, principal keeper, store-keeper, kitchen-keeper, hall-keeper and yard-keeper of each of said prisons, before entering on the duties of his office shall each execute and file in the office of the comptroller of the state, a bond to the people of this state, with sufficient sureties to be approved by the superintendent of state prisons, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duties according to law.

**§ 120. Office, powers and duties of superintendent.**

The superintendent of state prisons shall have his office in the city of Albany. He shall have the superintendence, management and control of the state prisons and of the convicts therein, and of all matters relating to the government, discipline, police, contracts and fiscal concerns thereof. He shall have power and it

shall be his duty to inquire into all matters connected with said prisons. He shall make such rules and regulations, not in conflict with the statutes of this state, for the government of the officers, guards and employees of the prisons, except the clerks and assistant clerks, who shall be subject to such rules and regulations as shall be prescribed by the comptroller, and in regard to the duties to be performed by them, and for the government and discipline of each prison, as he may deem proper, and shall cause such rules and regulations to be recorded by the clerk of the prison, and a printed copy thereof to be furnished to each officer of the prison on his appointment. He shall also prescribe a system of accounts and records to be kept at each prison, which system shall be uniform at all of said prisons, and he may also make rules and regulations for a record of photographs and other means of identifying each convict received into said prisons. The superintendent of state prisons may delegate to his clerk authority to certify, in the absence of the superintendent, estimates on all funds to the comptroller, to sign orders for the transfer of convicts, to sign orders for the discharge of insane criminals, whose term of imprisonment has expired, to approve vouchers, to approve bills and pay rolls for payment by the comptroller. The superintendent of state prisons may require reports from the agent and warden or other officers of the prison in relation to their conduct as such officers, and shall have power to inquire into any improper conduct which may be alleged to have been committed by the agent and warden or other officer of either of the said prisons, and for that purpose to issue subpoenas to compel the attendance of witnesses, and the production before him of books, writings and papers in the same manner and with the like effect and subject to the same penalties for disobedience as in cases of trial before justices of the peace, and to examine in person or by attorney all persons who may be brought before him as such witnesses. The superintendent of state prisons is authorized and empowered to lease the railroad, constructed under and by the authority of the laws of eighteen hundred and seventy-eight, chapter one hundred and forty-eight, for such term of years and upon such terms and conditions as shall be approved of, in writing, by the governor and comptroller of this state.

It shall be the duty of the superintendent of state prisons to provide an electrical apparatus suitable and sufficient for the infliction of the punishment of death as provided by section five hundred and five of the code of criminal procedure in each of the state prisons of this state; together with the necessary machinery and appliances for the execution of convicted criminals as provided by said code.

**§ 121. Annual report of superintendent.** It shall be the duty of the superintendent of state prisons on or before the tenth day of January in each year to report to the legislature in writing the condition of each of the prisons for the year ending with the last day of the previous September, specifying the number of convicts confined during such year, and for what offenses, the number transferred from any prison and the reason therefor in each case, the moral, intellectual and physical condition of the prisoners and how employed, the amount of money expended during such year and how, in detail, the amount of money earned during such year and how, in detail, the amount paid into the treasury during such year, and such other matters as may seem pertinent and proper in the judgment of the superintendent.

**§ 122. Powers and duties of agent and warden.** The agent and warden of each of said prisons shall attend regularly at such prison, and exercise a general supervision over its government, discipline and police, and attend to the fiscal and business concerns of the prison, and conform to and enforce the rules and regulations of the superintendent of state prisons in relation thereto. He shall give the necessary directions to the subordinate officers and employees of such prison, and shall examine whether they have been careful and diligent in the discharge of their several duties, shall examine diligently into the state of the prison, and into the health, condition and safe-keeping of the prisoners, and inquire into the justice of any complaints made by the prisoners relative to their provisions, clothing and treatment by such subordinate officers and employees. He may make such general orders or rules for the government of such subordinate officers and employees of the prison, not in conflict with the statutes of the state or the rules and regulations of the superintendent of state prisons, as he may deem proper, which rules and orders shall be entered in a book provided by the agent and warden for that purpose, and copies thereof shall be printed, and each of said subordinate officers and employees shall be furnished with a printed copy thereof upon his appointment.

**§ 123. Daily journal.** The agent and warden of each of said prisons shall cause to be kept a daily journal of the proceedings of the prison, in which shall be entered a note of every infraction of the rules and regulations of the prison by any officer, which shall have come to his knowledge, and of every punishment inflicted on a prisoner, the nature and amount thereof and by whom it was inflicted, and also a memorandum of every



well-founded complaint made by any convict of bad or insufficient food, want of clothing, or cruel or unjust treatment by a guard; such journal shall be kept open at all times to the examination of the superintendent of state prisons.

**§ 124. Account books.** The agent and warden of each of said prisons shall cause to be kept regular books of entry, in which all his accounts and transactions shall be entered. Such books shall contain a regular and correct account of all moneys received by such agent and warden from any source whatever, by virtue of his office, including all moneys taken or received from convicts, or as the proceeds of property taken from them, and of all sums paid by him by virtue of his office, and the persons to whom and purposes for which the same were paid. Such books and the accounts entered therein shall be open for the examination of the superintendent of state prisons or the comptroller or of any person authorized by any of them.

**§ 125. Deposit of convicts' deposits and earnings.** The agent and warden of each of said prisons shall deposit at least once in each week to his credit as agent and warden, in such bank or banks as may be designated by the comptroller, all the moneys received by him as such agent and warden, as convict deposits and miscellaneous earnings, and send to the comptroller, and also to the superintendent of state prisons, weekly, a statement showing the amount so received and deposited, and when, from whom and for what received, and the days on which such deposits were made. Such statement of deposits shall be certified by the proper officer of the bank receiving such deposit or deposits. The agent and warden shall also verify by his affidavit that the sum so deposited is all the money received by him from whatever source of prison income, other than proceeds of the labor of prisoners, and of sales of articles manufactured by them during the week and up to the time of the last deposit appearing on such statement. Any bank in which such deposits shall be made shall, before receiving any such deposits, file a bond with the comptroller of the state, subject to his approval, for such sum as he shall deem necessary. The moneys so deposited by such agent and warden as convict deposits and miscellaneous earnings shall be subject to his check or draft only when countersigned by the comptroller. The comptroller shall countersign such check or draft only when the same is drawn for the payment of an expenditure included in an estimate approved by the superintendent of state prisons, and for the purposes hereinafter stated. The agent and warden of each prison shall, on the first day of each month, make an estimate and detailed statement of all moneys that will, in his judg-

ment, be required for clothing, allowance and transportation of United States prisoners, and to repay to convicts moneys on deposit to their credit, and the interest thereon, as provided by section one hundred and thirty-four of this chapter, during such month, which estimate shall be forwarded to the superintendent of state prisons, who may revise the same by reducing the amount thereof, and he shall certify that he has carefully examined the same, and that the sums stated in said estimate are actually required for the purposes above stated, and he shall thereupon deliver the said estimate, so certified, to the comptroller.

**§ 126. Estimate of expenses; revision by comptroller.** The agent and warden of each of said prisons shall, on the first day of each month, make an estimate, in minute detail, of the necessary expenses for the support and maintenance of the prison under his charge during such month, and shall submit such estimate to the superintendent of state prisons. The superintendent may revise the said estimate by reducing the amount thereof, and shall certify that he has carefully examined the same and that the articles contained in said estimate, or in said estimate as so revised by him, as the case may be, are actually required for the use of the prison, and the superintendent of state prisons shall thereupon present the said estimate and certificate to the comptroller, who shall thereupon authorize the said agent and warden to make his draft on the treasurer for the sum thus certified, or any part thereof, which amount shall be paid on the warrant of the comptroller; and it shall not be lawful for such agent and warden to make purchases on behalf of the state for any other than industrial purposes at such prison, unless such purchases have been included in the estimate as presented to and approved by the superintendent of state prisons.

**§ 127. Monthly statement of \*financial agent and warden to comptroller.** The agent and warden of each of said prisons shall on the first day of each month make to the comptroller a full and perfect statement of all the receipts and expenditures, specifying the items thereof, for the prison under his charge, for the preceding month, which shall be accompanied by the necessary vouchers regularly rendered according to their respective dates, with some short designation thereon of the consideration of payment, evidenced by the vouchers, and the amount of the vouchers carried out in figures; if the vouchers are objectionable, the comptroller shall enter his dissent on the particular voucher, and return it to the agent and warden, reporting the same, who shall cause it to be immediately corrected and returned. Every such statement shall be verified by an affidavit of the agent

\*So in original.

and warden thereunto annexed, as follows: "I, . . . . ., agent and warden of the . . . . . prison, do solemnly swear that I have deposited in the bank, designated by law for such purpose, all the moneys received by me, belonging to the state, during the last month; and I do further swear that the foregoing is a true abstract of all the moneys received and expenditures made by me as such agent and warden during the month ending on the . . . . . day of . . . . ., nineteen hundred and . . . . ., and that the goods and other articles therein specified were purchased and received by me at the prison of which I am in charge, and that the goods were purchased at fair cash market prices, and that the same were paid for in cash; and that neither I nor any person in my behalf had any pecuniary or other interest in the articles purchased; that I received no pecuniary or other benefit therefrom in the way of commissions, percentage, deductions or presents, or in any other manner whatever, either directly or indirectly, nor any promise of future payments, presents or benefits, or to any other person for me, either directly or indirectly." The affidavit of the clerk shall likewise be appended thereto, certifying that the articles contained in such bill were received at the prison, and that they conformed in all respects to the invoice of the goods received and entered by him, both in quality and quantity.

**§ 128. Monthly report as to inmates.** The agent and warden of each of said prisons shall make a monthly report, verified by his oath, to the superintendent of state prisons, stating the names of all convicts received into the prison during the preceding month, the counties in which they were tried, the crimes of which they were convicted, the nature and duration of their sentences, their former trade, employment or occupation, their habits, color, age, place of nativity, degree of instruction, and a description of their persons, and also stating whether any such convicts have ever been confined in any state or county prison, and if so, stating the offense for which they were confined, and the duration of their punishment, and also stating in such report the names of all the convicts pardoned or discharged during the past month, and all other particulars in relation to the parties pardoned or discharged, that are required to be stated in relation to the convicts received in the prison.

**§ 129. Annual financial report.** The agent and warden of each of said prisons shall, on or before the fifteenth day of November in each year, render to the superintendent of state prisons a full and true report for the year ending with the last day of the previous September, of all moneys received by him on account of the prison under his charge, and all the moneys

expended by him for the use thereof, and also an inventory of the goods, raw materials and other property of the state on hand on the last day of the previous September, which account and inventory shall be attested by the oath of the agent and warden and clerk of the prison to be just and true, together with a statement of all changes in the officers of such prison during such year, and the annual reports to the agent and warden of the clerk, physician and chaplain of each prison, and such other matters as shall be required by the superintendent of state prisons.

**§ 130. Annual inventory.** The superintendent of state prisons may, whenever he shall deem advisable, cause an estimate to be made of the value of the goods and other property of the state, for which an inventory has been rendered to him by the agent and warden of either of said prisons, which estimate shall be made under oath by two or more competent persons to be appointed for that purpose by the superintendent, which inventory and estimate shall be transmitted to the comptroller of the state on or before the first day of January in each year, with such observations and remarks thereon as the superintendent may deem necessary to enable the comptroller to understand the same and to correct any errors that may be discovered therein.

**§ 131. Agent and warden to control fiscal transactions; recovery of debts to prison.** All the fiscal transactions and dealings on account of each prison shall be conducted by and in the name of the agent and warden thereof, who shall have control over all matters of finance relating to such prison, subject to the direction and supervision of the superintendent of state prisons. Such agent and warden shall be capable in law of suing in all courts and places, and in all matters concerning the prison, by his name of office, and by that name shall be authorized to sue for and recover all sums of money due from any person to any former agent, or agent and warden of the prison, or to the people of this state on account of such prison. But it shall not be lawful in any such suit or action for any defendant to plead or give in evidence any offset or matter by way of recoupment or counterclaim except for payments made, and not credited to such defendant, or to recover any judgment against such agent and warden in such suit or action other than for the costs and disbursements therein. Each agent and warden shall enforce the payment of all debts due to the prison under his charge with as little delay as possible, but subject to the approbation of the superintendent of state prisons, he may accept any security from any debtor on granting him time, that he may deem conducive to the interests of the state.

**§ 132. Agent and warden to purchase supplies.**

The agent and warden of each of said prisons shall supply provisions and other suitable articles for the maintenance and supply of the prison under his charge, either by contract or by purchase, as shall be directed by the superintendent of state prisons. In case the said superintendent shall direct that such supplies shall be obtained by contract, the agent and warden shall cause notice to be published in a newspaper printed in the county in which such prison is situated, and in such other newspapers and for such time as the said superintendent shall direct, stating the particular supplies wanted, the manner in which they are to be delivered, and the time during which proposals will be received by such agent and warden for furnishing the same. Contracts shall be made by the agent and warden with those persons whose proposals in pursuance of such notice shall be most advantageous to the state, and who shall give satisfactory security for the performance of their contracts, subject to the approval of the said superintendent, unless the superintendent shall deem it expedient to decline all proposals and advertise anew. The articles of food and the quantities of each kind shall be prescribed by the said superintendent and inserted in the contract. All contracts made under this section shall be reduced to writing and signed in duplicate by the parties. One of such duplicates shall be filed with the clerk of the prison, and a copy thereof shall be delivered to the superintendent of state prisons.

**§ 133. Bills and receipts for supplies and services.**

The agent and warden of each of said prisons shall take bills for all goods purchased by him for such prison at the time of such purchase, and shall take similar bills and receipts for such services that shall be rendered for such prison at the time of making payment therefor, and the person to whom any bill shall be paid by either of said agents and wardens, shall in all cases make and subscribe an affidavit to be sworn to before some person duly authorized by law to take the same, stating that said account and the articles and services therein specified were actually furnished or rendered as charged; that neither the agent and warden, nor any person for him or in his behalf had any pecuniary or other interests in the articles sold or services rendered, or in the profits thereof; that to the best of his knowledge and belief no commissions, presents or profits directly or indirectly connected therewith had been paid to him or any other person; or had been promised to be paid in the future to him or to any other person; that the said bill represents the correct amount due him; that the articles included in such account were sold at fair cash market

prices, and that he has actually received the full amount in cash from the said agent and warden.

**§ 134. Convicts' money and other property; what to be furnished them on their release.** The agent and warden of each of said prisons shall take charge of all moneys and other articles which may be brought to the prison by the convicts, and shall cause the same, immediately upon the receipt thereof, to be entered by the clerk among the receipts of the prison; which money and other articles, whenever the convict from whom the same was received shall be discharged from prison, or the same shall be otherwise legally demanded, shall be returned by the said agent and warden to such convict or other person legally entitled to the same; and for such money as the said convict, or any other person for such convict, may have so deposited, such convict shall be entitled to receive interest at the rate of four per centum per annum from the time of such deposit until the same shall be so repaid to such convict as aforesaid, and vouchers shall be taken therefor. The agent and warden of each of said prisons shall furnish to each convict who shall be discharged from prison by pardon or otherwise, or who shall be released therefrom on parole, necessary clothing, not exceeding twelve dollars in value, (between the first day of November and the first day of April, clothing not exceeding eighteen dollars in value and including an overcoat, shall be so furnished) and ten dollars in money, and a railroad ticket for the transportation of one person from such prison to the place of the conviction of such convict, or to such other place as such convict may designate, at no greater distance from said prison than the place of conviction.

**§ 135. Neglect of duty by agent and warden, punishable.** If the agent and warden of a state prison shall wilfully neglect or refuse to make any weekly or monthly return, estimate or statement, or to transmit any statement and certificate of such deposits to the comptroller, as hereby directed, it shall be the duty of the comptroller to notify the superintendent of state prisons of such omissions, and it shall be the duty of such superintendent to order the bond of the agent and warden to be prosecuted for the recovery of any moneys which may be in his hands belonging to the state. The agent and warden of a state prison shall be liable to indictment and punishment for any wilful neglect of duty, or for any malpractice in the discharge of the duties of his office.

**§ 136. General duties of clerk.** It shall be the duty of the clerk of each of said prisons, to reside regularly within one mile,

from said prison, to conform to the rules of discipline established by the superintendent of state prisons, and to perform his duties as prescribed by the comptroller in accordance with law; to keep a register of convicts, in which the names of the convicts shall be alphabetically arranged, and in which shall be entered, under appropriate columns, the date of conviction, where born, age, occupation, complexion, stature, crime, court in which county where convicted, term of sentence, number of previous convictions, to what prison or prisons previously sent, when discharged and how discharged, and such additional facts as the superintendent of state prisons may require to be stated on the register; to annually report to the agent and warden of such prison on the first day of November the number of convicts remaining in prison on the last day of the previous September, the number received during the year ending with the last day of the previous September, the number discharged by expiration of sentence, habeas corpus or by the courts, the number of deaths and escapes, and the number transferred to any other penal institution during such year, and the number remaining in prison on the last day of said September; to keep books of account of the financial transactions of the prison; to keep a separate account in a book provided for that purpose of all money and other articles received by the agent and warden from each convict, crediting such convict therefor; to enter each bill taken by the agent and warden of the prison in the books of the prison at the time of the receipt of the articles mentioned in such account, and in case the articles received do not agree in all respects with the invoice, he shall immediately notify the agent and warden of such discrepancy, and note in his book the discrepancy, whether in weight, quantity or quality; to preserve in the prison a set of all official reports made to the legislature respecting the same, and a set of similar reports in relation to each of the other state prisons, and for that purpose a suitable number of such reports, when printed, shall be supplied to him by the superintendent of state prisons; to make an annual report, attested by his oath to be just and true, to the secretary of state, on or before the first day of December of each year, stating the names of convicts discharged or pardoned from said prison during the year ending with the last day of the preceding September, and all the particulars in relation to such convicts as are required to be stated in the agent and warden's monthly report to the superintendent of state prisons, and stating also, in the cases of pardon, the time unexpired of the time for which the convicts so pardoned were respectively pardoned, when such pardons were granted, and the conditions, if any, on which they were granted, and also the state of health of each convict so pardoned at the time of his discharge.

**§ 137. Duties of assistant clerk and of assistant foreman of construction at Clinton prison.** The assistant clerk of each of said prisons shall assist the clerk in the performance of his duties, in conformity with the disciplinary rules and regulations of the superintendent of state prisons, and under the direction of the comptroller. Any prison employee shall, when so directed by the agent and warden, perform the same duties and have the same authority as a prison guard.

**§ 138. Duties of physician.** It shall be the duty of the physician at each of said prisons to reside regularly within one mile from said prison, to attend daily during the proper business hours of such prison, and at all times hold himself in readiness to discharge his duties as such physician whenever directed by the agent and warden, unless, by the direction of the superintendent of state prisons, he is otherwise engaged in transacting business on account of the prison; to examine weekly the cells of the convicts for the purpose of ascertaining whether they are kept in a proper state of cleanliness and ventilation, and report the same, weekly, to the agent and warden in writing; to examine daily into the quality and state of the provisions delivered to the prisoners, and whenever he shall have reason to believe that any of such provisions are prejudicial to the health of the prisoners, he shall immediately make a report thereof to the agent and warden of the prison in writing; to have charge of the hospital, to attend at all times to the wants of the sick convicts whether in the hospital or in their cells; to prescribe the diet of sick convicts, whether in the hospital or in their cells or elsewhere, and his directions in relation thereto shall be followed by the agent and warden; to keep a daily record of all admissions to the hospital, indicating the color, nativity, age, occupation, habit of life, crime, time of entrance and discharge from the hospital, date of admission to the prison, time in county prison before conviction, disease, if afflicted with scrofula before admission, scrofula during the first, second and third six months after admission to prison, and of the prescriptions and treatment of each case; to report monthly to the agent and warden the number of patients received into the hospital during the last preceding month, stating their respective ages, color, disease and occupations in prison, the quality and kind of medicine administered during the month, the number of those discharged, their condition when discharged, the time they shall have remained in the hospital, the number of deaths, stating cause of such deaths; and it shall be his further duty to state in such report, the number of sick convicts not received into the hospital, for whom he shall have pre-



scribed during the last preceding month, and the quantity and kind of medicine so prescribed, and the number of days during which such convicts, in consequence of sickness, shall have been relieved from labor; to make an annual report to the agent and warden on or before the first day of November in each year of the sanitary condition of the prison for the year ending with the last day of the previous September, with a condensed statement of the information contained in his monthly reports, and of such other matters as shall be required by the agent and warden.

**§ 139. Duties of chaplain.** It shall be the duty of the chaplain of each of said prisons, to perform religious services in the prison, under such regulations as the superintendent of state prisons may prescribe, and to attend to the spiritual wants of the convicts; to visit the convicts in their cells for the purpose of giving them religious and moral instruction, and to devote at least one hour in each week day and the afternoon of each Sunday to such instruction; to furnish, at the expense of the state, a bible to each convict, if requested by such convict; to take charge of the library and to take care that no improper books are introduced into the cells of the convicts, and if any such books shall be found either in the cells or in the possession of a convict, to take away and return the same to the agent and warden, and for the purpose of properly discharging these duties, to visit weekly each cell in the prison; to visit daily the sick in the hospital; to make a quarterly report to the agent and warden, stating the number of convicts that shall have been instructed during the last quarter, the branches of education in which they shall have been instructed, the text-books used in such instruction, and the progress made by the convicts, and to note especially, any cases in which an unusual progress has been made by a convict; to make an annual report on or before the first day of November in each year, to the agent and warden, which report shall be attested by his oath to be just and true, relative to the religious and moral conduct of the prisoners in the prison during the year ending with the last day of the previous September, stating therein what services he shall have performed, and the fruits, if any, of his instructions, and he shall append thereto, as far as practicable, in tabular form, a statement exhibiting the number of convicts in prison, on the last day of such September, and at what age convicted, specifying separately the number born in the United States, foreigners, and of what country, and the nativity of their parents, the number that can not read, that can read only, read and write, well educated, classically educated, temperate, intemperate, healthy, scrofulous, whether employed at

the time of the commission of the crime, counties where convicted, occupation, sentence, how many times recommitted, and social state.

**§ 140. Duties of principal keeper.** It shall be the duty of the principal keeper of each of the prisons, to keep a time-book, in which shall be inserted the names of all the officers and guards belonging to the prison, except the agent and warden, and opposite to each name he shall daily mark whether such officer or guard was absent or present, and at the end of each month shall add up the same and verify such statement by his affidavit that it is correct, which statement, so sworn to, shall be delivered to the agent and warden, who shall forward the same to the comptroller with his monthly report.

**§ 141. Duties of store-keeper.** It shall be the duty of the store-keeper of each of said prisons to take charge of all provisions and other articles purchased for the prison, to compare all such purchases with the bills thereof, furnished to him by the agent and warden of such prison, and to note all discrepancies, and to enter the goods so received in books to be kept by him for that purpose; to keep such goods, when received, in some safe place under his charge, and no goods shall be delivered by him except on a requisition from the kitchen-keeper, or the agent and warden or principal keeper, or in his or their absence, the person acting as such. Such requisition shall in all cases be in writing, and be by him placed on file, and in addition thereto, the articles named in such requisition shall be entered in his books, which books shall state what the articles were, the quantity delivered, and on whose order they were delivered, and to what shop or place sent. It shall also be his duty to keep a perfect, just and true account of all goods sold by the agent and warden, or other officers of the prison, belonging to the prison; at the end of each month to make out a correct statement, attested by his affidavit, giving the amount of each article received, and the quantity, and the amount and kinds of goods delivered on requisitions, and to whom delivered, and the quantity of each kind of property then on hand, with the value thereof at that time, which statement, when made up, shall be delivered to the agent and warden, and by him examined, and if found correct, he shall so certify thereon; such report shall be then forwarded to the comptroller by the agent and warden.

**§ 142. Duties of kitchen-keeper.** It shall be the duty of the kitchen-keeper of each of said prisons to keep a proper book, and to enter therein all goods received on his requisition

from the store-keeper, and the amount cooked and sent to the hospital, and to make a report, attested by his oath to be just and true, at the end of each month to the agent and warden of the amount of such goods then on hand, and the amount received and consumed during the month.

**§ 143. Notes, drafts and other evidences of debt not to be given.** No agent and warden or other officer of either of the state prisons of this state shall give any note, draft or other evidence of debt, except a check on the bank designated by the comptroller, as aforesaid, and such checks and drafts as are authorized by law, in payment for any article purchased for either of said prisons, and signed by him or them individually or in their official capacity, nor shall any such agent and warden, or other officer, sign any paper as agent and warden for the purpose or with the intent of putting or having the same put in circulation for any purpose whatever.

**§ 144. Imprisonment of convict sentenced to death and commuted by governor.** The agent and warden of each of said prisons shall receive into the prison under his charge, on the order of the governor, any person convicted of any crime punishable by death, or who shall be pardoned, on condition of being confined either for life or a term of years in a state prison, and confine such prisoner according to the terms of such condition.

**§ 145. Transfer from one prison to another.** Whenever the transfer of prisoners from one state prison to another shall be ordered by the superintendent of state prisons, the agent and warden of the prison from which such transfer is to be made, shall cause the prisoners to be sufficiently chained in pairs so far as practicable, and to be transported to the prison to which they are so ordered to be transferred, and to be delivered together with the certified copies of their sentences to the agent and warden of such last-mentioned prison, who shall receive and keep them according to their sentences respectively, as if they had been originally sentenced thereto. The persons so employed to transport such prisoners shall prohibit all intercourse between them, and may inflict any reasonable and necessary correction upon such prisoners for disobedience or misconduct in any respect. All necessary expenses of such transfer of such prisoners shall be deemed a part of the incidental expenses of the prison from which they shall be transferred. The necessary expenses of the transfer of any prisoner from a state prison to the state asylum for insane criminals, or to any other penal institution, shall also be deemed a part of the incidental expenses of such prison.

**§ 146. Escaped prisoners, reward for; increased imprisonment because of escape.** Whenever any prisoner confined in a state prison, and not released on parole, shall escape therefrom, it shall be the duty of the agent and warden of such prison to take all proper measures for the apprehension of the prisoner so escaped; and in his discretion he may offer a reward not exceeding fifty dollars for the apprehension and delivery of every such escaped prisoner; and, with the consent of the superintendent of state prisons, such reward may be increased to a sum not exceeding two hundred and fifty dollars each. The agent and warden of a state prison may pay a reward not exceeding fifty dollars for the apprehension and delivery of any such escaped prisoner, whether such reward shall have been previously offered or not. Any such prisoner, escaped from any state prison or penitentiary in this state, and afterwards arrested, shall serve out the full balance of his sentence remaining unexpired at the time of such escape, notwithstanding the time may have expired previous to his recovery, as if he had remained in prison, except as provided by article nine of this chapter. All suitable rewards and other sums of money paid for so advertising and apprehending any such escaped prisoner shall be paid by the agent and warden out of the funds of the prison.

**§ 147. Agent and warden to report as to prisoner believed insane when crime was committed.** Whenever the agent and warden of a state prison shall have reason to believe that any prisoner in the prison was insane at the time he committed the offense for which he was sentenced, such agent and warden shall communicate in writing to the governor his reason for such opinion, and shall refer the governor to all the sources of information with which he may be acquainted in relation to the insanity of such prisoner.

**§ 148. Prisoners, how graded.** The superintendent of state prisons shall direct the classification of prisoners into three classes or grades, as follows: In the first grade shall be included those appearing to be corrigible or less vicious than the others and likely to observe the laws and to maintain themselves by honest industry after their discharge; in the second grade shall be included those appearing to be incorrigible or more vicious, but so competent to work and so reasonably obedient to prison discipline as not seriously to interfere with the productiveness of their labor, or of the labor of those in company with whom they may be employed; in the third grade shall be included those appearing to be incorrigible or so insubordinate or so incompe-

tent otherwise than from temporary ill health as to seriously interfere with the discipline or productiveness of the labor of the prison.

**§ 149. Promotions and reductions in grade.** The superintendent of state prisons may make rules and regulations for the promotion or reduction of the prisoners from one grade to another, and shall transfer from time to time the prisoners in the state prisons from one prison to another with reference to the respective capacities of the several state prisons, or with reference to the health or reformation of the prisoners, or with reference to including all prisoners of one grade as nearly as may be practicable in one prison, or may direct the separation from each other of the prisoners of different grades so far as practicable within each state prison.

**§ 150. Prison instruction.** It shall be the duty of the agent and warden of each of such prisons, so far as practicable and necessary, to appoint as guards of such prison, persons qualified to instruct the prisoners in the trades and manufactures prosecuted in such prison, or in other industrial occupations. Instruction shall also be given in the useful branches of an English education to such prisoners as in the judgment of the agent and warden or chaplain may require the same and be benefited thereby. The time devoted to such instruction shall not be less than an average of one hour and a half daily, Sunday excepted, between the hours of six and nine in the evening, in such room or rooms as may be provided for that purpose.

**§ 151. Single cells.** Whenever there shall be a sufficient number of cells in the prison, it shall be the duty of the agent and warden to keep each prisoner single in his cell at night, and also in the day time when not employed, unless such prisoner be then released on parole.

**§ 152. Clothing, bedding and food of prisoners.** The clothing and bedding of the prisoners shall be of coarse materials, and shall be manufactured as far as practicable in the prison. The prisoners shall be supplied with a sufficient quantity of inferior but wholesome food.

**§ 153. Prison punishment.** The punishments commonly known as the shower bath, crucifix, and yoke and buck are hereby abolished in all the state prisons of this state. No guard in any prison shall inflict any blows whatever upon any prisoner, unless in self-defense, or to suppress a revolt or insurrection. When several prisoners combine, or any single prisoner shall offer violence to any officer of a state prison, or to

any other prisoner, or do or attempt to do any injury to the building or any workshop or to any appurtenances thereof, or to any property therein, or shall attempt to escape, or shall resist or disobey any lawful command, the officers of the prison shall use all suitable means to defend themselves, to enforce observation of discipline; to secure the persons of the offenders, and to prevent any such attempt or escape.

**§ 154. Solitary confinement on short rations.** If in the opinion of the agent and warden of such prison it shall be deemed necessary, in any case, to inflict unusual punishment in order to produce the entire submission or obedience of any prisoner, it shall be the duty of such agent and warden to confine such prisoner immediately in a cell, upon a short allowance, and to retain him therein until he shall be reduced to submission and obedience. The short allowance of each prisoner so confined shall be prescribed by the physician, whose duty it shall be to visit such prisoner and examine daily into the state of his health until the prisoner be released from solitary confinement and returned to his labor.

**§ 155. Contagious disease in prison.** In case any pestilence or contagious disease shall break out among the prisoners in any of the state prisons, or in the vicinity of such prisons, the superintendent of state prisons may cause the prisoners confined in such prison, or any of them, to be removed to some suitable place of security, where such of them as may be sick shall receive all necessary care and medical assistance; such prisoners shall be returned as soon as may be to the state prison from which they were taken, to be confined therein according to their respective sentences.

**§ 156. Fire in prison.** Whenever by reason of any state prison, or any building contiguous to such prison, being on fire, there shall be reason to apprehend that the prisoners may be injured or endangered by such fire, or may escape, it shall be the duty of the agent and warden of such prison to remove such prisoners to some safe and convenient place, and there confine them until the necessity of such removal shall have ceased.

**§ 157. Imprisonment of criminals convicted of crime against the United States.** It shall be the duty of the agent and warden of each of the state prisons, in accordance with the provisions of section one hundred and fifty-eight, to receive into the said prison and safely to keep therein, subject to the discipline of such prison, any criminal convicted of any offense against the United States, sentenced to imprisonment therein, by any court of the United States, sitting within this state, until such

sentence be executed, or until such convict shall be discharged by due course of law; the United States supporting such convict, and paying the expenses attendant upon the execution of such sentence.

**§ 158. Restrictions on imprisonment of United States prisoners.** It shall not be lawful for the superintendent of state prisons, or the agents and wardens, or managers or superintendents of any of the penal institutions in this state, to hereafter receive or permit to be received therein, any prisoner convicted in the United States courts, held without the state of New York, or in any state court other than that of the state of New York. It shall be lawful for the agents and wardens of the state prisons, and the managers of the reformatories of the state to receive prisoners convicted and sentenced in the United States courts in this state, for one year or more, upon proper contracts made for their care and custody, to be approved by the superintendent of state prisons; but no prisoners sentenced in United States courts in this state, for one year or more, shall be received in any penal institution in this state, except in the state prisons and reformatories as aforesaid.

**§ 159. Penalty for neglect or violation of duty as to United States prisoners.** The agent and warden of any prison to whom any such prisoner may have been committed, shall be liable to the like penalties and punishment, for any neglect or violation of duty in respect to the custody of such prisoner, as if such prisoner had been committed by virtue of a commitment or conviction under the authority of this state.

**§ 160. Persons authorized to visit prisons.** The following persons shall be authorized to visit at pleasure all state prisons: The governor and lieutenant-governor, secretary of state, comptroller and attorney-general, members of the legislature, judges of the court of appeals, supreme court and county judges, district attorneys and every minister of the gospel having charge of a congregation in the town wherein any such prison is situated. No other person not otherwise authorized by law shall be permitted to enter a state prison except under such regulations as the superintendent of state prisons shall prescribe.

## ARTICLE 7

### Prison Labor

Section 170. Contracts prohibited.

171. Prisoners to be employed; products of labor of prisoners.

- Section 172. Labor of prisoners of first grade, how directed.  
 173. Labor of prisoners of second grade, how directed.  
 174. Labor of prisoners of third grade, how directed.  
 175. Prisoners employed for use of state, and divisions thereof.  
 176. No printing or photo-engraving to be done by prisoners for use of state.  
 177. Labor of prisoners in prisons, reformatories and penitentiaries.  
 178. Labor of prisoners in certain institutions.  
 179. Employment of convicts on public highways.  
 180. Persons interfering with convicts employed on highways guilty of misdemeanor.  
 181. Classification of industries; report as to industries.  
 182. Articles manufactured to be furnished to the state or division thereof.  
 183. Estimates of articles required to be furnished commission of prisons by officers.  
 184. Board of classification; prices to be fixed.  
 185. Earnings of prisoners.  
 186. Disposition of fines.  
 187. Disposition of moneys paid to prisoner for his labor.  
 188. Monthly statement of receipts and expenditures for prison industries.  
 189. Statement of machinery and materials required.  
 190. Machinery and materials for prison industries, how purchased.  
 191. Disposition of machinery on discontinuance of industry.  
 192. Purchases to be included in estimates.  
 193. Deposits by agent and warden in banks.  
 194. Violations of prison labor regulations.

**§ 170. Contracts prohibited.** The superintendent of state prisons shall not, nor shall any other authority whatsoever, make any contract by which the labor or time of any prisoner in any state prison, reformatory, penitentiary or jail in this state, or the product or profit of his work, shall be contracted, let, farmed out, given or sold to any person, firm, association or corporation; except that the convicts in said penal institutions may work for, and the products of their labor may be disposed of to, the state or any political division thereof or for or to any public institution owned or managed and controlled by the state, or any political division thereof.

**§ 171. Prisoners to be employed; products of labor of prisoners.** The superintendent of state prisons, the super-



intendents, managers and officials of all reformatories and penitentiaries in the state, shall, so far as practicable, cause all the prisoners in said institutions, who are physically capable thereof, to be employed at hard labor, for not to exceed eight hours of each day, other than Sundays and public holidays, but such hard labor shall be either for the purpose of production of supplies for said institutions, or for the state, or any political division thereof, or for any public institution owned or managed and controlled by the state, or any political division thereof; or for the purpose of industrial training and instruction, or partly for one, and partly for the other of such purposes.

**§ 172. Labor of prisoners of first grade, how directed.** The labor of the prisoners of the first grade in each of said prisons, reformatories and penitentiaries, shall be directed with reference to fitting the prisoner to maintain himself by honest industry after his discharge from imprisonment, as the primary or sole object of such labor, and such prisoners of the first grade may be so employed at hard labor for industrial training and instruction solely, even though no useful or salable products result from their labor, but only in case such industrial training or instruction can be more effectively given in such manner. Otherwise, and so far as is consistent with the primary object of the labor of prisoners of the first grade as aforesaid, the labor of such prisoners shall be so directed as to produce the greatest amount of useful products, articles and supplies needed and used in the said institutions, and in the buildings and offices of the state, or those of any political division thereof, or in any public institution owned or managed and controlled by the state or any political division thereof, or said labor may be for the state, or any political division thereof.

**§ 173. Labor of prisoners of second grade, how directed.** The labor of prisoners of the second grade in said prisons, reformatories and penitentiaries shall be directed primarily to labor for the state or any political division thereof, or to the production and manufacture of useful articles and supplies for said institutions, or for any public institution owned or managed and controlled by the state, or any political division thereof.

**§ 174. Labor of prisoners of third grade, how directed.** The labor of prisoners of the third grade shall be directed to such exercise as shall tend to the preservation of health, or they shall be employed in labor for the state, or a political division thereof, or in the manufacture of such useful articles

and supplies as are needed and used in the said institutions, and in the public institutions owned or managed and controlled by the state, or any political division thereof.

**§ 175. Prisoners employed for use of state, and divisions thereof.** All convicts sentenced to state prisons, reformatories and penitentiaries in the state, shall be employed for the state, or a political division thereof, or in productive industries for the benefit of the state, or the political divisions thereof, or for the use of public institutions owned or managed and controlled by the state, or the political divisions thereof, which shall be under rules and regulations for the distribution and diversification thereof, to be established by the state commission of prisons.

**§ 176. No printing or photo-engraving to be done by prisoners for use of state.** No printing or photo-engraving shall be done in any state prison, penitentiary or reformatory for the state or any political division thereof, or for any public institution owned or managed and controlled by the state or any such political division, except such printing as may be required for or used in the penal and state charitable institutions, and the reports of the state commission of prisons and the superintendent of prisons, and all printing required in their offices.

**§ 177. Labor of prisoners in prisons, reformatories and penitentiaries.** The labor of the convicts in the state prisons and reformatories in the state, after the necessary labor for and manufacture of all needed supplies, for said institutions, shall be primarily devoted to the state and the public buildings and institutions thereof, and the manufacture of supplies for the state, and public institutions thereof, and secondly to the political divisions of the state, and public institutions thereof; and the labor of the convicts in the penitentiaries, after the necessary labor for and manufacture of all needed supplies for the same, shall be primarily devoted to the counties, respectively, in which said penitentiaries are located, and the towns, cities and villages therein, and to the manufacture of supplies for the public institutions of the counties, or the political divisions thereof, and secondly to the state and the public institutions thereof.

**§ 178. Labor of prisoners in certain institutions.** The state board of managers of reformatories, and the managing authorities of all the penitentiaries or other penal institutions in this state, are hereby authorized and directed to conduct the labor of prisoners therein, respectively, in like manner and under like restrictions, as labor is authorized by

sections one hundred and seventy and one hundred and seventy-one of this article, to be conducted in state prisons.

**§ 179. Employment of convicts on public highways.** The superintendent of state prisons may employ or cause to be employed, not to exceed three hundred of the convicts confined in each state prison in the improvement of the public highways, within a radius of thirty miles from such prison and outside of an incorporated city or village.

The agent and warden of each prison may make such rules as he may deem necessary for the proper care of such prisoners while so employed, subject to the approval of the superintendent of state prisons.

The agent and warden of each prison may designate, subject to the approval of the superintendent of state prisons, the highways and portions thereof upon which such labor shall be employed; and such portions so designated and approved shall be under his control during the time such improvements are in progress, and the state engineer and surveyor shall fix the grade and width of the roadway of such highways and direct the manner in which the work shall be done.

The superintendent of state prisons is hereby authorized to purchase any machinery, tools and materials necessary in such employment.

**§ 180. Persons interfering with convicts employed on highways guilty of misdemeanor.** Any person interfering with or in any way interrupting the work of any convict employed pursuant to this article upon the public highways, or any person giving or attempting to give any intoxicating liquors, beer, ale or other spirituous beverage to any state prison convict so employed, shall be guilty of a misdemeanor. Any officer or guard of any state prison having in charge the convicts employed upon such highways, may arrest without a warrant any person violating any provision of this section.

**§ 181. Classification of industries; report as to industries.** It shall be the duty of the superintendent of state prisons to distribute, among the penal institutions under his jurisdiction, the labor and industries assigned by the commission to said institutions, due regard being had to the location and convenience of the prisons, and of the other institutions to be supplied, the machinery now therein and the number of prisoners, in order to secure the best service and distribution of the labor, and to employ the prisoners, so far as practicable, in occupations in which they will be most likely to obtain employment

after their discharge from imprisonment; to change or dispose of the present plants and machinery in said institutions now used in industries which shall be discontinued, and which can not be used in the industries hereafter to be carried on in said prisons, due effort to be made by full notice to probable purchasers, in case of sales of industries or machinery, to obtain the best price possible for the property sold, and good will of the business to be discontinued. The superintendent of state prisons shall annually cause to be procured and transmitted to the legislature, with his annual report, a statement showing in detail the amount and quantity of each of the various articles manufactured in the several penal institutions under his control and the labor performed by convicts therein, and of the disposition thereof.

**§ 182. Articles manufactured to be furnished to the state or division thereof.** The superintendent of state prisons, and the superintendents of reformatories and penitentiaries, respectively, are authorized and directed to cause to be manufactured by the convicts in the prisons, reformatories and penitentiaries, such articles as are needed and used therein, and also such as are required by the state or political divisions thereof, and in the buildings, offices and public institutions owned or managed and controlled by the state, including articles and materials to be used in the erection of the buildings. All such articles manufactured in the state prisons, reformatories and penitentiaries, and not required for use therein, shall be of the styles, patterns, designs and qualities fixed by the board of classification, and may be furnished to the state, or to any political division thereof, or for or to any public institution owned or managed and controlled by the state, or any political division thereof, at and for such prices as shall be fixed and determined as hereinafter provided, upon the requisitions of the proper officials, trustees or managers thereof. No article so manufactured shall be purchased from any other source, for the state or public institutions of the state, or the political divisions thereof, unless said state commission of prisons shall certify that the same can not be furnished upon such requisition, and no claim therefor shall be audited or paid without such certificate.

**§ 183. Estimates of articles required to be furnished commission of prisons by officers.** On or before October first in each year, the proper officials of the state, and the political divisions thereof, and of the institutions of the state, or political divisions thereof, shall report to the said commission of prisons estimates for the ensuing year of the amount of supplies of different kinds required to be purchased by them that can

be furnished by the penal institutions in the state. The said commission is authorized to make regulations for said reports, to provide for the manner in which requisitions shall be made for supplies, and to provide for the proper diversification of the industries in said penal institutions.

**§ 184. Board of classification; prices to be fixed.**

The fiscal supervisor of state charities, the state commission of prisons, and the superintendent of state prisons and the lunacy commission are hereby constituted a board to be known as the board of classification. Said board shall fix and determine the prices at which all labor performed, and all articles manufactured in the charitable institutions managed and controlled by the state and in the penal institutions in this state, and furnished to the state, or the political divisions thereof, or to the public institutions thereof, shall be furnished, which prices shall be uniform to all, except that the prices for goods or labor furnished by the penitentiaries to or for the county in which they are located, or the political divisions thereof, shall be fixed by the board of supervisors of such counties, except New York and Kings counties, in which the prices shall be fixed by the commissioners of charities and correction, respectively. The prices shall be as near the usual market price for such labor and supplies as possible. The state commission of prisons shall devise and furnish to all such institutions a proper form for such requisition, and the comptroller shall devise and furnish a proper system of accounts to be kept for all such transactions. It shall also be the duty of the board of classification to classify the buildings, offices and institutions owned or managed and controlled by the state, and it shall fix and determine the styles, patterns, designs and qualities of the articles to be manufactured for such buildings, offices and public institutions, in the charitable and penal institutions in this state. So far as practicable, all supplies used in such buildings, offices and public institutions shall be uniform for each class, and of the styles, patterns, designs and qualities that can be manufactured in the penal institutions in this state.

**§ 185. Earnings of prisoners.** Every prisoner confined in the state prisons, reformatories and penitentiaries, who shall become entitled to a diminution of his term of sentence by good conduct, may, in the discretion of the agent and warden, or of the superintendent of the reformatory, or superintendent of the penitentiary, receive compensation from the earnings of the prison or reformatory or penitentiary in which he is confined, such compensation to be graded by the agent and warden of the

prison for the prisoners therein, and the superintendent of the reformatory and penitentiary for the prisoners therein, for the time such prisoner may work, but in no case shall the compensation allowed to such convicts exceed in amount ten per centum of the earnings of the prison or reformatory or penitentiary in which they are confined. The difference in the rate of compensation shall be based both on the pecuniary value of the work performed, and also on the willingness, industry and good conduct of such prisoner; provided, that whenever any prisoner shall forfeit his good time for misconduct or violation of the rules or regulations of the prison, reformatory or penitentiary, he shall forfeit out of the compensation allowed under this section fifty cents for each day of good time so forfeited; and provided, that prisoners serving life sentences shall be entitled to the benefit of this section when their conduct is such as would entitle other prisoners to a diminution of sentence, subject to forfeiture of good time for misconduct as herein provided. The agent and warden of each prison, or the superintendent of the reformatory or superintendent of the penitentiary may institute and maintain a uniform system of fines, to be imposed at his discretion, in place of his other penalties and punishments, to be deducted from such compensation standing to the credit of any prisoner, for misconduct by such prisoner.

**§ 186. Disposition of fines.** All moneys received for fines under this chapter, from prisons and reformatories, shall be credited to a general fund, and be disbursed by direction of the superintendent of prisons, for special aid to discharged prisoners who are infirm, indigent, or in any way incapable, to an unusual degree, of earning a sufficient subsistence after their release, and all moneys received for fines imposed under this article by the superintendents of penitentiaries, shall be credited to a general fund and be disbursed by direction of the board of supervisors of the counties in which they are located, except that in the counties of New York and Kings they shall be disbursed by direction of the commissioners of charities and correction.

**§ 187. Disposition of moneys paid to prisoner for his labor.** The amount of such surplus standing on the books of the prison to the credit of any prisoner may be drawn by the prisoner during his imprisonment, only upon the certified approval of the superintendent of state prisons for disbursement by the agent and warden of said prison or superintendent of said reformatory to aid dependent relatives of such prisoner, or for such other purposes as the superintendent of state prisons may

approve, or may with the approval of the said superintendent of state prisons be so disbursed without the consent of such prisoner. And any balance to the credit of any prisoner at the time of his conditional release as provided by this article, shall be subject to the draft of the prisoner in such sums and at such time as the superintendent of state prisons shall approve; but at the date of the absolute discharge of any prisoner the whole amount of credit balance as aforesaid shall be subject to his draft at his pleasure. Provided, that any prisoner violating his conditional release, when the violation is formally declared by the board of parole for state prisons, or by the board of managers of said reformatory, shall thereby forfeit any credit balance; and the amount thereof shall be transferred to the fund in aid of discharged prisoners, as herein provided for fines imposed, except such portion thereof as may be applied to pay the expense of his recapture as hereinbefore provided.

**§ 188. Monthly statement of receipts and expenditures for prison industries.** The agent and warden of each of the state prisons shall, on the first of each month, make a full detailed statement of all materials, machinery or other property procured, and of the cost thereof, and of the expenditures made during the last preceding month for manufacturing purposes, together with a statement of all materials then on hand to be manufactured, or in process of manufacture, or manufactured, and of machinery, fixtures or other appurtenances for the purpose of carrying on the labor of the prisoners, and the amount and kinds of work done, and the earnings realized, and the total amount of moneys coming into his hands as such agent and warden during such last preceding month as the proceeds of the labor of the prisoners at such prison, which statement shall be verified by the oath of such agent and warden to be just and true, and shall be by him forwarded to the superintendent of state prisons.

**§ 189. Statement of machinery and materials required.** Such agent and warden shall also on the first day of each month, make an estimate and detailed statement of all materials, machinery, fixtures, tools or other appurtenances or accommodations, and of the cost thereof, which will, in his judgment, be necessary for carrying on the labor of the prisoners at such prison, both for the purposes of production, and of industrial training and education, for the next ensuing month, or which, in his judgment, should be contracted for during such month, which estimate shall be forwarded to the superintendent of state prisons, who may

revise the same by reducing the amount thereof, and he shall certify that he has carefully examined the same, and that the articles contained in said estimate as so revised by him, are actually required for the use of the prison, and he shall thereupon deliver the said estimate so certified to the comptroller.

**§ 190. Machinery and materials for prison industries, how purchased.** The agents and wardens of the state prisons with the approval of the superintendent of state prisons and the manager or other authorities by whatever name known having charge of the penal institutions of the state are authorized within the appropriations which may be placed at their disposal by the state or by the county supporting such institutions to procure and maintain all necessary machinery, tools, apparatus or accommodations needful for the purpose of carrying on and conducting such trades and industries as may be authorized under the provisions of this article. They shall purchase material in manner following: All purchases and contracts for the material to be used in the manufacture of goods in the state prisons and other penal institutions of the state shall be made by advertising for sealed proposals except when in the judgment of the superintendent of state prisons it is for the best interest of the state to purchase the same in the open market. Whenever proposals for furnishing materials have been solicited the parties responding to said solicitations shall be duly notified of the time and place of opening the bids and may be present either in person or by attorney and a record of each bid shall then and there be made. They shall advertise for said proposals or bids daily for at least two weeks in one newspaper published in the city of Albany and two newspapers published in the city of New York, specifying the classes and quantity of material required, and furnish bidders on demand with printed schedules giving a full description of all of the materials required, with date and place of delivery and all other necessary information. The person offering to furnish said materials upon terms most advantageous to the state, and who will give satisfactory security for the performance thereof, in case immediate delivery is not required, shall receive the contract to furnish said materials, unless the superintendent of state prisons shall deem it to the best interests of the state to decline all proposals and advertise anew.

**§ 191. Disposition of machinery on discontinuance of industry.** Whenever any trade or industry is discontinued and it appears to the satisfaction of the agent and warden of any state prison that the said trade or industry will not again be put in operation and continued at said prison, he must report that fact to



the superintendent of state prisons and the state comptroller, and at the same time furnish each with a schedule of the machinery, tools, apparatus and other appurtenances belonging to the said trade or industry or used in connection therewith, and an inventoried value of same, and also the quantity and value of the stock and manufactured product of such trade or industry then on hand, and said agent and warden shall, with the approval of the said superintendent of state prisons and comptroller, sell and dispose of all such unused and unnecessary machinery, tools, apparatus, stock and manufactured product. Said property shall be sold at public auction to the highest bidder, after public notice has been given of the intended selling thereof by advertising the time and place of holding the sale daily for at least two weeks in one newspaper published in the city of Albany, one newspaper published in the city of New York, and one newspaper published in the city or town in which the prison where said sale is to take place, is situated, or if there be no newspaper published in said city or town, then in a newspaper published in the city or town nearest to said place where such prison is located, and the agent and warden of any state prison where such sale is to be held shall furnish any person applying therefor with a printed schedule of the property to be sold, giving a full and complete description of same, the terms of the sale and all other necessary information. Any moneys received from such sale as aforesaid, after deducting all necessary and actual expenses, shall be deposited by the agent and warden of such prison to the credit of the prison capital fund thereof.

**§ 192. Purchases to be included in estimates.** The agent and warden of each prison shall make purchases of the articles included in the estimate so certified to the comptroller, as directed in section one hundred and ninety, and it shall not be lawful for such agent and warden to make any purchases and contracts on behalf of the state for the industrial purposes of such prison unless such purchases and contracts shall have been included in such estimate filed with the comptroller.

**§ 193. Deposits by agent and warden in banks.** The comptroller shall designate a bank or banks convenient to each of said prisons for receiving deposits from the agent and warden of such prison of all moneys coming to his hands as proceeds of the labor of the prisoners and of the sales of articles manufactured by them therein. Before any such deposit shall be made by such agent and warden or received by any such bank such bank shall execute and file with the comptroller a bond in such penal sum, with such sureties and upon such conditions as shall be approved

by the comptroller. The agent and warden of each of said prisons shall deposit, at least once in each week, in the bank or banks so designated by the comptroller, all the moneys received by him as proceeds of the labor of the prisoners, to his credit as such agent and warden, and shall send to the comptroller, and also to the superintendent of state prisons, weekly, a statement showing the amounts so received and deposited, and when, from whom and for what received, and the days on which such deposits were made, which statement shall be certified by the proper officer of each bank receiving such deposits, and shall also be verified by the oath of such agent and warden, to the effect that the sum so deposited includes all the moneys received by him as the proceeds of the labor of the prisoners in said prison and of the sales of the articles manufactured by them during such week and up to the time of the last deposit appearing on such statement. The moneys so deposited by such agent and warden shall be subject to his check or draft only when countersigned by the comptroller. The comptroller shall countersign such check or draft only when the same is drawn for the payment of an expenditure included in an estimate approved by the superintendent of state prisons. In case the balance of such deposits in any such bank shall at any time, in the judgment of the comptroller, be in excess of the amount which will be needed to meet the expenses of such prison, the comptroller shall notify the treasurer of the state and also the said bank of the amount of such excess, which amount shall be added by such treasurer to the prison fund in the treasury of the state, and shall be thereafter payable by said bank upon the draft of the said treasurer only. It shall be the duty of the comptroller at the commencement of each annual session of the legislature, to report the financial condition of each of the prisons under the control of the superintendent of prisons. Such report shall state the amount and value of unmanufactured material on hand, the amount and value of manufactured goods unsold, the amount and value of goods sold but not paid for and the amount of money remaining on deposit in each bank in which funds are deposited as provided by this section, such losses as may occur from time to time, and also such other information as he shall deem proper relating to the manufacturing industries of the prisons.

**§ 194. Violations of prison labor regulations.** Any contract made by the superintendent or agent and warden of any prison, or by any officer or any other authority whatsoever, of any prison, reformatory, penitentiary or other penal institution of this state, in violation of, or contrary to, the provisions of this article, shall be null and void. It shall be the

duty of any such officer or authorities to furnish to the attorney-general, upon demand therefor, a true copy, if in writing, and if not, in substance, of any contract made by such officer or authorities, relating in any way to the system of labor adopted, or to the employment of prisoners in any of said prisons, reformatories, penitentiaries or other penal institutions. Whenever the attorney-general shall be satisfied that any contract made as aforesaid is contrary to or in violation of this article, or that any of the officers or authorities aforesaid have entered into or are engaged in any contract or arrangement for the labor of prisoners, or relating to the system adopted or continued in said institutions, which contract or arrangement is contrary to or in violation of law as aforesaid, if he shall be of the opinion that the facts require such action, he is hereby authorized to bring an action in the supreme court in the name of the people of the state of New York, in any county which he may select, for the purpose of testing the validity of any contract or arrangement made by any of the officers herein named, relating in any way to the system of labor adopted, or the employment of prisoners in any of said prisons, reformatories, penitentiaries or other penal institutions, or to determine the validity of any act or thing done by any officer herein mentioned, which act or thing shall be alleged to have been in violation of this article. Any party to such contract, agreement or arrangement as aforesaid, or interested in the determination of such action, shall be made defendant, and pending the trial or hearing of the facts alleged, or of any issue made as aforesaid, the court shall, upon notice of the attorney-general, and upon a petition duly verified showing the making of any contract or arrangement in violation of the provisions of this article, or the doing of any act or thing by any of the parties defendant, in violation of this article, grant an injunction order, restraining the parties named in said order from the further prosecution of the business complained of, or from the further performance of the contract or arrangement claimed to have been entered into as aforesaid, and to restrain and enjoin such officer from the further continuance of any act alleged to be in violation of this article. And any disobedience of such injunction order shall be punishable as provided by article nineteen of the judiciary law. And upon any trial had, judgment shall follow the findings of fact made by the court or jury, as in other cases, and with costs, in the discretion of the court.

## **ARTICLE 8**

### **Paroles**

- Section 210. Board of parole for state prisons; parole officers.  
 211. Prisoners subject to parole. (*Title as inserted by editors.*)  
 212. Meetings of board; applications for parole or discharge.

- Section 213. Biographical record of prisoners on indeterminate sentence.
214. Release on parole of prisoners on indeterminate sentence.
215. Warrant for arrest of paroled prisoner.
216. Officer may arrest prisoner.
217. Appearance of recaptured paroled prisoner before parole board; imprisonment after delinquency.
218. Absolute discharge of paroled prisoner.
219. Not to affect governor's powers to pardon or commute.

**§ 210. Board of parole for state prisons; parole officers.** There shall be a board of parole for state prisons of three members to consist of the superintendent of prisons, and two members to be appointed by the governor, by and with the advice and consent of the senate. This board shall have all the powers and perform all the duties now devolving by law upon the board of commissioners for paroled prisoners for the state prisons. It shall adopt a uniform system of marking prisoners by means of which shall be determined the number of marks or credits to be earned by each prisoner as a condition of release by parole, which system shall be subject to revision from time to time. It shall also be its duty to make examination and report to the governor with its recommendations on all applications for pardon referred to it by the governor. The members of said board other than the superintendent of prisons shall receive for their services an annual salary of not to exceed one thousand five hundred dollars each from the dates of their respective appointments to October first, nineteen hundred and eight, and thereafter an annual salary of not to exceed one thousand eight hundred dollars each and shall hold office for a term of five years from the time of their appointment. They shall also receive their necessary expenses actually incurred in the discharge of their official duties. In case of the absence or disability of the superintendent of prisons he may deputize his chief clerk to represent and act for him at any meeting of said board. Each agent and warden shall appoint a parole officer for the prison of which he is in charge. It shall be the duty of such officers to aid paroled prisoners in securing employment and to visit and exercise supervision over them while on parole and they shall have such authority and perform such other duties as the board of parole may direct. The salary of each parole officer shall not exceed twelve hundred dollars per annum, which together with his actual and necessary traveling expenses shall be payable from the maintenance fund of the prison to which he is assigned.

**§ 211. \*Prisoners subject to parole.** Every person con-

\* Title of section inserted by editors.

fined in a state prison, or reformatory, under sentence for a definite term for a felony, who has never before been convicted of a crime punishable by imprisonment in a state prison, shall be subject to the jurisdiction of the board of parole for state prisons and may be paroled in the same manner and subject to the same conditions and penalties as prisoners confined under indeterminate sentences. The minimum and maximum terms of the sentences of said prisoners are hereby fixed and determined to be as follows: The definite term for which each person is sentenced shall be the maximum limit of his term and if the definite term for which the person is sentenced is two years or less the minimum limit of his term shall be one year. If the definite term for which the person is sentenced is more than two years, one-half of the definite term of his sentence shall be the minimum limit of his term. (*Thus amended by L. 1909, ch. 240, § 63, in effect April 22, 1909, and L. 1909, ch. 489, in effect May 25, 1909.*)

Amendments of 1909, chap. 240, struck out the word "now" before "confined" and the words "or reformatory" following the words "state prison", near the beginning of the first sentence. Chap. 489 restored the words "or reformatory" stricken out by former amendment and otherwise materially changed former section which read as follows:

§ 211. Prisoners subject to parole. Every person now confined in a state prison or reformatory, under sentence for a definite term for a felony, the maximum penalty for which is imprisonment for five years or less, exclusive of fines, who has never before been convicted of a crime punishable by imprisonment in a state prison, shall be subject to the jurisdiction of the board of parole for state prisons and may be paroled in the same manner and subject to the same conditions and penalties as prisoners confined under indeterminate sentences. The minimum and maximum terms of the sentences of said prisoners are hereby fixed and determined to be as follows: The definite term for which each person is sentenced shall be the maximum limit of his term, and one-third of the definite term of his sentence shall be the minimum limit of his term.

§ 212. Meetings of board; applications for parole or discharge. A majority of the board of parole for state prisons shall constitute a quorum for the transaction of business and they shall meet monthly at each of said prisons upon dates to be fixed by them between April first and December first, excepting the month of August, and at such other times as they may deem necessary between December first and the following April first in each year. Each prisoner confined in the state prisons may one month prior to the expiration of the minimum term of his sentence, make application to the board, in writing and in such form as they may prescribe, for his release upon parole, or for an absolute discharge as hereinafter provided, and said board is hereby prohibited from entertaining any other form of application or petition for the release upon parole or absolute discharge of any prisoner.

§ 213. Biographical record of prisoners on indeterminate sentence. The superintendent of state prisons

shall cause to be kept, at each state prison, a full and accurate record of each prisoner therein confined upon an indeterminate sentence, which record shall include a biographical sketch covering such items as may indicate the causes of the criminal character or conduct of the prisoner, and also a record of the demeanor, education and labor of the prisoner while confined in such prison; and whenever such prisoner is transferred from one prison to another, a copy of such record or an abstract of the substance thereof, together with the certified copy of the sentence of such prisoner, shall be transmitted with such prisoner to the prison to which he shall be transferred.

**§ 214. Release on parole of prisoners on indeterminate sentence.** If it shall appear to said board of parole for state prisons, upon an application by a convict for release on parole as hereinbefore provided, that there is reasonable probability that such applicant will live and remain at liberty without violating the law, then said board may authorize the release of such applicant upon parole, and such applicant shall thereupon be allowed to go upon parole outside of said prison walls and inclosure upon such terms and conditions as said board shall prescribe, but to remain, while so on parole, in the legal custody and under the control of the agent and warden of the state prison from which he is so paroled, until the expiration of the maximum term specified in his sentence as hereinbefore provided, or until his absolute discharge as hereinafter provided.

**§ 215. Warrant for arrest of paroled prisoner.** If the agent and warden of the prison from which such prisoner was paroled, or said board or any member thereof, shall have reasonable cause to believe that the prisoner so on parole has violated his parole and has lapsed or is probably about to lapse into criminal ways or company, then such agent and warden or said board, or any member thereof, may issue his warrant for the retaking of such prisoner.

**§ 216. Officer may arrest prisoner.** Any officer of said prison, any parole officer, or any officer authorized to serve criminal process within this state to whom such warrant shall be delivered is authorized and required to execute said warrant by taking said prisoner and returning him to said prison, within the time specified in said warrant therefor. Such officer other than an officer of the prison, or parole officer, shall be entitled to receive the same fees therefor as upon the execution of a warrant of arrest at the place where said prisoner shall be retaken, and as for transporting a convict from the place of arrest to the prison, in case such officer also transports said prisoner to the prison. Such fees of the officer other than a prison officer, or parole officer, and the expenses of a prison officer in executing such warrant shall be paid by the agent and warden of the prison out of the moneys standing

to the credit of such paroled prisoner as hereinafter provided, if any or sufficient therefor, and otherwise out of the funds of the prison. The parole officers, for purposes of identification, may, within this state, measure, describe and photograph prisoners in accordance with the Bertillon system.

**§ 217. Appearance of recaptured paroled prisoner before board of parole; imprisonment after delinquency.** At the next meeting of the board of parole of state prisons, held at such prison, after the issuing of a warrant for the retaking of any paroled prisoner, said board shall be notified thereof. If said prisoner shall have then been returned to said prison, he shall be given an opportunity to appear before said board, and the said board may after such opportunity has been given, or in case said prisoner has not yet been returned, declare said prisoner to be delinquent, and he shall whenever arrested by virtue of such warrant be thereafter imprisoned in said prison for a period equal to the unexpired maximum term of sentence of such prisoner, at the time such delinquency is declared, unless sooner released on parole or absolutely discharged by the board of parole of state prisons.

**§ 218. Absolute discharge of paroled prisoner.** If it shall appear to said board of parole that there is reasonable probability that any prisoner so on parole will live and remain at liberty without violating the law, and that his absolute discharge from imprisonment is not incompatible with the welfare of society, then said board shall, if such prisoner was originally sentenced to an indeterminate term, issue to said prisoner an absolute discharge from imprisonment upon such sentence, which shall be effective therefor, and if such prisoner was originally sentenced to a definite term the said board shall report his case to the governor, with such information and recommendations as they may deem proper, for his discretionary action.

**§ 219. Not to affect governor's powers to pardon or commute.** Nothing herein contained shall be construed to impair the power of the governor of the state to grant a pardon or commutation in any case.

## **ARTICLE 9**

### **Commutations**

Section 230. Definite sentence; indeterminate sentence; commutation.

231. Commutation, how computed.

232. Term of imprisonment, when to begin.

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245. Convicts to be informed of this article.
246. Proceedings upon discharge.
247. Application of article to a hospital for insane criminals or convicts.
248. Application of article to convicts in reformatories.

**§ 230. Definite sentence; indeterminate sentence; commutation.** A sentence to imprisonment in a state prison for a definite fixed period of time is a definite sentence. A sentence to imprisonment in a state prison having minimum and maximum limits fixed by the court is an indeterminate sentence. Every convict confined under a definite sentence in any state prison or penitentiary in this state, on a conviction of a felony or misdemeanor, whether male or female, where the terms or term equal or equals one year, exclusive of any term which may be imposed by the court or by statute as an alternative to the payment of a fine, or a term of life imprisonment, may earn for himself or herself a commutation or diminution of his or her sentence or sentences as follows, namely, two months for the first year, two months for the second year, four months each for the third and fourth years, and five months for each subsequent year.

**§ 231. Commutation, how computed.** Where any convict in any state prison or penitentiary in this state is held under more than one conviction, the several terms of imprisonment imposed thereunder shall be construed as one continuing term for the purpose of estimating the amount of commutation which he or she may be entitled to under the provisions of this article.

**§ 232. Term of imprisonment, when to begin.** For the purpose of this article the term of imprisonment of each convict shall begin on the date of his or her actual incarceration in a state prison or penitentiary.



**§ 233. Warden to report monthly to governor; contents.** On any day not later than the twentieth day of each month, the agent and warden of each of the state prisons in this state, and the warden or superintendent of each of the penitentiaries in this state, shall forward to the governor a report, directed to him, of any convict who may be discharged the following month by reason of the commutation of his or her sentence in the manner hereinafter provided, which may be written or printed, or partly written and partly printed, which shall be uniform as to size and arrangement, which size and arrangement shall be fixed by the governor, and shall contain the following information, distinctly written, namely: The full name of the convict, together with any alias which he or she may be known to have, the name of the county where the conviction was had, a brief description of the crime of which the convict was convicted, the name of the court in which the conviction was had, the name of the presiding judge, the date of sentence, the date of reception in the prison or penitentiary, the term and fine, the amount of commutation recommended, and the date for discharge from the prison or penitentiary, if allowed.

**§ 234. Terms expiring on holidays and Sundays.** In the cases of all convicts where the date of discharge from a state prison or penitentiary, as determined after the allowance of commutation for good conduct, falls on Sunday, or any legal holiday, it shall fall on the day following.

**§ 235. Rules for allowance of commutation; change thereof.** The superintendent of state prisons shall formulate rules governing the allowance or disallowance of commutation to convicts for good conduct in prison or penitentiary which shall in all cases be strictly adhered to in all the prisons and penitentiaries in this state. These rules may be changed from time to time, if necessary, in the discretion of the superintendent of state prisons, and he shall immediately on their adoption or of any changes in the same thereafter, cause copies of the same to be forwarded to the agents and wardens of all the prisons, and the wardens or superintendents of all the penitentiaries in this state. A copy of these rules shall be furnished to every convict entitled to the benefits of this article.

**§ 236. Allowance of commutation to be determined by prison board; regulations respecting the same; part of commutation may be withheld.** For the purpose of applying the rules mentioned in the last section for the allowance or disallowance of commutation for the good conduct of any con-

vict, a board shall be constituted in each of the prisons and penitentiaries of this state, to consist of the agent and warden in each of the state prisons and the principal keeper and the physician therein, and the warden or superintendent in each of the penitentiaries of this state, the deputy or principal keeper and the physician therein, or of the persons acting in their place and stead. This board shall meet once in each month before the date fixed for the transmission of their report to the governor, as hereinbefore provided, and proceed to determine the amount of commutation which they shall recommend to be allowed to any convict, which shall not in any case exceed the amount fixed by this article. They shall have full discretion to recommend the withholding of the allowance of commutation for good conduct, or of a part thereof, as a punishment for offenses against the discipline of the prison or penitentiary, in accordance with the rules hereinbefore mentioned.

**§ 237. Reasons for withholding to be sent to governor; his power.** In all cases, however, where the board shall recommend the withholding of the allowance of the whole or any part of commutation for good conduct, they shall forward with their report to the governor their reasons, in writing, for such disallowance, and the governor may, in his discretion, decrease or increase the amount of commutation as recommended by the said board, but he shall not increase the same beyond the amount fixed by this article.

**§ 238. Forfeiture of commutation for escapes.** In case any convict in any of the state prisons or penitentiaries in this state having a sentence or sentences which equals or equal four years, escapes or attempts to escape, he or she shall, for the first escape or attempt to escape, forfeit one-half of the amount of commutation fixed by this article. For the second escape or attempt to escape, he or she shall forfeit all commutation for good conduct as provided for in this article. Any convict, however, having a sentence or sentences which equals or equal less than four years, who escapes or attempts to escape, shall forfeit all commutation for good conduct as provided for in this article. But where a convict has more than one term, the provisions of this section shall only apply to the term during which the escape or attempt to escape was made.

**§ 239. Proceedings for determining as to escapes.** The board hereinbefore provided for to fix the amount of commutation for good conduct shall, immediately on the escape or attempt to escape of any convict, meet and proceed to investigate the said

escape or attempt to escape, reduce the testimony of all persons having knowledge on the subject to writing, cause the said persons to affix their signatures thereto and make oath to the same before any one of the members of said board, who is hereby authorized and empowered to administer such oath, and false swearing on such examination or in such statement shall be perjury. The said board shall thereupon make a full report in writing, and immediately forward the same to the superintendent of state prisons, who shall thereupon determine whether an escape or attempt to escape was committed, make an indorsement, in writing, of his decision, and return the same to the agent and warden of the state prison, or the warden or superintendent of the penitentiary where the escape or attempt to escape shall have occurred, where the same shall be recorded in a book to be kept for that purpose. But if from newly-discovered evidence, or other just cause, there is reasonable ground to believe that an injustice has been done to any convict in his or her having been adjudged to have escaped or attempted to escape, the superintendent of state prisons may, in his discretion, make an order in writing directed to the agent and warden of the state prison or the warden or superintendent of the penitentiary from which such convict was adjudged to have escaped or attempted to escape, requiring that a re-examination of the former adjudication be had, and upon a report to him of such re-examination, he shall proceed to render a decision upon the same. And the proceedings on such re-examination, the decision and the proceedings had thereunder, shall in all respects be conducted in the manner above set forth in this section as upon a first hearing in the matter of an escape or attempt to escape. But the provisions of this section shall not apply to the case of any convict, the length of whose term or terms is less than one year.

**§ 240. To whom provisions as to escapes are applicable.** The provisions of section two hundred and thirty-eight shall apply to all convicts who are now, or who may hereafter be confined in any prison or penitentiary of this state.

**§ 241. Reports to governor, how signed.** The reports of the various boards for the determination of the amount of commutation for good conduct of convicts in the prisons and penitentiaries of this state to the governor, shall be personally signed by the members thereof.

**§ 242. Power of governor to grant commutation for good conduct.** The governor, upon the receipt of the report recommending the allowance of commutation of sentences of con-

victs for good conduct as provided for in this article, may, in his discretion, allow the same, and place the names of all those convicts whom he may determine to commute upon one warrant, and direct the same to the agent and warden of the state prison, or the warden or superintendent of the penitentiary, wherein such convicts may be confined, who shall thereupon proceed to execute such warrant by discharging the convicts mentioned therein on the date fixed for their discharge.

**§ 243. Governor to annex condition to commutation; return of convict to prison for violation.** The governor shall, in commuting the sentences of convicts as provided for in this article, annex a condition to the effect that if any convict so commuted shall, during the period between the date of his or her discharge by reason of such commutation and the date of the expiration of the full term for which he or she was sentenced, be convicted of any felony, he or she shall, in addition to the penalty which may be imposed for such felony committed in the interval as aforesaid, be compelled to serve in the prison or penitentiary in which he or she may be confined for the felony for which he or she is so convicted, the remainder of the term without commutation which he or she would have been compelled to serve but for the commutation of his or her sentence as provided for in this article.

**§ 244. Certificate of warden as to commutation may be received in evidence.** The certificate of the agent and warden of a state prison or the warden or superintendent of a penitentiary, that the period of imprisonment of a convict was commuted under the provisions of this article, and of the crime and the length of term for which such commutation was granted, shall be received in evidence as proof for the purposes mentioned and described in section two hundred and forty-three.

**§ 245. Convicts to be informed of this article.** Upon the receipt of any convict in any prison or penitentiary in this state who shall be entitled to the benefits of this article, the provisions of the same shall be read to him or her and the meaning of the same shall be fully explained to him or her by the clerk of the prison or penitentiary.

**§ 246. Proceedings upon discharge.** Upon the discharge of any convict by reason of commutation of sentence for good conduct, the provisions of sections two hundred and forty three and two hundred and forty-four of this article shall be read.

and their nature fully explained, to him or her, by the clerk of the prison or penitentiary.

**§ 247. Application of article to a hospital for insane criminals or convicts.** The provisions of this article shall apply to any prisoner who may have been transferred to a state hospital for insane criminals or convicts from any of the prisons or penitentiaries or from any reformatory of this state to which he or she may have been transferred from any of the prisons or penitentiaries of this state whose sentence or sentences aggregates or aggregate not less than one year. And the medical superintendent of such hospital may and shall perform any of the acts which may or shall be done by any board mentioned in this article.

**§ 248. Application of article to convicts in reformatories.** The provisions of this article shall apply to any convict who may have been transferred from any of the prisons or penitentiaries to any reformatory of this state, whose sentence or sentences equals or equal not less than one year. And the superintendent or chief officer of such reformatory may and shall perform any of the acts which may or shall be done by any board mentioned in this article.

## ARTICLE 10

### Executive Clemency

- Section 260. Judge or district attorney to furnish facts.  
 261. Subpœna on application for executive clemency.  
 262. Appointment of person to hear application.  
 263. Oath to witnesses.  
 264. Form and service of subpœna; witness fees.  
 265. Penalty for failure of witness to appear.  
 266. Disbursements.

**§ 260. Judge or district attorney to furnish facts.**

When application is made to the governor for a pardon, commutation or reprieve, it shall be the duty of the presiding judge of the court before which the conviction was had, and the district attorney by whom the criminal action was prosecuted, or the district attorney of the county where the conviction was had, holding office at the time of such application, to supply the governor, upon his request therefor, and without delay, with a statement of the facts proved on the trial; or, if a trial was not had, the facts appearing before the grand jury which found the indictment, and of any other facts having reference to the propriety of granting or refusing such pardon, commutation or reprieve.

**§ 261. Subpoena on application for executive clemency.** The governor shall have the power in any matter pertaining to an application for clemency, to issue a subpoena to compel the attendance of a person before him at a time and place designated in said subpoena; and he shall also have the power to compel the production of any book, paper or writing by a subpoena duces tecum, directed to a person in whose custody either may be, at a time and place designated in said subpoena. But the provisions of this article shall not apply to any book, paper or writing filed in any office of record in any civil division of this state.

**§ 262. Appointment of person to hear application.** The governor may appoint a person to conduct a hearing in a matter pertaining to an application for clemency, and his compensation shall not exceed ten dollars for each day's actual service. Such person, upon the conclusion of such hearing, shall forward to the governor without delay, the testimony taken before him. The governor may direct that a person subpoenaed by him, in conformity to the provisions of the preceding section, appear before a person designated by him to conduct a hearing as provided by this section; and a person so subpoenaed shall produce any book, paper or writing before said person so designated by the governor, in conformity with the provisions of the preceding section of this article.

**§ 263. Oath to witnesses.** The governor or a person designated by him to conduct a hearing in a matter pertaining to an application for clemency, shall have power to administer an oath to a person brought before him.

**§ 264. Form and service of subpoena; witness fees.** A subpoena, or subpoena duces tecum, issued in conformity with the provisions of this article, shall be signed by the governor's private secretary, and be attested by the privy seal of the state, and may be served by any person authorized by law to serve subpoenas in civil or criminal actions at law. No person shall be compelled to appear as provided by this article, unless he is paid at the time of the service of the subpoena upon him, the fees and mileage prescribed by law for the attendance of witnesses in civil actions at law in the supreme court.

**§ 265. Penalty for failure of witness to appear.** A person subpoenaed who fails to appear, refuses to answer, or produce a book, paper or writing as provided in this article, shall upon conviction be adjudged guilty of a criminal contempt. And in addition thereto a person so subpoenaed shall be subject to

all the provisions of law which now or may hereafter exist, relating to witnesses in civil or criminal actions at law; and the governor shall possess all the powers in relation to said provisions which are possessed by any court or judge, but he shall be limited to the matters arising under the provisions of this article.

**§ 266. Disbursements.** Any disbursements necessary to be made for any of the purposes mentioned in this article shall be paid upon the approval of the governor's private secretary, by the comptroller, out of any moneys in the treasury not otherwise appropriated.

## **ARTICLE 11**

### **Reformatories**

- Section 280. Name and location of state reformatories.
281. Board of managers of state reformatories.
282. Control and management of Eastern New York reformatory at Napanoch vested in state board of managers.
283. Management and control of state reformatories vested in state board of managers.
284. General powers and duties of state board of managers.
285. Transfer of prisoners from either reformatory to the other.
286. Superintendent of reformatories and assistant superintendent; appointment, powers and duties.
287. General duties of superintendent of reformatories.
288. Officers and employees at Napanoch reformatory to continue in their positions.
289. Compensation of officers and employees in state reformatories.
290. Board of managers may transfer officers and employees from one reformatory to the other.
291. Oaths and bonds of officers and employees.
292. General duties of chaplains.
293. General duties of physicians.
294. Powers and duties of treasurers.
295. Transportation of convicts to reformatories.
296. Transfer of prisoners to state prisons.
297. Transfer of convicts from state prisons to reformatories.
298. Control and discipline of prisoners at reformatories.
299. Register of prisoners at reformatories.
300. Parole of prisoners at reformatories.

- Section 301. Retaking of paroled prisoners of reformatories.  
302. Rules of reformatories.  
303. Marks for good conduct at reformatories; records filed with secretary of state.  
304. Absolute release from imprisonment from reformatories; discharge.  
305. Sentences for a definite period to reformatories.  
306. Supervision of prisoners paroled from reformatories.  
307. Sentence to reformatories.  
308. State to pay expenses of trial of convict committing crime in reformatory.

**§ 280. Name and location of state reformatories.**

The state reformatory at Elmira is continued, and shall be known as the New York state reformatory; and the state reformatory at Napanoch is continued, and shall be known as the Eastern New York reformatory.

**§ 281. Board of managers of state reformatories.**

There shall be a state board of managers of reformatories, consisting of seven members, who shall be appointed by the governor, by and with the advice and consent of the senate. The full term of office of each manager hereafter appointed shall be seven years. The managers of the reformatory at Elmira, in office on May thirty-first, nineteen hundred and six, shall be continued in office as members of said state board until the expiration of their terms, unless sooner removed for cause as provided by law. The said managers and two additional members appointed by the governor, as above provided, shall constitute said state board. The said state board of managers of reformatories shall elect from their number a president, a secretary and a treasurer. Said board may elect a secretary and treasurer for each institution. Such managers shall receive no compensation for their services, but shall receive their reasonable traveling and other official expenses. (*Thus amended by L. 1909, ch. 240, § 64, in effect April 22, 1909.*)

Amendment of 1909 corrected error by changing the word "thirteenth" to "thirty-first" in the third sentence following the word "May."

**§ 282. Control and management of Eastern New York reformatory at Napanoch vested in state board of managers.** The superintendence, control and management of the Eastern New York reformatory at Napanoch shall continue to be vested in said state board of managers. All unexpended appropriations or balances of appropriations for the erection, construction or equipment of the said reformatory, or for any other purpose in connection therewith, shall be expended under the direction of the said state board of managers.



**§ 283. Management and control of state reformatories vested in state board of managers.** Said state board of managers shall continue to be vested with the management and control of the state reformatory at Elmira and the transfer and parole of prisoners formerly possessed by the board of managers, and all existing laws relating to the management and control of the said New York state reformatory at Elmira and the transfer and parole of prisoners therein, are applicable to the management and control of the Eastern New York reformatory at Napanoch and the transfer and parole of prisoners therein. Said state board of managers shall be vested with the same authority, management and control of both of said reformatories, their officers and inmates, except as herein otherwise provided, that the former board of managers possessed over the said reformatory at Elmira, its officers and inmates. (*Thus amended by L. 1909, ch. 240, § 65, in effect April 22, 1909.*)

Amendment of 1909 changed the word "present" to "former" preceding the words "board of managers" and changed the words "now possess" to "possessed" following the words "board of managers" near the end of the last sentence.

**§ 284. General powers and duties of state board of managers.** The state board of managers of reformatories shall:

1. Have the general superintendence, management and control of said reformatories, of the grounds and buildings, officers and employees thereof, of the prisoners therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof.

2. Make rules, not inconsistent with law, for the proper government of said reformatories and of the officers and employees thereof, and for the employment, discipline, education, transfer, parole and discharge of prisoners sentenced thereto.

3. Investigate the affairs of said reformatories, inquire into any improper conduct alleged to have been committed by any officer or employee, and require reports from the superintendent of reformatories and other officers thereof in relation to the discipline, labor and government of said reformatories and have power to take proof under oath in any such investigation or inquiry.

4. Meet at least once in each month for the purpose of performing the several duties prescribed in this article.

5. Examine, monthly or quarterly, all the accounts, expenditures and vouchers relating to the business of said reformatories, and certify their approval or disapproval thereof to the comptroller.

6. Report to the legislature, annually, on or before the tenth day of January, for the year ending with the last day of the next preceding September, the condition of said reformatories, the amount of money received and expended by them during such year with a detailed statement thereof; their proceedings in re-

gard to the prisoners therein, and such other matters as they may deem proper, or as the legislature may require.

7. Make such other reports from time to time as the legislature may require.

**§ 285. Transfer of prisoners from either reformatory to the other.** The said state board of managers may transfer prisoners committed to their custody from either one of said institutions to the other, in their discretion, and may provide rules and regulations governing such transfers.

**§ 286. Superintendent of reformatories and assistant superintendent; appointment, powers and duties.** Said state board of managers shall appoint a superintendent of reformatories, and may remove him for cause after an opportunity to be heard. Said superintendent shall have general oversight of both institutions, and, subject to the approval of said board of managers, shall appoint all other officers and employees of said institutions, and be possessed with all the powers and perform all the duties in both institutions prescribed in this article. There shall be an assistant superintendent for each one of said institutions, who shall be authorized to exercise in the institution to which he was appointed the powers and duties of the superintendent in case of his absence or inability to perform such duties, and to exercise such powers and perform such other duties as may be prescribed by said board of managers or by the superintendent.

**§ 287. General duties of superintendent of reformatories.** The superintendent of reformatories, subject to the direction and control of the state board of managers, shall:

1. Have the general supervision and control of said reformatories, of the grounds and buildings, subordinate officers and employees thereof, the prisoners therein, and of all matters relating to the government and discipline thereof.

2. Make such rules and orders, not inconsistent with law, or with the rules and directions of the said board of managers, as he may deem proper or necessary for the government of said reformatories and of the officers and employees thereof; and for the employment, discipline and education of the prisoners sentenced thereto.

3. Annually report to the said board of managers, on or before the first day of December, all such matters as are required by the said board of managers.

4. Exercise such other powers and perform such other duties as the said board of managers may lawfully prescribe.

**§ 288. Officers and employees at Napanoch reformatory to continue in their positions.** The officers and employees of the reformatory at Napanoch at the time said institution was transferred to the control of said state board of managers, shall be continued in their respective positions, or in similar positions, so far as practicable, subject to the power of removal possessed by said board of managers and said superintendent.

**§ 289. Compensation of officers and employees in state reformatories.** The annual compensation of the several officers, keepers and employees, except guards, of both said institutions, shall be fixed by the state board of managers, not exceeding the maximum sums fixed under section seventeen of the state finance law. The guards employed in both such institutions shall receive the same compensation allowed by law to guards in the state prisons. Maintenance and supplies may be allowed to such officers, guards, keepers and employees in the discretion of the board of managers as a part of said compensation.

**§ 290. Board of managers may transfer officers and employees from one reformatory to the other.** Said state board of managers may also transfer officers and employees from either one of said institutions to the other for temporary or permanent service.

**§ 291. Oaths and bonds of officers and employees.** All persons appointed to office as prescribed in this article, shall take the constitutional oath of office and file the same in the office of the secretary of state within fifteen days after such appointment. The superintendent and such other officers and employees, as may be so required by the comptroller, shall give bonds to the state in such sums and with such sureties as he shall approve, conditioned for the faithful performance of their lawful duties.

**§ 292. General duties of chaplains.** The chaplain of each of said reformatories shall, under the rules of the state board of managers:

1. Hold religious services in the reformatory, and attend to the spiritual wants of the prisoners.
2. Personally communicate with the prisoners for the purpose of giving them religious and moral instruction.
3. Visit daily the sick in the hospital.

4. Perform such other duties, consistent with his calling and profession, as the said board of managers may direct.

**§ 293. General duties of physicians.** The physician of each of said reformatories shall:

1. Have charge of the hospital of the reformatory, under the direction of the state board of managers, and keep a daily record of all admissions thereto, in such form as the said board of managers may prescribe.

2. Attend to the medical needs and prescribe the diet of the sick prisoners in the hospital or cells.

3. Examine daily, and as often as required by the superintendent, all prisoners undergoing punishment by solitary confinement or otherwise, and prescribe the allowance of food to each prisoner so confined.

4. Make such reports to the said board of managers, as to the sanitary condition of the reformatory and the general health of the prisoners, as he may see fit, and such other reports as may be required by the said board of managers, the superintendent of reformatories or the state commission of prisons.

5. Hold himself in readiness at all times to discharge his duties as such physician, as prescribed by statute and the rules of the said board of managers, whenever directed by the superintendent.

6. Perform such other duties as may be prescribed by the rules of the said board of managers.

**§ 294. Powers and duties of treasurers.** The treasurer of each of said reformatories shall:

1. Have the custody of all moneys received from the comptroller on account of estimates made by the superintendent of reformatories and revised and approved by the comptroller and keep an accurate account thereof.

2. Collect and receive all moneys due the reformatory from any source.

3. Deposit all such money in a bank designated by the comptroller, conveniently near the reformatory, in his name as treasurer, and send each month to the comptroller a statement showing the amount so received and deposited, and from whom and for what received, and when such deposits were made. Such statement of deposits shall be certified by the proper officer or the bank receiving such deposit. The treasurer shall attach to such statement an affidavit to the effect that the sum so deposited is all the money received by him from any source, since making the last statement. A bank designated by the comptroller to receive such deposits shall, before any deposit is made, execute a bond to

the people of the state, in a sum and with sureties approved by the comptroller, conditioned for the safe-keeping of the funds deposited.

4. Pay out money deposited for the uses of the reformatory, upon the vouchers of the superintendent of reformatories, in accordance with the estimates made by the said superintendent and revised and approved by the comptroller.

5. Cause to be kept full and accurate accounts of all receipts and expenditures in the manner and form prescribed by the comptroller.

**§ 295. Transportation of convicts to reformatories.**

Upon the receipt, by the superintendent of reformatories, of notice of the sentence of a convict to either of said reformatories, an officer of such reformatory shall proceed to the place of conviction, and the sheriff or keeper of the prison having custody of the convict shall deliver the convict to such officer, with the papers required to be delivered with such convict, and such officer shall thereupon convey such convict to the reformatory at the expense of the reformatory. Such officer shall for the purpose of such conveyance have all the powers possessed by sheriffs in conveying a convict to a state prison in pursuance of law.

**§ 296. Transfer of prisoners to state prisons.** If it shall appear to the state board of managers that said reformatories are over-crowded or that any prisoner confined in either of said reformatories,

1. Was, at the time of his conviction, more than thirty years of age; or

2. Has been previously convicted of a felony; or

3. While in the reformatory, is incorrigible and that his presence therein is seriously detrimental to the welfare of the institution; an application may be made to a justice of the supreme court of the judicial district in which such reformatory is located, for an order transferring the prisoner named therein to a state prison. Such application shall be by written petition signed by the president or secretary of the board and shall state the causes for seeking such transfer and due notice of such application with a copy of the petition shall be served personally or by mail at least eight days before the hearing on the superintendent of state prisons, who shall specify the institution to which such prisoner shall be transferred, in case the order shall be made. Such justice shall grant such order of transfer, on such hearing as he may prescribe, if it appears to his satisfaction that the facts alleged are true and that such transfer should be made. A prisoner so transferred shall be confined in such institution as under an

indeterminate sentence, commencing with his imprisonment in the reformatory with a minimum of one year and a maximum fixed by law for the crime of which the prisoner was convicted and sentenced; and may be released on parole or absolutely discharged as are other prisoners confined under an indeterminate sentence. Such prisoner may be returned at any time to the reformatory in the discretion of the superintendent of state prisons, and with the consent of the said board of managers.

**§ 297. Transfer of convicts from state prisons to reformatories.** Whenever there is unoccupied room in either of said reformatories, the state board of managers may make a requisition upon the superintendent of state prisons, for a sufficient number of well-behaved and most promising convicts under thirty years of age who are confined in a state prison because of a first offense, and the superintendent of state prisons shall transfer such convicts to such reformatory for education and treatment under the rules thereof. The said board of managers shall receive and detain the prisoners so transferred for the terms of their sentences, if such sentences are for fixed terms, less the commutation of imprisonment if earned, that would have been allowed to them for good conduct if they had completed their terms in the state prisons from which they were transferred. If such prisoners are confined under an indeterminate sentence, they may be paroled and discharged as are prisoners confined in a state prison, except that the said board of managers shall constitute a board of parole for the purpose of paroling and discharging such prisoners, and such board shall make rules for such parole and discharge not inconsistent with law and in general conformity with the rules made by the parole boards of the state prisons.

**§ 298. Control and discipline of prisoners at reformatories.** The state board of managers shall maintain such control over all prisoners committed to their custody, as shall prevent them from committing crime, best secure their self-support and accomplish their reformation. The discipline to be observed shall be reformatory, and the board of managers may use such means of reformation consistent with the security and improvement of the prisoners, as they may deem expedient. The prisoners may be employed in agricultural or mechanical labor as a means of securing their support and reformation.

**§ 299. Register of prisoners at reformatories.** The state board of managers shall cause to be entered in a register the date of the admission of each prisoner

received in each of said reformatories, the name, age, nativity and nationality of such prisoner, and also such other ascertainable facts relating to parentage and early social influences as seem to indicate the constitutional and acquired defects and tendencies of the prisoner, and based upon these, an estimate of the then present condition of the prisoner and the best probable plan of treatment. There shall also be entered upon such register, quarterly or oftener, minutes of observed improvement or deterioration of character, notes as to methods of treatment employed, all orders or alterations affecting the standing or situation of such prisoner, the circumstances of his final release and any subsequent facts relating to his personal history which may be brought to their knowledge.

**§ 300. Parole of prisoners at reformatories.** The state board of managers may allow any prisoner confined in either of said reformatories to go upon parole outside of the reformatory buildings and inclosures, pursuant to the rules of the board of managers. A person so paroled shall remain in the legal custody and under the control of the board, until his absolute discharge, as provided by law. No personal appearances before the board shall be permitted in behalf of the parole or discharge of any prisoner.

**§ 301. Retaking of paroled prisoners of reformatories.** If the state board of managers has reasonable cause to believe that a paroled prisoner has violated the conditions of his parole, the board may issue its warrant certified by its secretary, for the retaking of such prisoner at any time prior to his absolute discharge. The time within which the prisoner must be retaken shall be specified in the warrant. Such warrant may be issued to an officer of the reformatory or to any peace officer of the state, who shall execute the same by taking such prisoner into custody within the time specified in the warrant. Thereupon such officer shall return such prisoner to the reformatory, where he may be retained for the remainder of the maximum term provided by law.

**§ 302. Rules of reformatories.** The state board of managers shall make rules, not inconsistent with law:

1. Prescribing the conditions under which prisoners may be paroled or conditionally released.
2. Regulating the retaking and re-imprisonment of such prisoners.
3. Providing for the employment, discipline, instruction and education of the prisoners. Such rules shall be adopted by the

resolution of the board of managers, passed at a meeting thereof, at which a majority of its members shall be present. All rules adopted and in force shall be printed and a copy thereof distributed to each officer, employee and prisoner in each of said reformatories.

**§ 303. Marks for good conduct at reformatories; records filed with secretary of state.** The state board of managers shall adopt a uniform system of marks by means of which shall be determined the number of marks or credits to be earned by each prisoner sentenced to either of said reformatories, as the condition of increased privileges, or of release from their control, which system shall be subject to revision from time to time. Each prisoner shall be credited for good personal demeanor, diligence in labor and study, and for results accomplished, and be charged for dereliction, negligence and offenses. Each prisoner's account of marks or credits shall be made known to him as often as once in each month. The said board of managers shall make rules by which each prisoner shall be permitted to see and converse with some member of the board of managers at stated periods. An abstract of the record in the case of each prisoner confined in each of said reformatories shall be made semi-annually, showing the date of admission, the age, the crime, place of conviction, court or judge by whom sentenced, the situation at the time of making such abstract, whether in a reformatory, or state prison, the hospital for insane criminals or elsewhere, whether any and how much progress or improvement has been made, and the reason for release or continued custody or transfer as the case may be, the names of those deceased during said period, with cause of death. Such abstract shall be considered by the said board of managers at a regular meeting and filed with the secretary of state.

**§ 304. Absolute release from imprisonment from reformatories; discharge.** When it appears to the state board of managers that there is strong or reasonable probability that any prisoner will remain at liberty without violating the law, and that his release is not incompatible with the welfare of society, they shall issue to such prisoner an absolute release or discharge from imprisonment. Nothing herein contained shall be construed to impair the power of the governor to grant a pardon or commutation in any case.

**§ 305. Sentences for a definite period to reformatories.** If, through oversight or otherwise, a person be sentenced to imprisonment in either of said reformatories for a



definite period of time, such sentence shall not, for that reason, be void, but the person so sentenced shall be entitled to the benefits and subject to the liabilities of this article, in the same manner and to the same extent as if such sentence had been made for an indefinite period of time in the manner provided by the penal law.

**§ 306. Supervision of prisoners paroled from reformatories.** The state board of managers may appoint and at pleasure remove suitable persons in any part of the state, who shall supervise paroled prisoners and perform such other lawful duties as may be required of them by such board. Such persons shall be subject to the direction of the board. They may be paid a reasonable compensation for their services and expenses, which shall be a charge upon and paid from the funds of said reformatories.

**§ 307. Sentence to reformatories.** Any person who shall be convicted of an offense punishable by imprisonment in either of said reformatories, and who, upon such conviction, shall be sentenced to imprisonment therein, shall be imprisoned according to this article, and not otherwise. The term of such imprisonment of any person so convicted and sentenced shall be terminated by the state board of managers, as authorized by this article; but such imprisonment shall not exceed the maximum term provided by law for the crime for which the prisoner was convicted and sentenced.

**§ 308. State to pay expenses of trial of convict committing crime in reformatory.** Whenever any convict in either of said reformatories shall be indicted and tried for any offense committed by such convict during the time of his imprisonment in a reformatory in this state, the expenses of such trial, and in case of conviction for murder in the first degree, the expenses of executing the judgment or sentence of the court, shall be paid by the state, and sections seventeen and eighteen of this chapter relating to the statement of the expenses incurred and the payment of the same are applicable thereto.

## **ARTICLE 12**

### **Penitentiaries**

Section 320. Contracts by boards of supervisors for keeping prisoners.

321. Convicts in penitentiary to be confined at labor.

322. Fees of sheriffs for transporting convicts to a penitentiary.

Section 323. Punishment of prisoners.

324. Money and transportation to be furnished prisoners on discharge.

**§ 320. Contracts by boards of supervisors for keeping prisoners.** It shall be lawful for the several boards of supervisors in the several counties of this state to enter into an agreement with the board of supervisors of any county having a penitentiary therein, or with any person in their behalf by them appointed, to receive and keep in the said penitentiary any person who may be sentenced to confinement therein by any court or magistrate, in any of the said several counties of this state, for any term not less than sixty days. Whenever such agreement shall have been made, it shall be the duty of the said several boards of supervisors of the several counties aforesaid, to give public notice thereof, specifying in such notice the period of the continuance of such agreement, which notice shall be published in such newspapers, printed in said several counties, not less than two, and for such period of time, not less than four weeks, as the several boards of supervisors of said several counties shall direct.

**§ 321. Convicts in penitentiary to be confined at labor.** It shall be the duty of the agent and warden of each of the penitentiaries in this state to require of every able-bodied convict confined therein as many hours of faithful labor in each and every day during his term, as shall be prescribed by the rules of such penitentiary.

**§ 322. Fees of sheriffs for transporting convicts to a penitentiary.** The compensation to sheriffs for conveying convicts to a penitentiary from a county prison shall be the same as is prescribed in section twelve for conveying convicts to a state prison.

**§ 323. Punishment of prisoners.** Section one hundred and fifty-three of this chapter relating to the punishment of prisoners in state prisons is applicable to prisoners confined in penitentiaries.

**§ 324. Money and transportation to be furnished prisoners on discharge.** It shall be the duty of the superintendent of a county penitentiary to furnish to each convict, male or female, who shall have been convicted of a felony, and imprisoned therein in pursuance of the provisions of statute, upon his or her discharge from the penitentiary, by pardon or otherwise, necessary clothing not exceeding twelve dollars in value, except

for the time between the first day of November and the first day of April, when clothing not exceeding eighteen dollars in value may be given; and a sum of money not exceeding, on an average, five dollars, as the superintendent may deem proper and necessary; and a railroad ticket or tickets for the transportation of one person from the penitentiary to the place of his or her conviction, or to such other place as said convict may designate at no greater distance from the penitentiary than the place of conviction. It shall be the duty of the superintendents of said penitentiaries to make a return to the comptroller of this State, under oath, on the thirtieth day of September of each year, in which he shall fully set forth the name of each convict received in said penitentiaries by virtue of statute, in what court convicted, before what presiding justice or judge, the offense for which conviction was had, the date of such conviction and length of sentence, date of reception of such convict at such penitentiaries, and the date of his or her discharge therefrom; and in detail, the sums of money paid by them under the foregoing provisions of this section. The comptroller shall thereupon audit and allow to such penitentiaries such sum as may be found due to them, under the foregoing provisions, during the year preceding said thirtieth day of September, and shall draw his warrant upon the treasury of the state in favor of the superintendent of each penitentiary, for the amount so audited and allowed, payable out of any money in the treasury not otherwise appropriated.

## ARTICLE 13

### Jails

- Section 340. Charges by sheriff for food and drink prohibited.
341. Gratuities to sheriff from prisoner prohibited.
342. Regulations of rates of charges against certain persons arrested.
343. Prisoner kept in house other than jail may order necessaries.
344. Charges by officer for rent or fee of any kind prohibited.
345. Civil and criminal prisoners to be kept separate.
346. Males and females to be kept separate.
347. Either of several jails may be used.
348. Jail physician.
349. Liquors not to be brought into nor sold within jails.
350. Permit to bring liquor into jail.
351. When jail becomes unfit another to be designated.
352. Annulment of designation of jail to take place of unfit jail.

- Section 353. Proceedings where jail in contiguous county designated in place of unfit jail.
354. Removal of prisoners in case of fire.
355. Removal of sick prisoners from jail.
356. Officer to make designation of jail where county judge or presiding judge of appellate division in first department is absent.
357. Jail liberties in certain counties.
358. Jail liberties in other counties.
359. Laying out jail liberties.
360. Copy of resolution establishing or altering jail liberties to be kept posted in jail.

**§ 340. Charges by sheriff for food and drink prohibited.** A sheriff or other officer shall not charge a civil prisoner with any sum of money, or demand, or receive from him money, or any valuable thing, for any drink, victuals or other thing, furnished or provided for the officer, or for the prisoner, at any tavern, ale-house, or public victualing or drinking house.

**§ 341. Gratuities to sheriff from prisoner prohibited.** A sheriff or other officer shall not demand or receive from a civil prisoner, while in his custody, a gratuity or reward, upon any pretence, for keeping the prisoner out of jail; for going with him or waiting for him to find bail, or to agree with his adversary; or for any other purpose.

**§ 342. Regulation of rates of charges against certain persons arrested.** If a person arrested in a civil cause is kept in a house, other than the jail of the county, the officer arresting him, or the person in whose custody he is, shall not demand or receive from him any greater sum, for lodging, drink, victuals, or any other thing, than has been theretofore prescribed by the court of sessions or county court of the county; or, if no rate has been prescribed by the court of sessions or county court, than is allowed by a justice of the peace of the same town or city, upon proof that the lodging or other thing was actually furnished, at the request of the prisoner. And such an officer or person shall not, in any case or upon any pretext, demand or receive compensation for strong, spirituous, or fermented liquor, or wine, sold or delivered to the prisoner.

**§ 343. Prisoner kept in house other than jail may order necessaries.** A civil prisoner arrested and kept in a house, other than the jail of the county, may send for and have beer, ale, cider, tea, coffee, milk, and necessary food, and such bedding, linen and other necessary things, as he thinks fit, from

whom he pleases, without detention of the same or any part thereof by, or paying for the same, or any part thereof to, the officer arresting him, or the person in whose custody he is.

**§ 344. Charges by officer for rent or fee of any kind prohibited.** A sheriff, jailer, or other officer, shall not demand or receive money, or any valuable thing, for chamber rent in a jail; or any fee, compensation, or reward, for the commitment, detaining in custody, release, or discharge of a civil prisoner, other than the fees expressly allowed therefor by law.

**§ 345. Civil and criminal prisoners to be kept separate.** A prisoner, arrested in a civil cause, must not be kept in a room, in which any prisoner, detained on a criminal charge or conviction, is confined.

**§ 346. Males and females to be kept separate.** Male and female civil prisoners must not be put in the same room; except that a husband and his wife may be put or kept together, in a room wherein there are no other prisoners.

**§ 347. Either of several jails may be used.** The sheriff of a county, in which there is more than one jail, may confine a civil \*and criminal prisoner in either; and may remove him from one jail to another, within the county, whenever he deems it necessary for his safe-keeping, or for his appearance at court.

**§ 348. Jail physician.** The board of supervisors of each county, except New York, must appoint some reputable physician, duly authorized to practice medicine, as the physician to the jail of the county. If there is more than one jail they must appoint a physician to each. The physician to a jail holds his office at the pleasure of the board which appointed him, except in the county of Kings. In that county, the term of his office is three years.

**§ 349. Liquors not to be brought into nor sold within jails.** Strong, spirituous, or fermented liquor, or wine, shall not, on any pretence, be sold within a building used and established as a jail. Spirituous, fermented or other liquor, except cider, and that quality of beer called table beer, shall not be brought into a jail for the use of a person confined therein, without a written permit by the physician to the jail, which must be delivered to and kept by the keeper thereof, specifying the quantity and kind of liquor which may be furnished, the name of the civil prisoner for whom, and the time during which the same may be furnished.

\*So in original.

**§ 350. Permit to bring liquor into jail.** A permit by a jail physician as specified in the last section shall not be granted, unless the physician is satisfied, that the liquor allowed to be furnished is necessary for the health of the civil prisoner, for whose use it is permitted and that fact must be stated in the permit.

**§ 351. When jail becomes unfit another to be designated.** If there is no jail in a county; or the jail becomes unfit or unsafe for the confinement of some or all of the prisoners, civil or criminal, or is destroyed by fire or otherwise; or if a pestilential disease breaks out in the jail, or in the vicinity of the jail, and the physician to the jail certifies that it is likely to endanger the health of any or all of the prisoners in the jail; the county judge, or, in the city and county of New York, the presiding justice of the appellate division of the supreme court of the first department, must, by an instrument in writing, filed with the clerk of the county, designate another suitable place within the county, or the jail of a contiguous county, for the confinement of some or all of the prisoners, as the case requires. The place so designated thereupon becomes, to all intents and purposes, except as otherwise prescribed in this article, the jail of the county for which it has been so designated, and the purposes expressed in the instrument designating the same.

**§ 352. Annulment of designation of jail to take place of unfit jail.** The designation may be modified or revoked, by the judge making the same, by a like instrument in writing, filed with the clerk of the county.

**§ 353. Proceedings where jail in contiguous county designated in place of unfit jail.** The county clerk must serve a copy of the designation, duly certified by him, under his official seal, on the sheriff and keeper of the jail of a contiguous county so designated. The sheriff of that county must, upon the delivery of the sheriff of the county for which the designation is made, receive into his jail, and there safely keep, all persons who may be lawfully confined therein, pursuant to this article; and he is responsible for their safe-keeping, as if he was the sheriff of the county for which the designation is made.

**§ 354. Removal of prisoners in case of fire.** If, by reason of a jail, or a building near a jail, being on fire, there is reason to apprehend that some or all of the prisoners confined in the jail, may be injured, or may escape, the sheriff or keeper of the jail may, in his discretion, remove them to some safe and convenient place, and there confine them, until they can be safely returned to the jail; or, if the jail is destroyed, or so injured, that

it is unfit or unsafe for the confinement of the prisoners, until a designation is made, as prescribed in section three hundred and fifty-one of this article.

**§ 355. Removal of sick prisoners from jail.** If the physician to a jail, or, in case of a vacancy, a physician acting as such, and the warden or jailer, certify in writing, that a prisoner confined in the jail in a civil cause, is in such a state of bodily health that his life will be endangered unless he is removed to a hospital for treatment, the county judge, or, in the city and county of New York, one of the justices of the supreme court, must, upon application, make an order, directing the removal of the prisoner to a hospital within the county designated by the judge; or, if there is none, to such nearest hospital as the judge directs; that the prisoner be kept in the custody of the chief officer of the hospital until he has sufficiently recovered from his illness, to be safely returned to the jail; that the chief officer of the hospital then notify the warden or jailer, and that the latter thereupon resume custody of the prisoner.

**§ 356. Officer to make designation of jail where county judge or presiding judge of appellate division in first department is absent.** If the county judge, or the presiding justice of the appellate division of the supreme court of the first department, is absent or unable to act, or his office is vacant, a designation, or the revocation or modification thereof, as prescribed in this article, may be made, in any county, except New York, by the special county judge or the district attorney, or, in the city and county of New York, by any justice of the appellate division.

**§ 357. Jail liberties in certain counties.** The following are the liberties of the jail for each of the counties specified, to wit: For the county of New York, the whole of said county; for the county of Onondaga, the whole of the city of Syracuse; for the county of Monroe, the whole of the city of Rochester; for the county of Erie, the whole of the city of Buffalo; for the county of Dutchess, the whole of the city of Poughkeepsie; for the county of Kings, the whole of that county; for the county of Albany, the whole of the city of Albany; for the county of Jefferson, the whole of the city of Watertown; for the county of Herkimer, the whole of the village of Herkimer; for the county of Rensselaer, the whole of the city of Troy; for the county of Niagara, the whole of the city of Lookport; for the county of Steuben, the whole of the village of Bath; for the county of Nassau, the whole of the town of Hempstead; for the county of Broome, the whole of the city of Binghamton.

**§ 358. Jail liberties in other counties.** The liberties of the jail in each of the other counties of the state, as heretofore established, shall continue to be the liberties thereof, until they are altered, or new liberties are established, as prescribed by law.

**§ 359. Laying out jail liberties.** Where the liberties of a jail are altered or established, by resolution of the board of supervisors, as prescribed by law, a space of ground, adjacent to the jail, and not exceeding five hundred acres in quantity, must be laid out as the jail liberties, in a square or rectangle as nearly as may be; but a stream of water, canal, street, or highway, may be adopted as an exterior line, notwithstanding it is not in a straight line, or is not at right angles with the other exterior line of the liberties. A resolution establishing or altering jail liberties, must contain a particular description of their boundaries; and as soon as may be after its adoption, the boundaries must be designated by monuments, inclosures, posts, or other visible and permanent marks, at the expense of the county.

**§ 360. Copy of resolution establishing or altering jail liberties to be kept posted in jail.** The county clerk must, within one week after a resolution of the board of supervisors, establishing or altering jail liberties, has been filed in his office, deliver an exemplified copy thereof to the keeper of the jail, who must keep the same exposed to public view, in an open and public part of the jail, and exhibit it to each person admitted to the liberties of the jail, at the time of his executing a bond for that purpose.

## ARTICLE 14

### Care of Property of Person Confined for Life

Section 370. Who may apply for appointment of committee.

371. Application for appointment of committee.

372. Payment of debts and application of property.

373. Sale of property.

374. Report of committee; compensation.

375. Proceedings on pardon or commutation of sentence.

**§ 370. Who may apply for appointment of committee.** Whenever any person has been convicted and sentenced to imprisonment in this state for life, the husband, wife, relatives or next of kin or any creditor of such person may apply to the supreme court, at a special term thereof in the judicial district in which said person resided at the time of his conviction, for the appointment of a committee of such person's estate, both real and personal.



**§ 371. Application for appointment of committee.**

Such application shall be made upon personal notice of not less than twenty days to such convicted person and to the district attorney of the county where the conviction was had, and upon notice to such other persons as would be entitled to notice of application for the probate of the will of such convicted person if he were then dead leaving a will of real and personal property, to be given in like manner as notice of application for such probate. The application shall, among other things, set forth the amount of the property of such person, and the names and residences of his heirs-at-law and next of kin, as near as the same are known or can be ascertained by the applicant. Upon such application and due proof of the service of the notice herein required, the court may, in its discretion, appoint a committee of the estate of such convicted person. The person or persons so appointed as such committee shall file a bond in the county clerk's office of such county, and in such an amount and with such sureties as the said court shall direct. A copy of the order appointing such committee certified by the clerk of the county in which the order is filed, shall be filed in every county in which any real estate of such convicted person is situated.

**§ 372. Payment of debts and application of property.** The court shall direct the payment of the debts of such convicted person from said property, and may also in its discretion direct the application of the income, and if need be, of the principal of such property, to the support, education and maintenance of such persons as the said convicted person would be legally liable to support if he had not been so convicted. Or the court may direct the care and preservation of the income and principal of such estate until the natural death of the person so convicted.

**§ 373. Sale of property.** The court may from time to time, in the manner prescribed by the code of civil procedure upon the sale of the property of an infant, if it deems it necessary, or that the estate will be benefited thereby, direct the sale of any of the real or personal property by said committee, and the investment of the proceeds of such sale. The court shall control said committee in the performance of his duties; and may from time to time modify and alter its direction or orders in any matter pertaining to the estate.

**§ 374. Report of committee; compensation.** The committee so appointed shall annually render an account to the court of his management and of his receipts and disbursements, and transmit a copy thereof to the person so convicted. The court

may grant such compensation to the committee as it deems proper, not exceeding, however, the amount that may be allowed to an administrator.

**§ 375. Proceedings on pardon or commutation of sentence.** Should said convicted person be pardoned, or his sentence be commuted, the court shall direct the committee to transfer to him, after his discharge from prison, all of said property remaining in his hands not lawfully applied or used as herein provided for, and upon the death of such convicted person not pardoned or commuted as aforesaid, the court shall direct the distribution of such property as upon the natural death of a person not convicted.

## ARTICLE 15

### Care of Property of Person Confined for Less than Life

- Section 390. When and to what court application to be made.  
391. Who may apply.  
392. Creditor must relinquish security.  
393. Contents of petition.  
394. Copy of sentence and affidavit to be presented.  
395. Proceedings upon presentation of the papers.  
396. Proceedings on return of order to show cause.  
397. Effect of order appointing trustee.  
398. Removal of trustee; appointment of new trustee.  
399. Prisoner's property; how applied.  
400. Prisoner's property to be delivered to him on his discharge.  
401. Application of this article to persons heretofore sentenced.

**§ 390. When and to what court application to be made.** Where a person is imprisoned in a state prison, for a term less than for life; or in a penitentiary or county jail, for a criminal offense, for a longer term than one year; one or more trustees, to take charge of his property, may be appointed, as prescribed in this article, by the county court of the county, or the supreme court in the judicial district, where he resided at the time of his imprisonment, or if he was not then a resident of the state, where he is imprisoned.

**§ 391. Who may apply.** A petition for such an appointment may be presented by either of the following persons:

1. A creditor of the prisoner.
2. The prisoner's husband, wife, or child.

3. One or more of his next of kin, or, where he owns real property, of his heirs presumptive.

4. A relative whom he is bound to support.

5. Any relative or other person, in behalf of his infant child or children.

**§ 392. Creditor must relinquish security.** A creditor of the prisoner, who has a judgment, mortgage, or other security, specified in section fifty-nine of the debtor and creditor law, can not apply for such an appointment, with respect to the debt so secured, unless he appends to or includes in his petition, the declaration, required by that section from a consenting creditor; which declaration has the same effect as the declaration of a consenting creditor, as therein specified.

**§ 393. Contents of petition.** The petition must be in writing, and verified by the affidavit of the petitioner, to the effect, that the matters of fact therein stated are true, to the best of the petitioner's knowledge and belief. It must set forth the facts, showing that the applicant is entitled to make the application, and that the application is made to the proper court; the name and residence of each person, who is entitled to make such an application, as prescribed in the last section but one, except the fifth subdivision thereof; and a brief description of the property, real and personal, of the prisoner, and the value thereof. If the applicant is a creditor, and not a resident of the state, he must annex to his petition, the papers specified in section sixty-two of the debtor and creditor law. If any of the facts, herein required to be set forth can not be ascertained by the petitioner, after the exercise of due diligence, that fact must be stated; and the court may, in its discretion, issue a subpoena, requiring any person to attend and testify, respecting any matter, which, in its opinion, ought to be more fully and certainly set forth.

**§ 394. Copy of sentence and affidavit to be presented.** The petition must be accompanied with a copy of the sentence of conviction of the prisoner, duly certified by the clerk of the court by which he was sentenced, under the seal thereof; together with an affidavit of the applicant, stating that the person so convicted is actually imprisoned thereunder.

**§ 395. Proceedings upon presentation of the papers.** Upon the presentation of the papers, the court may, in its discretion, make an order, either appointing one or more fit persons trustees of the property of the prisoner; or requiring all creditors of the prisoner, and all persons interested in his estate, to show cause, at a time and place specified therein, why such an

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appointment should not be made. In the latter case, the order must direct the manner of service thereof, by publication or otherwise.

**§ 396. Proceedings on return of order to show cause.** Upon the return of an order to show cause, made as prescribed in the last section, proof of the service thereof, as required thereby, must first be made; whereupon the court must hear the allegations and proofs of the creditors, and other persons interested in the estate, who appear. Where the prisoner is indebted to any person, the court must appoint one or more trustees, unless the persons interested in the prisoner's property pay the debt, or give such security, as the court prescribes, for the payment thereof, either absolutely, or contingently upon a recovery in an action; in which case or where the prisoner is not indebted, the court may grant or deny the prayer of the petition, as justice requires.

**§ 397. Effect of order appointing trustee.** The entry of the order, appointing one or more trustees, and the filing of the papers upon which it was granted, vests in the trustee or trustees all the right, title and interest of the prisoner, in and to any property, real or personal. Where the prisoner owns real property, an exemplified copy of the order must be recorded, in the proper office for recording deeds, in each county where the real property is situated.

**§ 398. Removal of trustee; appointment of new trustee.** Upon the application of any person, entitled to apply for an order, appointing trustees of the prisoner's property, and upon such a notice as the court prescribes, to the petitioner, and to such other persons interested, as the court thinks proper to designate, the court, by which the order was granted, may, in its discretion, remove any trustee, and appoint another in his place; or may appoint one or more additional trustees. The new trustee or trustees, so appointed, have the same power and authority, are vested with the same right, title, and interest, and are subject to the same duties and liabilities, as if he or they had been appointed by the original order.

**§ 399. Prisoner's property; how applied.** After deducting their commissions and expenses, allowed by law, and paying the prisoner's debts, the trustees may, from time to time, under the direction of the court by which they were appointed, apply the surplus of any money in their hands, to the support of the prisoner's wife and children, and of such other relatives as he is bound to support, and to the education of his children.

**§ 400. Prisoner's property to be delivered to him on his discharge.** When the prisoner dies, or is lawfully discharged from imprisonment, the trustee or trustees must deliver over to him, or to his legal representatives, all his property, remaining in their hands, after deducting therefrom their lawful expenses and commissions.

**§ 401. Application of this article to persons heretofore sentenced.** This article applies to a prisoner who has been sentenced before this chapter takes effect, and to his property; except where one or more trustees of his property have been theretofore appointed, by proceedings taken in pursuance of a statute then in force.

## ARTICLE 16

### Laws Repealed; When to Take Effect

Section 420. Laws repealed.

421. When to take effect.

**§ 420. Laws repealed.** Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

**§ 421. When to take effect.** This chapter shall take effect immediately.

#### SCHEDULE OF LAWS REPEALED.

Revised Statutes. . . Part 4, titles 2, 3. . . . . All  
 \*Revised Statutes. . . Part 4, chapter 3, titles 2, 3. . . . . All

Laws of	Chapter	Section
1787. . . . .	26. . . . .	4, 5
1796. . . . .	30. . . . .	14-27, 29-36
1797. . . . .	12. . . . .	All
1797. . . . .	41. . . . .	All
1798. . . . .	56. . . . .	3-6, 8, 9, 13-15
1799. . . . .	14. . . . .	All
1800. . . . .	60. . . . .	6-12
1800. . . . .	118. . . . .	All
1801. . . . .	121. . . . .	All
1802. . . . .	37. . . . .	All
1802. . . . .	68. . . . .	All
1804. . . . .	89. . . . .	All
1804. . . . .	109. . . . .	20
1805. . . . .	135. . . . .	12, 13
1808. . . . .	240. . . . .	38
1809. . . . .	164. . . . .	22, 23
1810. . . . .	185. . . . .	All

\* Inserted and expressly repealed by L. 1909, ch. 240, § 94, in effect April 22, 1909.

Laws of	Chapter	Section
1811.....	173.....	All
1812.....	155.....	All
R. L. 1813....	1.....	All
1814.....	200.....	24
1816.....	15.....	All (40th Sessa.)
1816.....	236.....	24
1817.....	269.....	1-6, 8-10, 12, 14-19 —
1818.....	53.....	All
1818.....	211.....	All
1819.....	83.....	All
1820.....	121.....	All
1820.....	185.....	All
1820.....	246.....	All
1821.....	224.....	All
1822.....	273.....	All
1823.....	160.....	All
1823.....	269.....	18
1824.....	76.....	2
1824.....	253.....	All
1825.....	25.....	All
1826.....	24.....	3
1826.....	74.....	All
1826.....	242.....	All
1827.....	12.....	All
1827.....	52.....	All
1828.....	6.....	All
1828.....	11.....	All
1828.....	150.....	All
1828.....	197.....	All
1828.....	21.....	1, ¶¶ 79, 298, 387, 531, 535, 538 (2d Meet.)
1829.....	13.....	All
1829.....	56.....	All
1829.....	220.....	All
1830.....	35.....	All
1830.....	77.....	All
1830.....	87.....	All
1830.....	181.....	All
1830.....	331.....	All
1831.....	4.....	All
1831.....	275.....	All
1832.....	35.....	All
1832.....	138.....	2
1832.....	277.....	All

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Laws of	Chapter	Section
1834.....	145.....	All
1834.....	146.....	All
1834.....	252.....	All
1835.....	104.....	All
1835.....	302.....	All
1836.....	171.....	1-5
1836.....	381.....	All
1837.....	92.....	All
1840.....	25.....	All
1840.....	204.....	All
1841.....	200.....	All
1842.....	148.....	All
1842.....	186.....	All
1844.....	245.....	All
1844.....	301.....	All
1844.....	321.....	All
1845.....	70.....	1, 2, 5, 6, 11-13
1845.....	335.....	All
1846.....	275.....	3-5
1846.....	324.....	4-8, 11
1847.....	45.....	All
1847.....	428.....	All
1847.....	460.....	29-156, 159-161
1847.....	497.....	All
1848.....	294.....	All
1849.....	123.....	All
1849.....	132.....	All
1849.....	141.....	All
1849.....	331.....	1
1850.....	306.....	3-6
1851.....	259.....	All
1851.....	431.....	All
1852.....	194.....	All
1853.....	458.....	All
1854.....	58.....	All
1854.....	223.....	All
1854.....	240.....	All
1855.....	456.....	All
1855.....	501.....	All
1855.....	527.....	All
1855.....	552.....	All
1857.....	91.....	All
1857.....	144.....	All
1858.....	139.....	All

Laws of	Chapter	Section
1859.....	249.....	All
1859.....	289.....	All
1859.....	453.....	All
1859.....	470.....	All
1860.....	283.....	All
1860.....	399.....	All
1862.....	235.....	1
1862.....	403.....	All
1862.....	417.....	All
1863.....	291.....	All
1863.....	415.....	All
1863.....	465.....	All
1864.....	264.....	All
1864.....	300.....	All
1864.....	321.....	All
1865.....	43.....	All
1865.....	584.....	All
1865.....	600.....	All
1866.....	72.....	All
1866.....	330.....	All
1866.....	458.....	All
1866.....	667.....	All
1867.....	426.....	All
1868.....	599.....	All
1868.....	612.....	All
1869.....	574.....	1, 2, 4-9
1869.....	676.....	All
1869.....	841.....	All
1869.....	869.....	All
1870.....	108.....	All
1870.....	109.....	All
1870.....	427.....	All
1871.....	457.....	All
1872.....	782.....	All
1873.....	600.....	All
1874.....	209.....	1
1874.....	451.....	All
1875.....	25.....	All
1875.....	571.....	All
1875.....	596.....	All
1876.....	160.....	All
1876.....	193.....	1, part fixing compensation to sheriffs for transporting con- victs



Laws of	Chapter	Section
1876.....	197.....	All
1876.....	207.....	All
1876.....	339.....	All
1877.....	24.....	All
1877.....	27.....	1, part relating to sheriff's mileage
1877.....	107.....	All
1877.....	128.....	1, part relating to the compensation of sheriffs for conveying convicts
1877.....	172.....	All
1877.....	173.....	All
1877.....	253.....	All
1877.....	312.....	All
1877.....	424.....	All
1878.....	148.....	All
1879.....	284.....	All
1879.....	373.....	All
1879.....	462.....	All
1879.....	471.....	All
1880.....	416.....	All
1881.....	442.....	695
1881.....	548.....	All
1882.....	389.....	All
1883.....	83.....	All
1883.....	468.....	All
1884.....	12.....	All
1884.....	21.....	All
1884.....	178.....	All
1884.....	356.....	All
1885.....	267.....	1
1886.....	21.....	1-9, 21, 22
*1886.....	21.....	10-19 inclusive.
1886.....	432.....	All
1886.....	485.....	All
1887.....	213.....	All
1887.....	711.....	1-6, 8; 9, except part beginning "and the courts" to end of sentence; 10-19
1888.....	440.....	All
1888.....	586.....	All
1889.....	36.....	1
1889.....	382.....	All

\* Inserted and expressly repealed by L. 1909, ch. 240, § 97, in effect April 22, 1909.

Laws of	Chapter	Section
1889.....	401.....	All
1890.....	395.....	All
1890.....	559.....	All
1892.....	130.....	All
1892.....	336.....	All
1892.....	396.....	All
1892.....	587.....	2, 3
1893.....	306.....	All
1893.....	312.....	All
1893.....	386.....	All
1894.....	208.....	All
1894.....	266.....	All
1894.....	299.....	All
1894.....	465.....	All
1894.....	664.....	All
1894.....	737.....	All
1895.....	93.....	All
1895.....	372.....	All
1895.....	473.....	All
1895.....	730.....	All
1895.....	812.....	All
1895.....	1026.....	All
1896.....	429.....	All
1896.....	430.....	All
1896.....	440.....	All
1897.....	216.....	All
1897.....	623.....	All
1898.....	133.....	All
1898.....	645.....	All
1899.....	600.....	All
1900.....	72.....	All
1900.....	348.....	All
1900.....	378.....	All
1900.....	498.....	All
1901.....	12.....	All
1901.....	193.....	All
1901.....	260.....	All
1901.....	388.....	All
1901.....	418.....	All
1902.....	244.....	All
1902.....	500.....	All
1903.....	137.....	All
1903.....	138.....	All
1903.....	447.....	All

Laws of	Chapter	Section
1904.....	323.....	All
1904.....	425.....	All
1904.....	547.....	All
1904.....	709.....	All
1905.....	536.....	All
1906.....	684.....	All
1907.....	381.....	All
1907.....	467.....	All
1908.....	94.....	All
1908.....	232.....	All
1908.....	239.....	All
1908.....	251.....	All
Code Civil Procedure.....		113-117, 120, 122-124; 126, except part relating to county of New York; 127, first sentence; 128, 129, 135-137, 143-148, 2219-2230

# PUBLIC BUILDINGS LAW

**Laws 1909, Chap. 48.**

AN ACT relating to public buildings, constituting chapter forty-four of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

## **CHAPTER 44 OF THE CONSOLIDATED LAWS**

### **PUBLIC BUILDINGS LAW**

- Article 1. Short title (§ 1).
2. Trustees and superintendent of public buildings; state architect (§§ 2-8).
  3. Washington's headquarters (§§ 20-25).
  4. Senate house at Kingston (§§ 40-42).
  5. New York state soldiers' and sailors' home (§§ 60-66).
  6. Public buildings generally (§§ 80, 81).
  7. Laws repealed; when to take effect (§§ 100, 101).

### **ARTICLE 1**

#### **Short Title**

Section 1. Short title.

§ 1. **Short title.** This chapter shall be known as the "Public Buildings Law."

### **ARTICLE 2**

#### **Trustees and Superintendent of Public Buildings\***

- Section 2. Trustees of public buildings.
2. Powers and duties of trustees.
  4. Powers and duties of superintendent.
  5. Room for the Grand Army of the Republic.
  6. State architect.
  7. Office and assistants.
  8. Duties.

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\* So in original. See chapter heading and page 3004.

**§ 2. Trustees of public buildings.** The governor, lieutenant-governor and speaker of the assembly shall be trustees of public buildings, which include the state hall, geological hall, capitol and executive mansion, with the buildings, grounds and premises adjacent or appurtenant thereto or connected therewith belonging to the state, so far as such grounds and premises now or hereafter shall be laid out and completed, and the entire public sidewalks bordering upon the capitol grounds and parks for the purpose of keeping such sidewalks at all times clear of snow, ice, dirt and all other obstructions; and the streets bordering upon such grounds and parks to the center line thereof for the purpose of keeping the same clean.

**§ 3. Powers and duties of trustees.** The trustees of public buildings shall:

1. Allot to the legislature and the different departments and officers of the state government such space and room in the capitol and other buildings under their custody, as they may be entitled to by law and as in the judgment of the trustees shall be adequate and suitable and cause the same to be properly furnished.

2. Take all necessary measures for the careful preservation of the furniture and other personal property belonging to the state in such buildings. The furniture, other personal property and fixtures in such building, purchased with money appropriated by the state, shall be subject to the direction and control of such trustees, and shall not be sold, exchanged, given away or removed from such building, except with the consent of such trustees, or with the consent of the superintendent of public buildings, acting under their direction. No repairs, additions or alterations shall be made to such public buildings without the consent of such trustees or of such superintendent acting under their direction.

3. Appoint and remove at pleasure a superintendent of public buildings.

4. Fix the salary of all employees in the maintenance department under the charge of the superintendent of public buildings.

5. Report to the legislature on or before the fifteenth day of January in each year an estimate of the sum necessary for expenses of the maintenance department of the public buildings for the ensuing year, and transmit therewith a copy of the inventory of movable property delivered to them by the superintendent.

6. Have power to accept and receive for erection or location in any of the public buildings or grounds such statues, monuments, memorials or tablets having reference to historical events in the history or acts of the citizens or soldiers of the state of New York as shall meet their approval, provided that such gifts are erected or located without expenditure from the state treasury.

**§ 4. Powers and duties of superintendent.** The superintendent shall:

1. Hold office for two years, unless sooner removed; receive an annual salary to be fixed by the trustees not exceeding five thousand dollars, and all necessary traveling expenses when in discharge of his duties, and before entering on the duties of his office, execute and file in the office of the comptroller an official undertaking in the sum of ten thousand dollars, with two sureties to be approved by the comptroller. Said superintendent shall, in addition to the duties herein specifically enumerated, perform such other duties and make such investigations as he shall be directed and required to do by the governor or by the said trustees, and report thereon.

2. Have charge and care of the buildings and grounds specified in this article and observe the orders and directions of the trustees relating to the preservation thereof and to the maintenance department of such buildings.

3. Subject to the approval of the trustees, appoint all persons necessary in the maintenance department of the public buildings and grounds under his charge and suspend or remove any of them and prepare rules and regulations for their government.

4. Subject to the approval of the trustees, purchase such articles as are required in the maintenance department. All coal shall be purchased of the lowest bidder, taking into consideration price and quality, after four weeks advertisement for proposals in two newspapers published in the city of Albany.

5. Cause the flag of the United States and the state flag bearing the arms of the state, to be displayed upon the capitol building during the daily sessions of the legislature and on public occasions, and cause the necessary flag-staffs to be erected therefor. The necessary expenses incurred thereby shall be paid out of the treasury on the warrant of the comptroller.

6. Without process and of his own authority, arrest and convey to any magistrate in the county of Albany any person found intoxicated or disorderly, or in the commission of a breach of the peace within any building or on any grounds under his charge, and designate not exceeding eight of his employes, who, on taking and filing an oath of office with the county clerk of Albany county, shall have the same power of arrest and presentment of complaint as the superintendent.

**§ 5. Room for the Grand Army of the Republic.** There shall continue to be set apart and suitably furnished by the superintendent of public buildings, the rooms in the capitol now under the charge of the commander of the Grand

Army of the Republic for the department of New York, and such rooms so furnished shall remain under the charge of such commander and such officers who are members of such department as he or his successors may appoint, and be used by him and them for the purpose of storing the supplies and property of such Grand Army and its relics and mementoes of the war and arranging and preserving the history of individuals belonging to organizations of the state who served in the army, navy or marine corps, during the late war of the rebellion, or of citizens of this state who served in the regular army, navy or marine corps of the United States, which such Grand Army of the Republic may collect and desire to preserve as a part of the history of the state. Such records shall be accessible at all times under suitable rules and regulations to members of the Grand Army of the Republic and others engaged in collecting historical information. The commander of the Grand Army of the Republic for the department of New York shall annually report to the legislature, on or before April first, such portions of the transactions of the Grand Army of the Republic as he deems to be of interest to that organization and to the people of the state.

**§ 6. State architect.** The capitol commissioner is continued in office and shall hereafter be known as the state architect. The governor, by and with the advice and consent of the senate, shall appoint, and may at his pleasure remove, the state architect, who shall receive an annual salary of seven thousand five hundred dollars.

**§ 7. Office and assistants.** The state architect shall have an office in the capitol, and shall have the custody of the plans, specifications, apparatus, books and records heretofore under the custody of the capitol commissioner. He may appoint a deputy, who shall receive an annual salary of five thousand dollars, and employ a private secretary and such draughtsmen, tracers, clerks, stenographers and other assistants as may be needed, and shall, within the limitation of the appropriations made therefor, fix their compensation.

**§ 8. Duties.** The state architect shall prepare the drawings and specifications and supervise and control, as architect, the construction of all new buildings erected at the expense of the state. He shall also prepare the drawings and specifications for additions to existing buildings, and for the alteration or improvement thereof. He shall see that the materials furnished and the work performed in constructing, altering or improving any such building are in accordance with such drawings and specifications,

and that the interests of the state are fully protected, and no municipality of the state shall have the power to modify or change plans or specifications for the erection, alteration or improvement of state buildings, or the construction, plumbing, heating, lighting or other mechanical branch of work necessary to complete the work in question, nor to require that any person, firm or corporation employed on any such work shall perform said work in any other or different manner nor to obtain any other or additional authority or permit from said municipality, department or person as a condition of doing such work, other than that provided by said contract and specifications; and the doing of any such work for the state by any person, firm or corporation in accordance with the terms of such contract, plans or specifications shall not subject said person, firm or corporation to any liability or penalty, civil or criminal, other than as may be stated in such contract and specifications or incidental to the proper enforcement thereof. He shall prepare regular and standard forms of contracts, to be approved by the attorney-general, which shall be used in all work let by contract and no payment shall be made on any such contract except upon his regular certificate after audit by the comptroller. If the drawings and specifications for any such buildings shall include a laundry therein they shall provide that the drying-room for such laundry shall be constructed of fireproof building material.

### ARTICLE 3

#### Washington's Headquarters

- Section 20. Title to the premises.  
21. Board of trustees.  
22. Powers and duties.  
23. Superintendent; duties and compensation.  
24. Trustee or superintendent not to be interested in contract.  
25. Account; annual report.

**§ 20. Title to the premises.** The title to the premises known as "Washington's headquarters," in the city of Newburgh, shall remain in the people of the state of New York.

**§ 21. Board of trustees.** Such headquarters shall be managed by a board of trustees to be known as the board of trustees of Washington's headquarters, consisting of ten members, each of whom shall be appointed by the governor, by and with the advice and consent of the senate, and serve five years. The trustees shall be divided into classes so that the term of two shall expire each



year on the first of April. Meetings of the board shall be held annually on the first Tuesday of April, at which meeting a president, secretary and treasurer shall be appointed from among such trustees.

**§ 22. Powers and duties.** The trustees shall have the care and management of the headquarters with the grounds belonging thereto and direct the expenditure of all moneys appropriated, subscribed or donated for their care or improvement and provide for the preservation thereof, and for the protection of all property therein belonging to the state. No debt or liability shall be incurred in excess of the funds in the hands of the trustees.

**§ 23. Superintendent; duties and compensation.** The trustees may appoint a superintendent who shall reside on the premises and keep the same open for visitors at all reasonable hours, and receive an annual salary not exceeding five hundred dollars, which, with five hundred dollars for repairs to the property and care of the grounds, shall be paid to the president of the board of trustees in equal semi-annual payments on the first day of April and October in each year by the treasurer of the state on the warrant of the comptroller.

**§ 24. Trustee or superintendent not to be interested in contract.** No trustee or superintendent shall have any interest, direct or indirect, in any contract for material or labor provided pursuant to this article, and no trustee, president, secretary or treasurer shall receive any compensation for services rendered in connection with such headquarters.

**§ 25. Account; annual report.** The trustees shall keep an accurate account of their expenditures for the care and improvement of the property under their charge, and annually render to the comptroller, on or before the first day of December, a report and statement of all such expenditures duly verified by their president, accompanied by the vouchers therefor, and a general statement of the condition of the property.

## ARTICLE 4

### Senate House at Kingston

Section 40. Senate house.

41. Powers and duties of trustees.

42. Keeper.

**§ 40. Senate house.** The trustees of public buildings are charged with the care, custody and supervision of the property known as the senate house property situate at the city of Kingston in Ulster county.

**§ 41. Powers and duties of trustees.** The trustees may make such repairs and improvements to the buildings and grounds as may be necessary for the proper preservation of the senate house in its original style, and the protection and ornamentation of the grounds connected therewith, and direct the expenditure of all moneys appropriated, subscribed or donated for the care or improvement of such senate house and grounds, and provide for the protection of all property belonging to this state deposited therein. They shall prescribe the duties of the keeper and appropriate rules and regulations for the care and superintendence of such buildings and property, and provide for water, fuel and light therefor.

**§ 42. Keeper.** The trustees shall appoint some suitable person at Kingston as keeper of the buildings and grounds, who shall be in immediate charge thereof and exhibit them to visitors free of cost or charge of any kind. He shall receive an annual salary to be fixed by the trustees, not exceeding six hundred dollars.

## ARTICLE 5

### **New York State Soldiers' and Sailors' Home**

Section 60. Trustees.

61. Powers of trustees.

62. Sale of liquor at home.

63. Disposition of proceeds of sale.

64. Admission to home.

65. Transfer of inmates to state hospital.

66. Annual report.

**§ 60. Trustees.** The property heretofore conveyed to the state by the corporation known as the Grand Army of the Republic soldiers' home of New York, and all property heretofore or hereafter acquired by the state for the same purpose, shall continue to be known as the New York state soldiers' and sailors' home, and shall continue to be under the management and control of a board of trustees consisting of twelve members, of which the governor, attorney-general and the commander of the department of New York, Grand Army of the Republic, shall be ex officio members; and the remaining nine members shall be reputable citizens of the state appointed by the governor, by and with the advice and consent of the senate, and each shall hold office for three years. No trustee shall receive any compensation for his services as such trustee or otherwise, except the trustee elected to act as secretary who may receive a reasonable annual compensation for his services, to be fixed by the board, with the

approval of the comptroller, not exceeding the sum of two hundred and fifty dollars. The board shall annually elect by ballot a president, secretary, treasurer and executive committee, but the offices of secretary and treasurer may be held by one trustee or separately as the board may determine. The board shall be known as the board of trustees of the New York state soldiers' and sailors' home.

**§ 61. Powers of trustees.** The board of trustees shall have possession of all property belonging to or constituting such home and may complete the buildings therein already commenced or hereafter to be erected, and keep them in readiness for occupation, with any funds appropriated therefor or that may come into their hands for such purpose, and may pay any existing indebtedness of such corporation which shall be or might become a lien upon such property or any part thereof. The board may make contracts in its name, subject to the approval of the comptroller, for work and materials for the completion of the buildings on such property, the furnishing thereof and of supplies for use and consumption therein, but shall spend no money and incur no indebtedness for such purpose beyond the appropriation previously made therefor by the legislature. It may adopt rules and regulations, subject to like approval, specifying the duties of the officers of the home, the government of its inmates, fixing the terms and conditions of admission thereto and the cause and manner of expulsion therefrom. The board may require and take in its name any security by way of bond or otherwise from any person appointed or elected by it, for the faithful performance of his duties, and for truly accounting for all moneys or property received by him, for or on account of the board of trustees or in the performance of such duties. And the said board shall have power to organize and maintain a band, the same to be paid for out of the maintenance funds of the home, not exceeding six thousand dollars per annum.

**§ 62. Sale of liquor at home.** The board of trustees, upon complying with the provisions of the liquor tax law, are hereby authorized to sell ale and beer to the members of said home, upon the premises of said home, under such rules and regulations as said trustees shall prescribe, and the provisions of clause one, section twenty-three and clause six of section twenty-nine of said liquor tax law, shall not apply to the New York state soldiers' and sailors' home.

**§ 63. Disposition of proceeds of sale.** The board of trustees shall expend the net proceeds of such sales for the support of the library and reading room of said home and for such

other purposes as they shall deem best for the comfort and amusement of the inmates of said home.

**§ 64. Admission to home.** Every honorably discharged soldier or sailor who served in the army or navy of the United States during the late rebellion, who enlisted from the state of New York, or who shall have been a resident of this state for one year preceding his application for admission, and who shall need the aid or benefit of such home in consequence of physical disability or other cause within the scope of the regulations of the board, shall be entitled to admission thereto, subject to the conditions, limitations and penalties prescribed by the rules and regulations of the board.

**§ 65. Transfer of inmates to state hospital.** Any soldier or sailor regularly admitted into the home found to be insane, may be transferred by an order of the president and secretary of the board of trustees and the superintendent of the home to any state hospital for the insane, there to remain at the expense of the home until legally discharged, and such expense shall be paid out of the maintenance fund of the home, at the same rate as is charged for the support of the county insane.

**§ 66. Annual report.** Such board shall, annually, on or before January fifteenth, make to the legislature a detailed report of all its receipts and expenditures and of all its proceedings for the previous year, with full estimates for the coming year verified by the president and treasurer.

## ARTICLE 6

### Public Buildings Generally

Section 80. Fire protection of public buildings.

81. Display of foreign flags on public buildings.

**§ 80. Fire protection of public buildings.** It shall be the duty of each superintendent or chief executive officer of each of the public institutions of the state, supported wholly or partly by the funds of the state, to provide that the following regulations for the protection of the inmates of said buildings and the buildings be complied with: There shall be provided a sufficient number of stand-pipes, with connections or outlets on each floor, to which a length of fire hose shall be attached, to properly protect the entire floor surface. All fire hose must be tested at least once in three months under the direction of the engineer, and employees must be trained in its use. Not less than six portable fire-extinguishers for each floor of each building, hand grenades and fire-pails kept constantly filled with water and used for no other

purpose shall be provided. Bathtubs shall be kept filled with water during the night and pails ready for use placed near them. Suitable steps must be provided under windows used as exits to fire-escapes and all fire-escapes must be properly inclosed with wire netting. Wards of the state, if physically and mentally able, must be required to occasionally go up and down the outside iron stairways, which must be provided, in order to become accustomed to their use. If gas is used, the pressure shall be regulated by governor that the flow may be as nearly uniform as possible. All swinging gas jets in closets, clothes-rooms, employees' rooms and in rooms occupied by wards of the state must be protected by wire screens. Gas stoves must be used only when absolutely necessary, and if used must be suitably inclosed with metal. Kerosene oil must not be used for lighting purposes unless the institution is not fully provided with gas or electric lights; and if such oil is used it must be of the highest fire test commercially obtainable. Candles must be used only in an emergency, and on the express authorization of the superintendent or chief executive officer. None but safety matches, or those which can be used only on a specially prepared surface, must be allowed in or about the institution, and, so far as possible, matches should be dispensed with and electric-torches be supplied. All lanterns must be kept outside the buildings used for sleeping purposes, in charge of one person, who must regularly clean, replenish and distribute them. Painters' supplies and inflammable liquids of all kinds must not be stored in buildings occupied by wards of the state or employees. When oil or other inflammable substance is applied to floors, it must be applied only by persons skilled in its application, and all articles used in applying such inflammable material must be carefully destroyed after use. All attics and basements must be constantly kept free from rubbish or articles not necessary to the proper conduct of the institution, and must be regularly swept, cleaned and all broken or needless articles promptly removed.

The moneys necessary to carry out the provisions of this section shall be supplied from the moneys annually appropriated for the maintenance of the above described institutions.

### **§ 81. Display of foreign flags on public buildings.**

It shall not be lawful to display the flag or emblem of any foreign country upon any state, county or municipal building; provided, however, that whenever any foreigner shall become the guest of the United States, the state or any city, upon public proclamation by the governor or mayor of such city, the flag of the country of which such public guest shall be a citizen may be displayed upon such public buildings.

**ARTICLE 7****Laws Repealed; When to Take Effect**

Section 100. Laws repealed.

101. When to take effect.

§ 100. **Laws repealed.** Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 101. **When to take effect.** This chapter shall take effect immediately.

## SCHEDULE OF LAWS REPEALED.

Revised Statutes. . . . Part 1, chapter 9, title 7, sections. . . . 1-3

Laws of	Chapter	Section
1784. . . . .	12. . . . .	All (7th sess.)
1809. . . . .	188. . . . .	2
1811. . . . .	85. . . . .	All
1814. . . . .	200. . . . .	48
1830. . . . .	249. . . . .	All
1834. . . . .	66. . . . .	All
1840. . . . .	245. . . . .	2
1840. . . . .	295. . . . .	All
1841. . . . .	218. . . . .	All
1845. . . . .	98. . . . .	All
1847. . . . .	277. . . . .	14
1848. . . . .	260. . . . .	All
1848. . . . .	284. . . . .	All
1850. . . . .	265. . . . .	All
1851. . . . .	226. . . . .	5
1851. . . . .	509. . . . .	All
1852. . . . .	102. . . . .	3
1865. . . . .	648. . . . .	All
1866. . . . .	583. . . . .	All
1875. . . . .	147. . . . .	All
1875. . . . .	634. . . . .	1, ¶¶ 95, 96
1876. . . . .	2. . . . .	1
1878. . . . .	7. . . . .	All
1878. . . . .	48. . . . .	All
1878. . . . .	124. . . . .	All
1879. . . . .	407. . . . .	All
1880. . . . .	138. . . . .	All
1880. . . . .	289. . . . .	All
1881. . . . .	325. . . . .	All
1882. . . . .	190. . . . .	7

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Laws of	Chapter	Section
1882.....	295.....	All
1882.....	355.....	All
1883.....	146.....	All
1883.....	162.....	All
1883.....	349.....	All
1883.....	355.....	1
1884.....	259.....	All
1885.....	330.....	All
1885.....	336.....	All
1887.....	134.....	All
1888.....	207.....	All
1888.....	380.....	All
1890.....	316.....	2-5
1891.....	206.....	2-5
1893.....	227.....	All
1895.....	36.....	All
1895.....	535.....	All
1895.....	591.....	All
1895.....	737.....	All
1895.....	784.....	All
1896.....	900.....	All
1897.....	78.....	All
1897.....	511.....	All
1898.....	37.....	All
1899.....	512.....	All
1899.....	566.....	All
1901.....	315.....	All
1902.....	212.....	All
1902.....	277.....	All
1903.....	108.....	All
1903.....	342.....	All
1904.....	117.....	All
1905.....	32.....	All
1906.....	434.....	All
1908.....	8.....	All

# PUBLIC HEALTH LAW

## Laws 1909, Chap. 49.

AN ACT in relation to the public health, constituting chapter forty-five of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

## CHAPTER 45 OF THE CONSOLIDATED LAWS

### PUBLIC HEALTH LAW

- Article
1. Short title (§ 1).
  2. State department of health (§§ 2-16).
  3. Local boards of health (§§ 20-39).
  4. Adulterations (§§ 40-50).
  5. Potable waters (§§ 70-87).
  6. Quarantine at the port of New York (§§ 100-111).
  7. Health officer of the port of New York (§§ 120-145).
  8. Practice of medicine (§§ 160-174).
  9. Dental societies and the practice of dentistry (§§ 190-203).
  10. Veterinary medicine and surgery (§§ 210-224).
  11. Pharmacy (§§ 230-240).
  12. Registration of nurses (§§ 250-253).
  13. Chiropody (§§ 270-282).
  14. Embalming and undertaking (§§ 290-298).
  15. Optometry (§§ 300-308).
  16. Preservation of life and health; cadavers for medical and surgical study (§§ 310-334).
  17. Pasteur institute and the prevention of hydrophobia (§§ 340-343).
  18. Laws repealed; when to take effect (§§ 350, 351).

## ARTICLE 1

### Short Title

Section 1. Short title.

§ 1. **Short title.** This chapter shall be known as the "Public Health Law."



**ARTICLE 2****State Department of Health**

- Section 2. State department of health.
3. Compensation of officers and employees.
4. General powers and duties of commissioner.
5. Duties with respect to vital statistics.
6. Nuisances.
7. Overflow of water from the canals.
8. Employment of local boards and experts.
9. Examination and inspection of public works.
10. Acquisition of land.
11. Power of commissioner where municipality fails to establish board of health.
12. Annual report.
13. Tenement houses in cities of the first class.
14. Approval of plans for certain works built by state.
15. State board of health to mean department of health.
16. Pending actions and proceedings not affected.

**§ 2. State department of health.** The state department of health and the office of commissioner of health are continued. The commissioner of health shall be the head of such department. Such commissioner shall be appointed by the governor, by and with the advice and consent of the senate, and shall be a physician, a graduate of an incorporated medical college, of at least ten years' experience in the actual practice of his profession, and of skill and experience in public health duties and sanitary science. The term of office of the commissioner shall be four years, beginning on the first day of January of the year in which he is appointed.

**§ 3. Compensation of officers and employees.** The commissioner of health shall receive an annual salary of three thousand five hundred dollars, and his expenses actually and necessarily incurred in the performance of his official duties, to be paid monthly on the audit of the comptroller. He may employ such clerical and other assistants as are necessary for the proper performance of the powers and duties of the department, and fix their compensation within the amount appropriated therefor by the legislature. He shall designate, in writing, one of his assistants who shall possess the powers and perform the duties of commissioner of health during his absence or inability to act, or during a vacancy in the office.

**§ 4. General powers and duties of commissioner.**

The commissioner of health shall take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto. He shall make inquiries in respect to the cause of disease, especially epidemics, and investigate the source of mortality, and the effect of localities, employments and other conditions, upon the public health. He shall obtain, collect and preserve such information relating to mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state. He may issue subpoenas, compel the attendance of witnesses and compel them to testify in any matter or proceeding before him, and a witness may be required to attend and give testimony in a county where he resides or has a place of business without the payment of any fees. The commissioner of health may reverse or modify an order, regulation, by-law or ordinance of a local board of health concerning a matter which in his judgment affects the public health beyond the territory over which such local board has jurisdiction; and may exercise exclusive jurisdiction over all lands acquired by the state for sanitary purposes. The commissioner of health and any person authorized by him so to do, may, without fee or hindrance, enter, examine and survey all grounds, erections, vehicles, structures, apartments, buildings and places.

**§ 5. Duties with respect to vital statistics.** There shall be in the state department of health a bureau of vital statistics for the registration of births, marriages, deaths and prevalent diseases, which shall be under the general charge and supervision of the commissioner of health. He shall prescribe and prepare the necessary methods and forms for obtaining and preserving such statistics, and to insure the prompt and faithful registration of the same in the several municipalities and in the state bureau. He shall from time to time recommend such forms and such amendments of law as shall be deemed necessary for the thorough organization and efficiency of registration of vital statistics throughout the state, as supervised by him. The clerical duties and safe keeping of the state bureau shall be provided for by the commissioner of health. The comptroller shall provide and furnish such stationery as the commissioner may require in the discharge of his duties. If defects exist in any registration under the supervision of a local board of health, the commissioner shall notify the local board that such defects must be amended and prevented within ten days from the date of the notice. If such defects are not so amended or prevented, the commissioner shall take control of such registration and the record thereof, and enforce the rules and regulations in regard thereto, and secure a complete registration in such municipality, and such control shall

continue until the local board satisfies the commissioner that it will make such record and registry complete, as required by law, and the expenses incurred by the commissioner or his representative while in control of the registration shall be a charge upon the municipality. A copy of any record or registry in the office of the state department of health, duly certified by the commissioner to be a true copy thereof, shall be presumptive evidence in all courts and places of the facts therein stated. The commissioner of health shall prescribe and prepare the necessary methods, forms and rules regulating the issue of transfer permits, by local boards of health, for the transportation of corpses for burial outside of the county where death occurred and the use of such permits. He shall require a coupon to be attached to every such permit to be detached and preserved by every common carrier, or person in charge of any vessel, car or vehicle, to whom any such corpse shall be delivered for transportation. (*Thus amended by L. 1909, ch. 557, in effect May 28, 1909.*)

Amendment of 1909 changed the words "one month" to "ten days" in the sixth sentence after the words "prevented within".

**§ 6. Nuisances.** The commissioner of health shall have all necessary powers to make examinations into nuisances, or questions affecting the security of life and health in any locality. Whenever required by the governor of the state, he shall make such an examination and shall report the results thereof to the governor, within the time prescribed by him therefor. The report of every such examination, when approved by the governor, shall be filed in the office of the secretary of state, and the governor may declare the matters public nuisances, which may be found and certified in any such report to be nuisances, and may order them to be changed, abated or removed as he may direct. Every such order shall be presumptive evidence of the existence of such nuisance; and the governor may, by a precept under his hand and official seal, require the district attorney, sheriff and other officers of the county where such nuisance is maintained, to take all necessary measures to execute such order and cause it to be obeyed, and the acts of any such county officer in the abatement of any such nuisance, reasonable or necessary for such abatement, shall be lawful and justifiable and the order of the governor a sufficient protection to such officer. The expense of such abatement shall be paid by the municipality where the nuisance occurs, and shall be a debt recoverable by such municipality of all persons, maintaining it or assisting in its maintenance, and a lien and charge upon the lands upon which the nuisance is maintained, which may be enforced by a sale of such lands to satisfy the same.

**§ 7. Overflow of water from the canals.** Whenever water escaping or discharged from any of the canals of the state,

through water gates, spillways or otherwise, shall overflow adjacent lands, or any creek or stream receiving such waters, or collect in stagnant pools along the canal or any such creek or stream to such an extent as to cause disease or sickness to the inhabitants of the vicinity, any three of such inhabitants may make a written complaint thereof under oath to the commissioner of health, setting forth the extent of the injury to the public health, so far as is within their knowledge, and the length of time the disease or sickness has existed, which shall be accompanied by a verified certificate of a practicing physician of the vicinity, stating the facts known to him, pertaining to the allegations of the complaint. Upon receipt of such complaint, the commissioner of health shall forthwith examine into the facts and circumstances therein set forth, and may call on the state engineer to make such surveys as they may require for their information, who shall make the same without delay, and if such commissioner is satisfied that such disease or sickness exists, and is caused by waters of the canal escaping or discharged therefrom, he shall so report to the superintendent of public works, without unnecessary delay, who shall forthwith abate the cause of such disease or sickness.

**§ 8. Employment of local boards and experts.** Whenever requested by the commissioner of health, any city board of health in this state may appoint one of its members to act with and assist the commissioner during the examination of any nuisance, or for the purpose of determining whether a public nuisance exists. Such representative may take part in such examination, and sit with the commissioner during the conduct thereof, but the final determination of the questions involved shall rest solely with the commissioner. The commissioner may from time to time employ competent persons to render sanitary service, and make or supervise practical and scientific investigations and examinations requiring expert skill, and prepare plans and reports relative thereto.

**§ 9. Examination and inspection of public works.** All persons having the control, charge or custody of any public structure, work or ground, or of any plan, description, outline, drawing or chart thereof or relating thereto, made, kept or controlled by or under any public authority, shall permit and facilitate the examination, inspection and copying thereof by the commissioner of health, or by any person authorized by him to make such examination or inspection or such copies.

**§ 10. Acquisition of land.** If the commissioner of health or the health officer of the port of New York shall certify to the commissioners of the land office that by reason of sudden emer-

gency the acquisition of any land is immediately necessary for quarantine or other purposes to prevent great danger to the public health, and such commissioners are satisfied that such action is necessary, such commissioners may acquire by purchase or by condemnation, in the name of the people of the state of New York, such land as in their judgment is necessary and suitable for such purposes.

**§ 11. Power of commissioner where municipality fails to establish board of health.** If any municipal corporation, authorized by law to establish a local board of health, shall omit to do so, the commissioner of health may, in such municipality, exercise the powers of a local board of health and appoint a health officer thereof and fix his duties and compensation. The compensation of such health officer and the expenses lawfully incurred by him and by the commissioner of health in such municipality shall be a charge upon and paid by such municipality until such time as a local board of health shall be established therein, whereupon the jurisdiction of such health officer and of the commissioner of health conferred by this section shall cease.

**§ 12. Annual report.** The commissioner of health shall annually, on or before the first Monday in February, make a written report to the governor upon the vital statistics and sanitary conditions and prospects of the state. Such reports shall set forth the action of the department and of its officers and agents and the names thereof during the past year, a detailed statement of all moneys paid out by or on account of the department, and the manner of its expenditure during the year, and other useful information, and shall suggest any further legislative action or precaution deemed necessary for the better protection of life and health.

**§ 13. Tenement houses in cities of the first class.** The commissioner shall have power to examine into the enforcement of the laws relating to tenement houses in any city of the first class. Whenever required by the governor, he shall make such an examination and shall report the results thereof to the governor within the time prescribed by him therefor.

**§ 14. Approval of plans for certain works built by state.** In all buildings and institutions, owned, maintained or controlled by the state, the plans for all water supply, sewerage, sewage-disposal and garbage-disposal works, shall be subject to the approval of the state commissioner of health before being adopted or constructed.

**§ 15. State board of health to mean department of health.** Whenever the term "state board of health" occurs or any reference is made thereto, in any law, it shall be deemed to

mean or refer to the department of health as described in this article. The commissioner of health shall have all the powers conferred and perform all the duties imposed by law upon the state board of health, or any member, committee or officer thereof, including the secretary.

**§ 16. Pending actions and proceedings not affected.**

This article shall not affect actions or proceedings, civil or criminal, brought by or against the state board of health, and pending on February nineteenth, nineteen hundred and one, but such actions or proceedings may be prosecuted or defended in the same manner and to the same effect by the commissioner of health as if the foregoing provisions had not taken effect. Nor shall any of the foregoing provisions affect in any manner any order or recommendation made by, or any other matters or proceedings before such state board of health, and all such matters and proceedings pending before such board on the above date shall be continued before the commissioner of health.

### ARTICLE 3

#### Local Boards of Health

- Section 20. Local boards of health.
21. General powers and duties of local boards of health.
  22. Vital statistics.
  23. Burial and burial permits.
  24. Regulating interments in cemeteries.
  25. Infectious and contagious or communicable diseases.
  26. Nuisances.
  27. Owner to bear all or part of expense of removal.
  28. Assessing cost on property benefited.
  29. Municipality may bear part of expense.
  30. Assessing expense upon property benefited.
  31. Removal of nuisances.
  32. Expense of abatement of nuisances a lien upon the premises.
  33. Manufactures in tenement houses and dwellings.
  34. Jurisdiction of town and village boards.
  35. Expenses, how paid.
  36. Relief of indigent Indians in case of epidemic.
  37. Mandamus.
  38. Exceptions and limitations as to cities of New York, Brooklyn, Buffalo, Albany and Yonkers.
  39. Certain kinds of business and manufacture prohibited in cities or within three miles therefrom; exceptions.

**§ 20. Local boards of health.** There shall continue to be local boards of health and health officers in the several cities, villages and towns of the state. In the cities, except cities of the first and second class, the board shall consist of the mayor of the city who shall be its president, and at least six other persons, one of whom shall be a competent physician, who shall be appointed by the common council, upon the nomination of the mayor, and shall hold office for three years. Appointments of members of such boards shall be made for such shorter terms as at any time may be necessary, in order that the terms of two appointed members shall expire annually. In the cities, except cities of the first and second class, and such other cities whose charters otherwise provide, the board shall appoint, for a term of four years, a competent physician, not one of its members, to be the health officer of the city, and shall fill any vacancy that now exists or may hereafter exist from expiration of term or otherwise in the office of health officer of the city. In villages the board shall consist of not less than three nor more than seven persons, not trustees of the village, who shall be appointed by the board of trustees at the first meeting of the board of trustees of such village, after the next annual election of the village; the members of said board of health shall at their first meeting divide themselves by lot into three classes, whose terms of office shall expire respectively in one, two and three years, from the annual election held prior to their appointment; and in case of an increase in the membership of such board, as hereinafter provided, there shall be a like apportionment by lot, of the added members, in respect to their terms of office, at the first meeting of said board after such increase occurs, whereby the whole number of terms expiring annually shall be as nearly equal as possible. From and after the appointment of said board as above provided, the appointment of the successors of said members shall be made immediately after the annual elections of said village and shall continue in office until their successors are appointed unless removed therefrom; provided, however, that upon failure to appoint such board of health at such first meeting such appointment may be made at any subsequent meeting, in the event of no appointment having been made by the proper authorities as hereinafter provided. The board of trustees of such village may, in its discretion, at the first meeting of such board held after any annual election of the village, increase the number of members of the board of health of such village, and appoint such additional members and thereafter appoint their successors, providing the number of members of such board of health, as increased, shall not exceed seven. Every such village board shall elect a president and secre-

tary, the president to be elected from among the members of said board. In towns the board of health shall consist of the town board and another citizen of the town of full age biennially appointed by the town board at a meeting thereof after each biennial town meeting for the term of two years from and after such town meeting and until his successor is appointed. The local board of health shall appoint a competent physician, not a member of the local board of health, to be the health officer of the municipality. The term of office of the health officer shall be four years and he shall hold office until the appointment of his successor. He may be removed for just cause by the local board of health or the state commissioner of health after a hearing; such removal by the local board of health must be approved by the state commissioner of health. The health officer need not reside within the village or town for which he shall be chosen, but unless he shall, he must reside in an adjoining town. [If the proper authorities shall not fill any vacancies occurring in the membership of any local board within thirty days after the happening of such vacancy, the mayor of the city, president of the village, or supervisor of the town, shall appoint a competent person to fill the vacancy for the unexpired term, which appointment shall be immediately filed in the office of the county clerk, and a duplicate thereof filed with the clerk of the municipality for which such appointment is made.] Notice of the membership and organization of every local board of health shall be forthwith given by such board to the state department of health. The term "municipality," when used in this article, means the city, village or town for which any such local board may be or is appointed. The provisions herein contained for the appointment and number of members of boards of health, and for the appointment of health officers, shall apply to all towns and villages, whether such villages are organized under general or special laws. (*Thus amended by L. 1909, ch. 165, in effect April 6, 1909.*)

**Amendment of 1909** materially changed former section which read as follows:

**§ 20. Local boards of health.** There shall continue to be local boards of health and health officers in the several cities, villages and towns of the state. In the cities, except cities of the first and second class, the board shall consist of the mayor of the city who shall be its president, and at least six other persons, one of whom shall be a competent physician, who shall be appointed by the common council, upon the nomination of the mayor, and shall hold office for three years. Appointments of members of such boards shall be made for such shorter terms as at any time may be necessary, in order that the terms of two appointed members shall expire annually. In the cities, except cities of the first and second class, and such other cities whose charters otherwise provide, the board shall appoint, for a term of four years, a competent physician, not one of its members, to be the health officer of the city, and shall fill any vacancy that now exists or may hereafter exist from expiration of term or otherwise in the office of health officer of the city. In villages the board shall consist of not less than three nor more than seven



persons, not trustees of the village, who shall be appointed by the board of trustees at the first meeting of the board of trustees of such village, after the next annual election of the village; the members of said board of health shall at their first meeting divide themselves by lot into three classes, whose terms of office shall expire respectively in one, two and three years, from the annual election held prior to their appointment; and in case of an increase in the membership of such board, as hereinafter provided, there shall be a like apportionment by lot, of the added members, in respect to their terms of office, at the first meeting of said board after such increase occurs, whereby the whole number of terms expiring annually shall be as nearly equal as possible. From and after the appointment of said board as above provided, the appointment of the successors of said members shall be made immediately after the annual elections of said village and shall continue in office until their successors are appointed unless removed therefrom; provided, however, that upon failure to appoint such board of health at such first meeting such appointment may be made at any subsequent meeting, in the event of no appointment having been made by the proper authorities as hereinafter provided. The board of trustees of such village may, in its discretion, at the first meeting of such board held after any annual election of the village, increase the number of members of the board of health of such village, and appoint such additional members and thereafter appoint their successors, providing the number of members of such board of health, as increased, shall not exceed seven. Every such village board shall elect a president and secretary, the president to be elected from among the members of said board. In towns the board of health shall consist of the town board and another citizen of the town of full age biennially appointed by the town board at a meeting thereof after each biennial town meeting for the term of two years from and after such town meeting and until his successor is appointed. The state commissioner of health shall appoint for each municipality except in the cities of the state on the nomination of the local board of health, a competent physician, not a member of the local board of health, to be the health officer of the municipality. The term of office of the health officer shall be four years and he shall hold office until the appointment of his successor. If a local board of health fails to nominate a physician for appointment to the position of health officer within thirty days after the expiration of the term of office of the health officer, or if a vacancy in the office is not filled within thirty days, the state commissioner of health shall appoint a competent physician to the position, or, should a local board of health nominate a physician for appointment to the position of health officer who, in the judgment of the state commissioner of health is not properly qualified for appointment to the position, the state commissioner of health shall notify the local board of health of such fact, and thereupon such local board of health shall within thirty days from the date of such notice present to the state commissioner of health the name of another physician for appointment to the position of health officer, failing in which, the state commissioner of health shall appoint a physician to the position. He may be removed for just cause by the local board of health after a hearing; such removal must be approved by the state commissioner of health. The health officer need not reside within the village or town for which he shall be chosen, but unless he shall, he must reside in an adjoining town. If the proper authorities shall not fill any vacancies occurring in the membership of any local board within thirty days after the happening of such vacancy, the mayor of the city, president of the village, or supervisor of the town, shall appoint a competent person to fill the vacancy for the unexpired term, which appointment shall be immediately filed in the office of the county clerk, and a duplicate thereof filed with the clerk of the municipality for which such appointment is made. Notice of the membership and organization of every local board of health shall be forthwith given by such board to the state department of health. The term "municipality," when used in this article, means the city, village or town for which any such local board may be or is appointed. The provisions herein contained for the appointment and number of members of boards of health, and for the appointment of health officers, shall apply to all towns and villages, whether such villages are organized under general or special laws.

**§ 21. General powers and duties of local boards of health.** Every such local board of health shall meet at stated intervals to be fixed by it, in the municipality. The presiding officer of every such board may call special meetings thereof when in his judgment the protection of the public health of the municipality requires it, and he shall call such meeting upon the petition of at least twenty-five residents thereof, of full age, setting forth the necessity of such meeting. Every such local board shall prescribe the duties and powers of the local health officer, who shall be its chief executive officer, and direct him in the performance of his duties, and fix his compensation. In addition to his compensation so fixed, the board of health must allow the actual and reasonable expenses of said health officer in going to, attending and returning from, the annual sanitary conference of health officers, or equivalent meeting, held yearly within the state, and whenever the services rendered by its health officer shall include the care of smallpox, the board of health shall allow, or whenever such services are extraordinary, by reason of infectious diseases, or otherwise, they may in their discretion, allow to him such further sum in addition to said fixed compensation as shall be adequate for such services, audited by the town board of a town, by the board of trustees of a village or by the proper auditing board of a city of the third class, which said expenses and said additional compensation shall be a charge upon and paid by the municipality as provided in section thirty-five of this chapter. Every such local board shall make and publish from time to time all such orders and regulations as they may deem necessary and proper for the preservation of life and health, and the execution and enforcement of this chapter in the municipality. It shall make without publication thereof, such orders and regulations for the suppression of nuisances, and concerning all other matters in its judgment detrimental to the public health in special or individual cases, not of general application, and serve copies thereof upon the owner or occupant of any premises whereon such nuisances or other matters may exist, or upon which may exist the cause of other nuisances to other premises, or cause the same to be conspicuously posted thereon. It may employ such persons as shall be necessary to enable it to carry into effect its orders and regulations, and fix their compensation. It may issue subpoenas, compel the attendance of witnesses, administer oaths to witnesses and compel them to testify, and for such purposes it shall have the same powers as a justice of the peace of the

state in a civil action of which he has jurisdiction. It may designate by resolution one of its members to sign and issue such subpoenas. No subpoena shall be served outside the jurisdiction of the board issuing it, and no witness shall be interrogated or compelled to testify upon matters not related to the public health. It may issue warrants to any constable or policeman of the municipality to apprehend and remove such persons as can not otherwise be subjected to its orders or regulations, and a warrant to the sheriff of the county to bring to its aid the power of the county whenever it shall be necessary to do so. Every warrant shall be forthwith executed by the officer to whom directed, who shall have the same powers and be subject to the same duties in the execution thereof, as if it had been duly issued out of a court of record of the state. Every such local board may prescribe and impose penalties for the violation of or failure to comply with any of its orders or regulations, not exceeding one hundred dollars for a single violation or failure, to be sued for and recovered by it in the name and for the benefit of the municipality; and may maintain actions in any court of competent jurisdiction to restrain by injunction such violations, or otherwise to enforce such orders and regulations. Whenever such local board of health in any incorporated village shall deem the sewers of such village insufficient to properly and safely sewer such village, and protect the public health, it shall certify such fact in writing to the board of trustees of such village, stating and recommending what additions or alterations should in the judgment of such board of health be made, with its reasons therefor, and thereupon such board of trustees shall immediately convene and consider such recommendations, and if approved by such board of trustees, the same shall be certified to the state commissioner of health for his approval, and if such recommendations shall be approved by the state commissioner of health, it shall be the duty of the board of trustees or other board of such village having jurisdiction of the construction of sewers therein, if there be such a board, whether sufficient funds shall be on hand for such purpose or not, to forthwith make such additions to or alterations in the sewers of such village and execute such recommendations, and the expenses thereof shall be paid for wholly by said village in the same manner as other village expenses are paid or by an assessment of the whole amount against the property benefited, or partly by the village and partly by an assessment against the property benefited, as the board of trustees of such village shall by resolution determine. If the board of trustees shall determine that such expenses shall be paid partly by the

village and partly by an assessment against the property benefited, as authorized by this section, it shall in the resolution making such determination fix the proportion of such expense to be borne by each, and the proportion thereof to be raised by an assessment against the property benefited shall be assessed and collected in the manner provided by the village law for the assessment and collection of sewer assessments. Said village is hereby authorized to raise such sum as may be necessary for the payment of the expenses incurred, which are a village charge, if any, as herein provided, in addition to the amount such village is now authorized to raise by law for corporation purposes, and such board shall have the right to acquire such lands, rights of way, or other easements, by gift, or purchase, or in case the same can not be acquired by purchase may acquire the same by condemnation in the manner provided by law. (*Thus amended by L. 1909, ch. 480, in effect May 25, 1909.*)

Amendment of 1909 struck out the word "or" following the words "town board of a town" in the middle of the fourth sentence and inserted the words "or by the proper auditing board of a city of the third class" following the words "trustees of a village" in said sentence.

**§ 22. Vital statistics.** Every such local board shall supervise and make complete the registration of all births and deaths occurring within the municipality, and the cause of death and the finding of coroners' juries, in accordance with the methods and forms prescribed by the state department of health, and, after registration, promptly forward the certificates of such births and deaths to the state bureau of vital statistics on or before the fifth of each month. Every physician or midwife attending at the birth of a child, and no physician or midwife being in attendance, the parent or custodian of a child born, shall cause a certificate of such birth to be returned within thirty-six hours thereafter to the local board of health or person designated by it to receive the same, which shall be attested, if a birth, by the physician or midwife, if any in attendance, and no physician or midwife being in attendance, by the parent or custodian of a child born. It shall be the duty of the physician last in attendance upon any person who may die to fill out a certificate of the death and the probable cause, and duly certify to same and deliver the certificate to the local registrar of vital statistics within twenty-four hours after the death occurs. In case an inquest is required by law, the coroner or the coroner's physician shall fill out the said certificate, and if no inquest is required and no physician has been in attendance, the certificate shall be filled out,

setting forth the circumstances and probable cause of death, by some reputable person known to the officer issuing the burial or transit permit, and the said person shall also make affidavit to the facts set forth in the certificate of death. The person making such certificate shall be entitled to the sum of twenty-five cents therefor, which shall be a charge upon, and paid by the municipality where such birth or death occurred. The cost of such registration, not exceeding twenty-five cents for the complete registered record of a birth, or death, shall be a charge upon the municipality. The charge for a copy thereof shall be fixed by the board, not exceeding the same sum for a complete copy of a single registered record and the additional sum of twenty-five cents if certified to. Such copies shall be furnished upon request of any person, and when certified to be correct by the president or secretary of the board or local registering officer designated by it shall be presumptive evidence in all courts and places of the facts therein stated. The physician or midwife attending at the birth of a child, shall, at the time of filing such certificate of birth, unless it contains the given name of such child, cause to be furnished to the parents or custodian of such child a name card, which shall be filled in by such parent or custodian with the given name of such child when named, and immediately filed in the same office where certificates of birth are filed. Blank name cards shall be furnished by local boards of health in the form prescribed by the state department of health, the expense of which shall be a charge upon the municipality. Rules and regulations shall be adopted by local boards of health providing for the enforcement of this section. (*Thus amended by L. 1909, ch. 407, in effect May 20, 1909.*)

**Amendment of 1909** inserted the words "on or before the fifth of each month" at the end of the first sentence, changed the words "ten days" to "thirty-six hours" after the word "within" in the second sentence, changed the word "or" to "and" before the words "no physician" in the two places where such words occur in the second sentence, and added the third and fourth sentences.

**§ 23. Burial and burial permits.** Every such local board shall prescribe sanitary regulations for the burial and removal of corpses, and shall designate the local registrar of vital statistics and the health officer of the town or municipality to grant permits for such burial, and permits for the transportation of any corpse which is to be carried for burial beyond the county where the death occurred. Every undertaker, sexton or other person having charge of any corpse, shall procure a burial permit from the local registrar with whom the certificate of death has been

filed, or the health officer of the town or municipality and there shall be no burial or removal of a corpse until a permit for such burial or removal has been obtained. When application is made for a permit to transport a corpse over any railroad or upon any passenger steamboat within the state, the board of health, or the officers to whom such application is made, shall require such corpse to be inclosed in a hermetically sealed casket of metal or other indestructible material, if the cause of death shall have been from a contagious or infectious disease. (*Thus amended by L. 1909, ch. 407, in effect May 20, 1909.*)

Amendment of 1909 materially changed former section which read as follows:

**§ 23. Burial and burial permits.** Every such local board shall prescribe sanitary regulations for the burial and removal of corpses, and shall designate the persons who shall grant permits for such burial, and permits for the transportation of any corpse which is to be carried for burial beyond the county where the death occurred. Where such persons are appointed by the board of health of any town, one of such persons shall be the town clerk of such town. Every undertaker, sexton or other person having charge of any corpse, shall procure a certificate of the death and the probable cause duly certified by the physician in attendance upon the deceased during his last illness, or by the coroner where an inquisition is required by law, and if no physician was in attendance, and no inquest has been held or required by law, an affidavit stating the circumstances, time and cause of death, and sworn to by some credible person known to the officer granting the permit, and there shall be no burial or removal of a corpse until such certificate or affidavit has been presented to the local board or to the person designated by it, and thereupon a permit for such burial or removal has been obtained. When application is made for a permit to transport a corpse over any railroad or upon any passenger steamboat within the state, the board of health, or the officers to whom such application is made, shall require such corpse to be inclosed in a hermetically sealed casket of metal or other indestructible material, if the cause of death shall have been from a contagious or infectious disease.

**§ 24. Regulating interments in cemeteries.** Whenever the common council of any city of the third class shall deem that further interments in any cemetery in such city would be detrimental to the public health, it may by resolution direct its clerk to cause a notice to be served upon the person or corporation owning or controlling such cemetery and published once in a week for three successive weeks in two papers published in such city, stating a time and place not less than thirty days after service and first publication of such notice, at which any person interested may show cause to the common council why further interments in such cemetery should not be prohibited. At the time and place specified in such notice the common council shall hear all persons desiring to be heard, and if upon such hearing it appears that further interments in such cemetery will be detrimental to public health, the

common council may by resolution prohibit further interments therein. If such resolution is adopted a certified copy thereof shall be filed by the clerk of the common council with the board of health of such city, and thereafter such board shall not issue any permits for interments in such cemetery. The action of the common council in passing such resolution may be reviewed within thirty days thereafter by writ of certiorari as provided by the code of civil procedure.

**§ 25. Infectious and contagious or communicable diseases.** Every such local board of health shall guard against the introduction of such infectious and contagious or communicable diseases as are designated by the state department of health, by the exercise of proper and vigilant medical inspection and control of all persons and things infected with or exposed to such diseases, and provide suitable places for the treatment and care of sick persons who cannot otherwise be provided for. It shall prohibit and prevent all intercourse and communication with or use of infected premises, places and things, and require, and if necessary, provide the means for the thorough purification and cleansing of the same before general intercourse with the same or use thereof shall be allowed. Every physician shall immediately give notice of every case of infectious and contagious or communicable disease required by the state department of health to be reported to it, to the health officer of the city, town or village where such disease occurs, and no physician being in attendance on such case, it shall be the duty of the superintendent or other officer of an institution, householder, hotel or lodging house keeper, or other person where such case occurs, to give such notice. The physician or other person giving such notice shall be entitled to the sum of twenty-five cents therefor, which shall be a charge upon and paid by the municipality where such case occurs. Every such local board of health shall report to the state department of health, promptly, the facts relating to infectious and contagious or communicable diseases, and every case of smallpox or varioloid within the municipality. Health officers of cities, villages and towns shall report in writing once a month to the state department of health all cases of such infectious and contagious or communicable diseases as may be required by the state department of health, and for such reporting the health officer of a village or town shall be paid by the municipality employing him, upon the certification of the state department of health, a sum not to exceed twenty cents for each case so reported. The reports of cases of tuberculosis made pursuant to the provisions of this section shall not be divulged or made public

so as to disclose the identity of the persons to whom they relate, by any person; except in so far as may be necessary to carry out the provisions of this section. It shall provide at stated intervals, a suitable supply of vaccine virus, of a quality and from a source approved by the state department of health, and during an actual epidemic of smallpox obtain fresh supplies of such virus at intervals not exceeding one week, and at all times provide thorough and safe vaccination for all persons in need of the same. If a pestilential, infectious or contagious disease exists in any county almshouse or its vicinity, and the physician thereof shall certify that such disease is likely to endanger the health of its inmates, the county superintendent of the poor may cause such inmates or any of them to be removed to such other suitable place in the county as the local board of health of the municipality where the almshouse is situated may designate, there to be maintained and provided for at the expense of the county, with all necessary medical care and attendance until they shall be safely returned to such almshouse or otherwise discharged. This section shall apply to all cities, towns and villages, except cities of the first class, notwithstanding the provisions of section thirty-two of this article. The health officer, commissioner of health, or boards of health of the cities of the first class shall report promptly to the state department of health all cases of smallpox, typhus and yellow fever and cholera and the facts relating thereto.

**§ 26. Nuisances.** Every such board shall receive and examine into all complaints made by any inhabitant concerning nuisances, or causes of danger or injury to life and health within the municipality, and may enter upon or within any place or premises where nuisances or conditions dangerous to life and health or which are the cause of nuisances existing elsewhere are known or believed to exist, and by its members or other persons designated for that purpose, inspect and examine the same. The owners, agents and occupants of any such premises shall permit such sanitary examinations to be made, and the board shall furnish such owners, agents and occupants with a written statement of the results and conclusions of any such examination. Every such local board shall order the suppression and removal of all nuisances and conditions detrimental to life and health found to exist within the municipality. Whenever the state department of health shall by notice to the presiding officer of any local board of health, direct him to convene such local board to take certain definite proceedings concerning which the state department of health shall be satisfied that the action recommended by them is necessary for the public good, and is within the jurisdiction of such board of health, such



presiding officer shall convene such local board, which shall take the action directed.

**§ 27. Owner to bear all or part of expense of removal.** Whenever the local board of health of a municipality shall determine that any accumulation of water wherein mosquito larvae breed, constitutes a nuisance or a danger or injury to life or health, the owner or owners of the premises on which the breeding place is located shall bear the expense of its suppression or removal, or so much thereof as the local board may have determined to be equitable as hereinafter provided, and for the amount thereof an action may be maintained in the name of the municipality and the same shall become a first lien on the premises as provided by section thirty-one and thirty-two of this article.

**§ 28. Assessing cost on property benefited.** If such local board shall determine, in its discretion, that, owing to the natural conditions which are favorable to the breeding of mosquitoes and owing to the benefits to be secured to the public by the suppression of such conditions, some part or all of the expense of suppressing or removing a breeding place for mosquitoes should, in equity, be borne by the owners of the property which will be benefited by such suppression or removal, the local board shall make application as hereinafter provided, for the appointment of three commissioners, and the county court of the county in which are situated the premises whereon the breeding place is located, or, in case such premises are situated in more than one county, the supreme court, shall thereupon appoint three persons as commissioners to proceed with the work necessary for the suppression or removal of such breeding place, and to apportion, assess and collect the cost thereof, as so determined from the owners of such property benefited. Such appointment, apportionment, assessment and collection shall be made in the manner provided for the appointment of commissioners to suppress and remove any such breeding place by draining the premises on which such breeding place is located by means of ditches and channels constructed over lands belonging to others and the owners of the premises to be drained and to apportion, assess and collect the cost thereof from the owners of the property benefited thereby. In any case where, under the provisions of this article commissioners are to determine what property is benefited and to what extent said property is benefited by the suppression or removal of any such breeding place, such commissioners shall not be restricted in their determination to property immediately adjoining the premises whereon such breeding place is located; and, in apportioning the benefit to any property, such commissioners may consider any

circumstances by reason whereof any property will be benefited by the suppression and removal of such breeding place.

**§ 29. Municipality may bear part of expense.** If such local board shall have determined that, owing to the natural conditions which are favorable to the breeding of mosquitoes and owing to the benefit to be secured to the public by the suppression of such conditions, a part of the expense of such suppression or removal shall be borne by the owner of such premises and a part thereof by the municipality wherein the premises are situated, such owner or occupant may proceed to suppress or remove such breeding place and shall be reimbursed by the municipality for such proportion of the reasonable expense of such suppression or removal as the local board shall have determined should be borne by the municipality. For the purpose of ascertaining the actual cost of such suppression or removal, the local board or its duly authorized agents may at all times have access to the premises whereon the work is being carried on; and the owner of the premises shall furnish to such local board such information as such local board may deem necessary or desirable for the purpose of ascertaining such actual cost. If in any such case the owner of the premises shall not, within a reasonable time, proceed to suppress or remove such breeding place, the local board may proceed to suppress and remove the same, and for such proportion of the expense of such suppression and removal as the local board shall have determined to be equitable, an action may be maintained against such owner, and the same shall become a first lien upon the premises as above provided.

**§ 30. Assessing expense upon property benefited.** If such local board shall deem it necessary, in order to suppress or remove any such breeding place, that any swamp, bog, meadow or other low or wet lands within the municipality over which said board has jurisdiction, shall be drained and that it is necessary, in order thereto, that a ditch or ditches or other channel for the free passage of water should be opened through lands belonging to a person or persons other than the owners of said swamp, bog, meadow or other low or wet lands, or that any other act or thing be done upon or over land belonging to others than the owners of the lands whereon such breeding place shall be located, such board shall make application for the appointment of three commissioners to construct and complete such channels and ditches for the free passage of water, or to do such other act or thing as such local board shall have determined to be necessary upon such lands in order to suppress or remove such breeding place, and to apportion, assess and collect the amount of

the cost thereof from the owners of the lands which will be benefited by the suppression and removal of such breeding place. Such commissioners shall be appointed, and shall proceed, when appointed, to construct and complete such channels and ditches, or do such other act or thing as may be necessary, and to apportion, assess and collect the cost of the same from the owners of the lands benefited by such suppression or removal, in the manner provided for the appointment of commissioners for the drainage of any swamp, bog, meadow or other low or wet land and the apportionment, assessment and collection of the cost of such drainage, by the drainage law, and this article shall be construed with the provisions of such drainage law. In case of conflict the provisions of this article shall be substituted for the provisions of such drainage law, but such parts of the provisions of the drainage law as are not necessarily superseded shall apply.

**§ 31. Removal of nuisances.** If the owner or occupant of any premises whereon any nuisance or condition deemed to be detrimental to the public health exists or the cause of the existence elsewhere, fails to comply with any order or regulation of any such local board for the suppression and removal of any such nuisance or other matter, in the judgment of the board detrimental to the public health, made, served or posted as required in this article, such boards or their servants or employees may enter upon the premises to which such order or regulation relates, and suppress or remove such nuisance or other matter. The expense of such suppression or removal shall be paid by the owner or occupant of such premises, or by the person who caused or maintained such nuisance or other matters, and the board may maintain an action in the name of the municipality to recover such expense, and the same when recovered shall be paid to the treasurer of the municipality, or if it has no treasurer to its chief fiscal officer, to be held and used as the funds of the municipality. Whenever the suppression or removal of such nuisance or conditions detrimental to health demand the immediate expenditure of money, every such local board of health shall be authorized to use for such purpose any money in the hands of the board, or may call on the city council, village trustees or town board for such money or it may borrow the same on the credit of the municipality. All such moneys so expended or borrowed shall be immediately repaid to the fund or source whence they were received on the recovery of the same by action or otherwise from the persons responsible for the expenses of suppression or removal.

**§ 32. Expense of abatement of nuisances a lien upon the premises.** If execution upon a judgment for

the recovery of the expense of the suppression or removal of a nuisance or other matter, pursuant to an order or regulation of any such local board, is returned wholly or in part unsatisfied, such judgment, if docketed in the place and manner required by law to make a judgment of a court of record a lien upon real property, shall be a first lien upon such premises, having preference over all other liens and incumbrances whatever. The board may cause such premises to be sold for a term of time for the payment and satisfaction of such lien and the expenses of the sale. Notice of such sale shall be published for twelve weeks successively, at least once in each week, in a newspaper of the city, village or town, or if no newspaper is published therein, in the newspaper published nearest to such premises. If the owner or occupant of the premises, or his agent, is known, a copy of such notice shall be served upon him, either personally, at least fourteen days previous to the sale, or by mail at least twenty-eight days prior thereto. The premises shall be sold to the person offering to take them for the shortest time, paying the amount unpaid on such judgment and interest and the expenses of such notice and sale. A certificate of the sale, signed and acknowledged by the president and secretary of the board, shall be made and delivered to the purchaser, and may be recorded as a conveyance of real property, and the purchaser shall thereupon be entitled to the immediate possession of such premises, and, if occupied, may maintain an action or proceeding to recover the possession thereof against the occupant, as against a tenant of real property holding over after the expiration of his term; and the cost of any such action or proceeding, if not paid by the occupant, shall also be a lien upon such premises, having the same preference as the lien of such judgment, and the right of the purchaser to such premises shall be extended for a longer term, which shall bear the same proportion to the original term as the amount of such costs bears to the amount paid by the purchaser on such sale. The term of the purchaser at any such sale shall commence when he shall have acquired possession of the premises sold. At any time within six months after recording such certificate, the owner of the premises or any lessee, mortgagee or incumbrancer thereof, or of any part of the same, may redeem the premises or any such part from such sale by paying to the purchaser the amount paid by him on the sale, and all costs and expenses incurred by him in any action or proceeding to recover possession with interest at the rate of ten per centum per annum thereon. If redemption is made by the owner, the right of the purchaser shall be extinguished; if by a lessee, the amount paid shall be applied as a payment upon any rent due or which may accrue upon his lease; if by a mortgagee or an incumbrancer, the amount paid shall be

added to his mortgage, incumbrance or other lien, or if he have more than one to the oldest, and shall thereafter be a part of such mortgage, lien or incumbrance and enforceable as such.

**§ 33. Manufactures in tenement houses and dwellings.** No room or apartment in a tenement or dwelling house, used for eating or sleeping purposes, shall be used for the manufacture, wholly or partly, of coats, vests, trousers, knee pants, overalls, cloaks, shirts, purses, feathers, artificial flowers or cigars, except by the members of the family living therein, which shall include a husband and wife and their children, or the children of either. A family occupying or controlling such a workshop shall, within fourteen days from the time of beginning work therein, notify the board of health of the city, village or town, where such workshop is located, or a special inspector appointed by such board, of the location of such workshop, the nature of the work carried on, and the number of persons employed therein; and thereupon such board shall, if it deems advisable, cause a permit to be issued to such family to carry on the manufacture specified in the notice. Such board may appoint as many persons as it deems advisable to act as special inspectors. Such special inspectors shall receive no compensation, but may be paid by the board their reasonable and necessary expenses. If a board of health or such inspector shall find evidence of infectious or contagious diseases present in any workshop, or in goods manufactured or in process of manufacture therein, the board shall issue such orders as the public health may require, and shall condemn and destroy such infectious and contagious articles, and may, if necessary to protect the public health, revoke any permit granted by it for manufacturing goods in such workshop. If a board of health or any such inspector shall discover that any such goods are being brought into the state, having been manufactured, in whole or in part, under unhealthy conditions, such board or inspector shall examine such goods, and if they are found to contain vermin, or to have been made in improper places or under unhealthy conditions, the board may make such orders as the public health may require, and may condemn and destroy such goods.

**§ 34. Jurisdiction of town and village boards.** A town board of health shall not have jurisdiction over any city or incorporated village or part of such city or village in such town if such city or village has an organized board of health. The boards of health of any town and the incorporated villages therein, or any two or more towns and the incorporated villages therein, may unite, with the written approval of the state department of

health, in a combined sanitary and registration district, and appoint for such district one health officer and registering officer, whose authority in all matters of general application shall be derived from the boards of health appointing him, and in special cases not of general application arising within the jurisdiction of but one board, shall be derived from such board alone. When one or more towns and the incorporated villages therein unite in one registration district, the registrar of vital statistics of such combined district will be required to make separate returns to the state department of health of village and town certificates of births, marriages and deaths.

**§ 35. Expenses, how paid.** All expenses incurred by any local board of health in the performance of the duties imposed upon it or its members by law shall be a charge upon the municipality, and shall be audited, levied, collected and paid in the same manner as the other charges of, or upon, the municipality are audited, levied, collected and paid. The taxable property of any village maintaining its own board of health shall not be subject to taxation for maintaining any town board of health, or for any expenditure authorized by the town board of health, but the costs and expenditures of the town board shall be assessed and collected exclusively on the property of the town outside of any such village.

**§ 36. Relief of indigent Indians in case of epidemic.** Whenever an epidemic of a contagious or infectious disease shall prevail among the Indians of any nation, tribe or band in this state, the overseer of the poor of any town in which the reservation of such nation, tribe or band, is wholly or partly situated, may in accordance with rules and regulations adopted by the state commissioner of health, cause needed medical attendance, provisions and maintenance to be furnished to any indigent Indian residing in the town, who, or a member of whose family, is afflicted with such disease, while such disease shall continue; and the cost thereof after being audited as herein provided shall be a state charge. A verified statement of any expenses incurred under this section shall be transmitted by the overseer of the poor to the state commissioner of health. Such commissioner shall examine into the matter, and if satisfied that such expenses were properly and necessarily incurred in accordance with the rules and regulations of the state commissioner of health, shall audit and allow the same, and when so audited, the amount thereof shall be paid by the state treasurer on the warrant of the comptroller to such overseer of the poor.

**§ 37. Mandamus.** The performance of any duty or the doing of any act enjoined, prescribed or required by this article, may be enforced by mandamus at the instance of the state department of health or its president or secretary, or of the local board of health, or of any citizen of full age resident of the municipality where the duty should be performed or the act done.

**§ 38. Exceptions and limitations as to cities of New York, Brooklyn, Buffalo, Albany and Yonkers.** Sections twenty to thirty-eight inclusive of this article shall not be construed to affect, alter or repeal laws now in force relating to the boards of health of the cities of New York, Brooklyn, Buffalo, Albany and Yonkers, nor the sanitary codes duly adopted and now in force in such cities.

**§ 39. Certain kinds of business and manufacture prohibited in cities or within three miles therefrom; exceptions.** It shall not be lawful for any person or persons to engage in or carry on the business of fat rendering, bone boiling or the manufacture of fertilizers or any business as a public nuisance within the corporate limits of any incorporated city of this state, or within a distance of three miles from the corporate limits of any incorporated city, provided, however, that nothing herein contained shall prevent the rendering of fresh killed cattle or swine. All departments of health or the commissioner or commissioners thereof in any incorporated city of this state shall have power to enforce the provisions of this section. Any person or persons offending against the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor. [This section shall not apply to the counties of Fulton, Wayne, Tompkins, Chautauqua, Orange, Dutchess, Erie, Monroe, Oneida, Onondaga, New York, Schoharie, Ulster, Greene, Cayuga, Cattaraugus, Niagara, Saratoga, Schenectady, Hamilton, Montgomery and Orleans.

## ARTICLE 4

### Adulterations

- Section 40. Definitions.
41. Adulterations.
  42. Duties of state department of health in respect to adulterations.
  43. Analysis of spirituous, fermented or malt liquors.
  44. Samples to be furnished.
  45. Seizure of milk.
  46. Adulteration of wines.
  47. Pure wine defined.

Section 48. Half wine and made wine defined; packages, how stamped or labeled.

49. Penalties.

50. Report to district attorney.

**§ 40. Definitions.** The term "food," when used herein, shall include every article of food and every beverage used by man and all confectionery; the term "drug," when so used, shall include all medicines for external and internal use.

**§ 41. Adulterations.** No person shall, within the state, manufacture, produce, compound, brew, distill, have, sell or offer for sale any adulterated food or drug. An article shall be deemed to be adulterated within the meaning of this chapter:

A. In the case of drugs:

1. If when sold under or by a name recognized in the United States pharmacopeia, it differs from the standard of strength, quality or purity laid down therein.

2. If, when sold under or by a name not recognized in the United States pharmacopeia, but which is found in some other pharmacopeia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity laid down in such work.

3. If its strength or purity fall below the professed standard under which it is sold.

4. If it contains methyl or wood alcohol, in any of its forms, or any methylated preparation made from it.

B. In the case of food:

1. If any substance or substances has or have been mixed with it so as to reduce or lower or injuriously affect its quality or strength.

2. If any inferior or cheaper substance or substances have been substituted wholly or in part for the article.

3. If any valuable constituent of the article has been wholly or in part abstracted.

4. If it be an imitation or be sold under the name of another article.

5. If it consists wholly or in part of diseased or decomposed or putrid or rotten animal or vegetable substance, whether manufactured or not, or in the case of milk, if it is the product of a diseased animal.

6. If it be colored, or coated, or polished, or powdered, whereby damage is concealed, or it is made to appear better than it really is, or of greater value.

7. If it contain any added poisonous ingredient, or any ingredient which may render such article injurious to the health of the



person consuming it. Provided that an article of food which does not contain any ingredient injurious to health, shall not be deemed to have been adulterated, in the case of mixtures or compounds which may be now, or from time to time hereafter, known as articles of food under their own distinctive names, or which shall be labeled so as to plainly indicate that they are mixtures, combinations, compounds or blends, and not included in definition four of this subdivision.

8. If it contains methyl or wood alcohol in any of its forms, or any methylated preparation made from it.

C. In the case of spirituous, fermented and malt liquors, if it contain methyl or wood alcohol in any of its forms, or any substance or ingredient not normal or healthful to exist in spirituous, fermented or malt liquors, or which may be deleterious or detrimental to health when such liquors are used as a beverage. In the case of ale or beer, if it contains any substitute for hops, or pure extract of hops, or if any such substitute is used in the manufacture thereof.

D. In the case of confectionery, if it contains terra alba, barytes, talc or other mineral substance or poisonous colors or flavors, or other ingredients deleterious or detrimental to health. If the standard of any article of food or any drug is not established in a national pharmacopeia, the state board of health shall, from time to time, fix the limit for variability permissible therein. The state board of health may, from time to time, with the approval of the governor, declare what articles or preparations shall be exempt from the provisions of this article, and publish a list of such articles which shall thereafter be so exempt. Every person violating any provision of this section shall forfeit to the people of the state the sum of one hundred dollars for every such violation.

**§ 42. Duties of state department of health in respect to adulterations.** The state department of health shall take cognizance of the interests of the public health as affected by the sale or use of food and drugs and the adulterations thereof, and make all necessary inquiries and investigations relating thereto. It shall appoint such public analysts, chemists and inspectors as it may deem necessary for that purpose, and revoke any such appointment whenever it shall deem the person appointed incompetent, or his continuance in the service for any reason undesirable. It shall, from time to time, adopt such measures and make such regulations and declarations, in addition to the provisions of this article, as may seem necessary to enforce or facilitate the enforcement of this article, or for the purpose of making

an examination or analysis of any food or drug sold or exposed for sale in the state, and all such regulations and declarations made in any year shall be filed in the office of the secretary of state and published in the session laws first published after the expiration of thirty days from such filing.

**§ 43. Analysis of spirituous, fermented or malt liquors.** The state department of health shall at least once in each calendar year cause samples to be procured in the public market or otherwise of the spirituous, fermented or malt liquors, distilled, brewed, manufactured, sold or offered for sale in each brewery and distillery located in this state. Such samples shall be kept in vessels in a condition to obtain a proper test and analysis thereof. Such vessels shall be properly labeled and numbered, and an accurate list kept of the names of the distillers, brewers and vendors of the liquors from which the samples were taken, and opposite each name shall appear the number which is written or printed on the label attached to the vessel containing the sample. Such lists, numbers and labels shall be exclusively for the information of such department and shall not be disclosed or published unless upon discovery of some deleterious substance therein prior to the completion of the analysis or required in evidence in court. When listed and numbered, every such sample shall be delivered to an analyst, chemist or officer of the department and shall be designated and known to him only by its number, and by no other mark or designation. A test or analysis of such sample shall be made by such analyst, chemist or officer, which will determine the ingredients or component parts thereof. The result of such test or analysis shall be immediately reported to the department by the person making the same, setting forth explicitly the nature of any deleterious substance, compound or adulteration found therein which may be detrimental to public health, and the number of samples in which it was found. Any brewer, distiller or vendor in whose samples any such substance, compound or adulteration is found upon any such test or analysis, shall be deemed to have violated the provisions of this article, prohibiting the manufacturing, having, selling or offering for sale of adulterated food.

**§ 44. Samples to be furnished.** Every person selling, or offering, or exposing for sale or manufacturing or producing any article of food, or any drug, shall upon tender of the value thereof, furnish any analyst, chemist, officer or agent of the state department of health or of any local board of health, with a sample of any such article or drug, sufficient for the purpose of analysis or test. For every refusal to furnish the same, the person so re-

fusing shall forfeit to the people of the state the sum of one hundred dollars.

**§ 45. Seizure of milk.** When a health officer or other official shall seize or destroy or cause to be seized or destroyed any milk, he shall take a sample of such milk in the presence of at least one witness, and shall, in the presence of such witness, seal such sample and tender it to the vendor or person in charge of such milk, and if accepted, shall also deliver therewith a statement in writing of the date and cause of such seizure or destruction. Any health officer or other official violating the provisions of this section, shall be liable to a penalty of fifty dollars, to be recovered by the person aggrieved.

**§ 46. Adulteration of wines.** All wines containing alcohol, except such as shall be produced by the natural fermentation of pure undried fruit juices or compounded with distilled spirits, whether denominated as wines or by any other name, which may be used as a beverage or compounded with other liquors intended for such use, and all compounds of the same with pure wine, and all preserved fruit juices compounded with substances not produced from undried fruit in the nature of or intended for use as a beverage, or for use in the fermentation or preparation of liquors intended for such use, and all wines, imitations of wines or other beverages produced from fruit, which shall contain any alum, baryta salts, caustic lime, carbonate of soda, carbonate of potash, carbonic acid, salts of lead, glycerine, salic acid, or any other antiseptic, coloring matter, not produced from undried fruit, artificial flavoring, essence of ether, methyl or wood alcohol, in any of its forms, or any other foreign substance injurious to health, shall be known as or deemed to be adulterated wine, and shall not be sold, offered for sale or manufactured with intent to sell within this state; and all such wine and every such beverage shall be deemed a public nuisance and forfeited to the state and shall be summarily seized and destroyed by any health officer within whose jurisdiction it shall be found, and the reasonable expense of such seizure and destruction shall be a county charge.

**§ 47. Pure wine defined.** For the purpose of this article, pure wine shall be deemed to mean the fermented juice of undried grapes or other undried fruits, but the addition of pure sugar to perfect the wine or of pure distilled spirits to preserve it, not to exceed eight per centum of its volume, or the use of things necessary to clarify and fine the wine not injurious to health shall not be construed as adulteration, if such pure wine shall contain at least seventy-five per centum of pure grape or other undried fruit juice.

**§ 48. Half wine and made wine defined; packages, how stamped or labeled.** For the purpose of this article, any wine which contains less than seventy-five and more than fifty per centum of pure grape or other undried fruit juice and is otherwise pure shall be known as half wine, and upon each and every package of such wine manufactured with the intent to sell, or sold or offered for sale by any person within this state, if containing more than three gallons, there shall be stamped on both ends of the package containing the same in black printed letters, at least one inch in height and of proper proportion in width, the words "half wine"; and if containing more than one quart and not more than three gallons, there shall be stamped on each package in plain printed black letters, at least one-half inch high and of proper proportion as to width, the words "half wine"; and if in a package or bottle of one quart or less, there shall be placed a label securely pasted thereon, having the words "half wine" plainly printed in black letters at least one-quarter of an inch high and of proper proportion as to width. If any number of small packages is inclosed in a larger package, as a box, barrel, case or basket, such outside package shall have thereon the stamp "half wine" in letters of a size according to the size of such outer package. Every person who shall sell, offer for sale, or manufacture with the intent to sell, within the state any wine containing less than fifty per centum of pure grape or other undried fruit juice and otherwise pure, shall cause all the packages containing the same to be stamped, marked and labeled with the words "made wine" in the same manner as "half wine" is required in this section to be stamped, marked and labeled, and all such wine shall be known and sold as "made wine."

**§ 49. Penalties.** Every person who manufactures with intent to sell, sells or offers for sale within the state, any wine of a kind or character, the manufacture, sale or offering for sale of which is prohibited by this article, or which is not stamped, marked or labeled as required by this article, shall forfeit to the county wherein such manufacture, sale or offering for sale takes place, the sum of one-half dollar for each gallon thereof so sold or manufactured with the intent to sell. The provisions of the three preceding sections of this article shall not apply to medicated wines which are put up and sold for medical purposes only.

**§ 50. Report to district attorney.** Upon discovering any violations of the provisions of the penal law relating to the adulteration of foods and drugs, the state department of health shall immediately communicate the facts to the district attorney of the county where the violation occurred, who shall thereupon

forthwith commence proceedings for the indictment and trial of the person charged with such violation. Nothing in this article shall be construed to in any way repeal or affect any of the provisions of the agricultural law, nor to prohibit the coloring of butter made from milk, the product of the dairy, or the cream from the same with coloring matter which is not injurious to health.

## ARTICLE 5

### Potable Waters

- Section 70. Rules and regulations of department.  
 71. Inspection of water supply.  
 72. Rules and regulations for water supplies legalized.  
 73. Sewerage.  
 74. Discharge of sewage into \*Walkill creek prohibited.  
 75. Discharge of sewage into the Susquehanna near Binghamton prohibited.  
 76. Discharge of sewage and other refuse matter into certain waters prohibited.  
 77. Permission to discharge sewage.  
 78. Permission to discharge refuse or waste matter from industrial establishments.  
 79. Plans for refuse discharge pipes must be submitted.  
 80. Revocation of permit.  
 81. Reports of municipal authorities to local boards of health.  
 82. Reports of proprietors of industrial establishments.  
 83. Record of permits; inspection of local boards of health.  
 84. Violations; service of notice; actions by local boards.  
 85. Penalties.  
 86. Constructions and limitations made by sections seventy-six to eighty-five, inclusive.  
 87. Actions by municipalities to prevent discharge of sewage into waters.

**§ 70. Rules and regulations of department.** The state department of health may make rules and regulations for the protection from contamination of any or all public supplies of potable waters and their sources within the state. If any such rule or regulation relates to a temporary source or act of contamination, any person violating such rule or regulation shall be liable to prosecution for misdemeanor for every such violation, and on conviction shall be punished by a fine not exceeding two hundred dollars, or imprisonment not exceeding one year, or both. If any such rule or regulation relates to a permanent source or

\*So in original.

act of contamination, said department may impose penalties for the violation thereof or the non-compliance therewith, not exceeding two hundred dollars for every such violation or non-compliance. Every such rule or regulation shall be published at least once in each week for six consecutive weeks, in at least one newspaper of the county where the waters to which it relates are located. The cost of such publication shall be paid by the corporation or municipality benefited by the protection of the water supply, to which the rule or regulation published relates. The affidavit of the printer, publisher or proprietor of the newspaper in which such rule or regulation is published may be filed, with the rule or regulation published, in the county clerk's office of such county, and such affidavit and rule and regulation shall be conclusive evidence of such publication, and of all the facts therein stated in all courts and places.

**§ 71. Inspection of water supply.** The officer or board having by law the management and control of the potable water supply of any municipality, or the corporation furnishing such supply, may make such inspection of the sources of such water supply, as such officer, board or corporation deems advisable, and to ascertain whether the rules or regulations of the state department are complied with, and shall make such regular or special inspections as the state commissioner of health may prescribe. If any such inspection discloses a violation of any such rule or regulation relating to a permanent source or act of contamination, such officer, board or corporation shall cause a copy of the rule or regulation violated to be served upon the person violating the same, with a notice of such violation. If the person served does not immediately comply with the rule or regulation violated, such officer, board or corporation shall notify the state department of the violation, which shall immediately examine into such violation; and if such person is found by the state department to have actually violated such rule or regulation, the commissioner of health shall order the local board of health of such municipality wherein the violation or the non-compliance occurs to convene and enforce obedience to such rule or regulation. If the local board fails to enforce such order within ten days after its receipt, the corporation furnishing such water supply, or the municipality deriving its water supply from the waters to which such rule or regulation relates, or the state commissioner of health or the local board of health of the municipality wherein the water supply protected by these rules is used, or any person interested in the protection of the purity of the water supply, may maintain an action in a court of record, which shall be tried in the county where the cause of action arose against such person,

for the recovery of the penalties incurred by such violation, and for an injunction restraining him from the continued violation of such rule or regulation.

**§ 72. Rules and regulations for water supplies legalized.** All rules and regulations heretofore duly made and published for the sanitary protection of public water supplies, pursuant to chapter five hundred and forty-three of the laws of eighteen hundred and eighty-five, and chapter six hundred and sixty-one of the laws of eighteen hundred and ninety-three, as amended, are hereby legalized, ratified, confirmed and continued in force, until new rules and regulations become operative.

This section and the two preceding sections shall not be construed to repeal or affect any of the provisions of chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven, or its amendments.

**§ 73. Sewerage.** When the state department of health shall, for the protection of a water supply from contamination, make orders or regulations the execution of which will require or make necessary the construction and maintenance of any system of sewerage, or a change thereof, in or for any village or hamlet, whether incorporated or unincorporated, or the execution of which will require the providing of some public means of removal or purification of sewage, the municipality or corporation owning the water works benefited thereby shall, at its own expense, construct and maintain such system of sewerage, or change thereof, and provide and maintain such means of removal and purification of sewage and such works or means of sewage disposal as shall be approved by the state department of health. When the execution of any such regulations of the state department of health will occasion or require the removal of any building or buildings, the municipality or corporation owning the water works benefited thereby shall, at its own expense, remove such buildings and pay to the owner thereof all damages occasioned by such removal. When the execution of any such regulation will injuriously affect any property the municipality or corporation owning the water works benefited thereby shall make just and adequate compensation for the property so taken or injured. Until such construction or change of such system or systems of sewerage, and the providing of such means of removal or purification of sewage, and such works or means of sewage disposal and the removal of any building, are so made by the municipality or corporation owning the water works to be benefited thereby at its own expense, and until the municipality or corporation owning the water works benefited shall make just and adequate payment for all injuries to

property and for all injuries caused to the legitimate use or operation of such property, there shall be no action or proceeding taken by any such municipality, officer, board, person or corporation against any person or corporation for the violation of any regulation of the state department of health under this article, and no person or corporation shall be considered to have violated or refused to obey any such rule or regulation. The owner of any building the removal of which is occasioned or required, or which has been removed by any rule or regulation of the state department of health made under the provisions of this article, and all persons whose rights of property are injuriously affected by the enforcement of any such rule or regulation, shall have a cause of action against the municipality or corporation owning the water works benefited by the enforcement of such rule or regulation, for all damages occasioned or sustained by such removal or enforcement, and an action therefor may be brought against such municipality or corporation in any court of record in the county in which the premises or property affected is situated and shall be tried therein; or such damages may be determined by a special proceeding in the supreme court or the county court of the county in which the property is situated. Such special proceedings shall be commenced by petition and notice to be served by such owner upon the municipality or corporation in the same manner as for the commencement of condemnation proceedings. Such municipality or corporation may make and serve an answer to such petition as in condemnation proceedings. The petition and answer shall set forth the claims of the respective parties, and the provisions of the condemnation law shall be applicable to the subsequent proceedings upon the petition and answer, if any. Either party may, before the service of the petition or answer respectively, offer to take or pay a certain sum, and no costs shall be awarded against either party unless the judgment is more unfavorable to him than his offer.

**§ 74. Discharge of sewage into Wallkill creek prohibited.** No person or corporation shall permit the discharge or escape of any sewage, or other matter deleterious to public health, or destructive to fish, or throw or cast any dead animal, carrion or offal, or other putrid or offensive matter into the waters of the Wallkill creek, in the counties of Ulster and Orange. Any person violating any provision of this section shall forfeit to the county where the violation occurred the sum of fifty dollars for every such violation.

**§ 75. Discharge of sewage into the Susquehanna near Binghamton prohibited.** No person or corporation



shall cause to fall, flow or discharge into the Susquehanna river or any of its tributaries, between the Rock Bottom dam in such river at the city of Binghamton, and a point one mile east of the bridge that crosses such river at Conklin, any sewage matter, or other foul, noxious or deleterious, solid or liquid matter, or any matter that may be declared such by the board of health of any municipality adjacent to such river within such limit. The board of health of any such municipality shall examine into any alleged offense against this section and cause the same to be abated, if found to exist. Every person violating any provision of this section shall forfeit to the municipality having a local board of health where the violation occurs the sum of twenty-five dollars for the first day when the violation takes place, and the sum of ten dollars for every subsequent day that such violation is repeated or continued.

**§ 76. Discharge of sewage and other refuse matter into certain waters prohibited.** No person, corporation or municipality, shall place or cause to be placed, or discharge or cause to be discharged into any of the waters of this state, unless the same shall have been permitted by the state commissioner of health, any sewage, garbage, offal, dead animal, dead fish, dead bird or part thereof, or any decomposable or putrescible matter of any kind or any substance, chemical or otherwise, containing the same in quantities injurious to the public health, or any refuse or waste matter, either solid or liquid, in quantities injurious to the public health, from any shop, factory, mill or industrial establishment; unless express permission to do so shall have been first given in writing by the state commissioner of health as provided in this article, except as hereinafter provided. But this section shall not prevent the discharge of sewage from any public sewer system owned and maintained by a municipality, or the discharge of refuse or waste matter from any shop, factory, mill or industrial establishment, provided such sewer system was in operation and was discharging sewage, or such shop, factory, mill or industrial establishment was in operation and discharging refuse or waste matter, into any of the waters of this state on or prior to May seventh, nineteen hundred and three, nor to any extension or modification of such shop, factory, mill or industrial establishment or reconstruction thereof, provided the refuse or waste matter discharged therefrom is not materially changed or increased; but this exception shall not permit any increase in the discharge of such sewage, nor shall it permit the discharge of sewage from a sewer system which shall be extended, modified or reconstructed subsequent to said date.

**§ 77. Permission to discharge sewage.** Upon application duly made to the state commissioner of health by the public authorities having by law the charge of the sewer system of any municipality, the state commissioner of health shall have power to consider the case of a sewer system otherwise prohibited by the preceding section from discharging sewage into any of the waters of the state, and whenever in his opinion the general interests of the public health would be subserved thereby, he may issue a permit for the discharge of sewage from any such sewer system into any of the waters of the state, and may stipulate in the permit, modifications, regulations and conditions on which such discharge may be permitted. Such permit before being operative shall be recorded in the county clerk's office of the county wherein the outlet of the said sewer system is located, and a copy of the permit shall be transmitted by the state commissioner of health to the board of health of the municipality wherein the outlet of said sewer system is located.

**§ 78. Permission to discharge refuse or waste matter from industrial establishments.** Upon application duly made to the state commissioner of health by the proprietor, lessee or tenant of any shop, factory, mill or industrial establishment from which the discharge of refuse or waste matter into any of the waters of the state is otherwise prohibited by section seventy-six, the state commissioner of health shall have power to consider the case of the said shop, factory, mill or industrial establishment, and whenever the public health and purity of the waters shall warrant it, he shall issue a permit for the discharge of refuse or waste matter from such shop, factory, mill or industrial establishment into any of the waters of the state, and may stipulate in the permit such modifications, regulations and conditions as the public health may require. Such permit before being operative shall be recorded in the county clerk's office of the county where such shop, factory, mill or industrial establishment is located and a copy of such permit shall be transmitted by the state commissioner of health to the board of health of the municipality wherein the outlet discharging refuse or waste matter from such shop, factory, mill or industrial establishment shall be located.

**§ 79. Plans for refuse discharge pipes must be submitted.** Before any conduit or discharge pipe, or other means of discharging or casting any refuse or waste matter from

any shop, factory, mill or industrial establishment not constructed or in process of construction on May seventh, nineteen hundred and three, shall be put in or constructed for the purpose of discharging any refuse or waste matter therefrom into any waters in this state, the plan or plans therefor, together with a statement of the purpose for which the same is to be used, shall be submitted to the commissioner. If the same is not detrimental to the public health he shall issue a permit therefor to the applicant. No such conduit, discharge pipe or other means of discharging or casting any refuse or waste matter from any such shop, factory, mill or establishment into any of the waters of this state shall be put in or constructed before such permit is granted, and if put in or constructed, the person putting in or constructing or maintaining the same shall forfeit to the people of the state five dollars a day for each day the same is used or maintained for such purpose, to be collected in an action brought by the commissioner. He may also maintain an action in the name of the people to restrain a violation of this section.

**§ 80. Revocation of permit.** Every such permit for the discharge of sewage from a sewer system or for the discharge of refuse or waste matter from a shop, factory, mill or industrial establishment, shall when necessary to conserve the public health, be revocable or subject to modification or change by the state commissioner of health on due notice after an investigation and hearing and an opportunity for all interested therein to be heard thereon being served on the public authorities of the municipality owning and maintaining the sewer system, or on the proprietor, lessee or tenant of the shop, factory, mill or industrial establishment. The length of the time after receipt of the notice within which the discharge of sewage or of refuse or waste matter shall be discontinued may be stated in the permit, but in no case shall it exceed two years in the case of a sewer system, or one year in the case of a shop, factory, mill or industrial establishment, and if the length of time is not specified in the permit, it shall be one year in the case of a sewer system and six months in the case of a shop, factory, mill or industrial establishment. On the expiration of the period of time prescribed after the service of a notice of revocation, modification or change from the state commissioner of health, the right to discharge sewage or refuse or waste matter into any of the waters of the state shall cease and terminate and the prohibition of section seventy-six of this article against such discharge shall be in full force as though no permit had been granted, but a new permit may thereafter again be granted as hereinbefore provided.

**§ 81. Reports of municipal authorities to local boards of health.** The report of the public authorities having by law charge of the sewer system of every municipality in the state, from which sewer system sewage was being discharged into any of the waters of the state on May seventh, nineteen hundred and three, transmitted by the board of health of the municipality within which any sewer outlet of the said sewer system is located to the state commissioner of health and filed by him in his office, shall constitute the evidence of exemption from the prohibition of section seventy-six of this article. No sewer system shall be exempt from the prohibition of said section against the discharge of sewage into the waters of the state for which a satisfactory report shall not have been filed in the office of the state commissioner of health in accordance with laws of nineteen hundred and three, chapter four hundred and sixty-eight.

**§ 82. Reports of proprietors of industrial establishments.** The report of the proprietor of every shop, factory, mill and industrial establishment in the state, from which refuse or waste matter was being discharged into any of the waters of the state on May seventh, nineteen hundred and three, filed in the office of the state commissioner of health shall constitute the evidence of exemption of the shop, factory, mill or industrial establishment from the prohibition of section seventy-six of this article. No shop, factory, mill or industrial establishment shall be exempt from the prohibition of said section against the discharge of refuse or waste matter into the waters of the state, for which a report shall not have been made in accordance with laws of nineteen hundred and three, chapter four hundred and sixty-eight.

**§ 83. Record of permits; inspection of local boards of health.** Each board of health shall preserve in its office and in a form to be prescribed by the state commissioner of health, a permanent record of each permit issued by the state commissioner of health granting the right to discharge sewage or refuse or waste matter into any of the waters of the state within that municipality and of each revocation of a permit; and also a permanent record of each report received by the board of health concerning each sewer system and each shop, factory, mill or industrial establishment which on May seventh, nineteen hundred and three, was discharging sewage or refuse or waste matter into any of the waters of the state within that municipality. Each local board of health shall make and maintain such inspection as will, at all times, enable it to determine whether section seventy-six of this article is being complied with in respect to the dis-

charge of sewage, refuse or waste matter or other materials prohibited by said section, into any of the waters of the state within that municipality. For the purpose of such inspection every member of such board of health, or its health officers, or any person duly authorized by it, shall have the right to make all necessary examinations of any premises, building, shop, factory, mill, industrial establishment, process or sewer system.

**§ 84. Violations; service of notice; actions by local boards.** The local board of health of each municipality shall promptly ascertain every violation of, or non-compliance with, any of the provisions of section seventy-six of this article or of the permits for the discharge of sewage or refuse or waste material into any of the waters of the state herein provided, which may occur within that municipality. The board of health shall on the discovery of every violation of or non-compliance with any of the provisions of said section or of any permit duly issued, serve a written notice on the person or corporation responsible for the violation or non-compliance, together with a copy of sections seventy-six to eighty-six, inclusive, of this article, and of the permit, if any, violated or non-complied with, specifying the particular provision being violated or non-complied with, and stipulating the length of time within which the violation or non-compliance must cease. If at the expiration of the stipulated length of time, the violation or non-compliance shall still continue, the board of health shall at once report the violation or non-compliance to the state commissioner of health who shall at once give a hearing to and take the proof of the persons charged with such violation or non-compliance and investigate the matter and if he finds a violation or non-compliance to exist he shall at once certify that fact to the board of health of the municipality, which shall immediately bring an action in a court of record, which action shall be tried in the county wherein the cause of action arose against the person or corporation responsible for the violation or the non-compliance, for the recovery of the penalties incurred and for an injunction against the continuation of the violation or the non-compliance.

**§ 85. Penalties.** The penalty for the discharge of sewage from any public sewer system into any of the waters of the state without a duly issued permit for which a permit is required by this article shall be five hundred dollars, and a further penalty of fifty dollars per day for each day the offense is maintained. The penalty for the discharge of sewage from any public sewer system into any of the waters of the state without filing a report for which a report is required to be filed with the

board of health of the municipality shall be fifty dollars. The penalty for the discharge of refuse or waste matter from any shop, factory, mill or industrial establishment for which a permit is required by this article, without such permit shall be one hundred dollars and ten dollars per day for each day the offense is maintained. The penalty for the discharge of refuse or waste matter from any shop, mill, factory or industrial establishment, without filing a report where a report is required by this article to be filed shall be twenty-five dollars and five dollars per day for each day the offense is maintained. The penalty for discharging into any of the waters of the state any other matter prohibited by section seventy-six of this article, besides that specified above, shall be twenty-five dollars and five dollars per day for each day the offense is maintained.

**§ 86. Constructions and limitations made by sections seventy-six to eighty-five, inclusive.** Nothing in sections seventy-six to eighty-five inclusive shall be construed to diminish or otherwise to modify the common law rights of riparian owners in the quality of waters of streams covered by such rights, nor in the case of actions brought against the pollution of waters to limit their remedy to indemnities.

**§ 87. Actions by municipalities to prevent discharge of sewage into waters.** Any incorporated city or village in the state of New York, which has made such provision for the disposal of its sewage as not to pollute or contaminate therewith any river, stream, lake or other body of water, may have and maintain an action in the supreme court to prevent the discharge of any sewage or substance deleterious to health, or which shall injure the potable qualities of the water in any river, stream, lake or other body of water, from which such incorporated city or village shall take or receive its water supply, provided, that such river, stream, lake or other body of water is wholly, or in part, within the boundaries of the county in which such plaintiff is located. Whenever such action shall be brought under the provisions of this section, it shall be the duty of the supreme court upon proof of the existence of facts justifying the bringing and maintenance of such action under the provisions of this section to render a judgment in which shall be incorporated a mandatory injunction requiring the person, body, board, corporation, municipality, village, county or town, being a defendant to said action which directly or indirectly, or by its servants, agents or officers shall discharge or dispose of its sewage, or any other substance deleterious to health or which shall injure the potable qualities of the water in

such wise as that the same shall enter into any river, stream, lake or other body of water, from which such plaintiff shall take or receive its water supply, within such reasonable time as may be prescribed by the court, to take such action as shall prevent such discharge or the disposal of such sewage or other substance into such waters, or the pollution thereof, with such further directions in the premises as may be proper and desirable to effect such purpose, provided that such river, stream, lake or other body of water is wholly, or in part, within the boundaries of the county in which such plaintiff is located. But no such action shall be brought as provided for in this section until the state department of health has examined and determined whether the sewage does pollute or contaminate the river, stream, lake or other body of water into which said sewage is discharged. The expense of such examination by said department shall be a charge upon and paid by the municipality in whose interest, and on whose behalf such examination is made. In case the state department of health shall find upon examination that the discharge of said sewage does pollute or contaminate said waters or any of them in such manner as to be of menace or danger to the health of those using said waters, the plans for the removal or disposal of the sewage ordered to be prepared by the court as provided in this section shall be submitted to the state department of health for its approval.

## ARTICLE 6

### Quarantine at the Port of New York

- Section 100. Quarantine commissioners abolished; powers conferred on health officer.
101. Other officers and employees. (*Repealed by L. 1909, ch. 375, in effect June 1, 1909.*)
102. Meetings; report. (*Repealed by L. 1909, ch. 375, in effect June 1, 1909.*)
103. Custody of quarantine establishment.
104. Quarantine establishment.
105. Docks and wharves.
106. Anchorage.
107. Boarding station.
108. The Swinburne island hospital.
109. Crematory.
110. Remains of persons cremated.
111. Burying ground.

**§ 100. Quarantine commissioners abolished; powers conferred on health officer.** On and after June first, nineteen hundred and nine, the office of commissioner of quarantine at the port of New York and the board of commissioners of

quarantine at the port of New York shall be abolished; and all the powers and duties heretofore possessed by or imposed upon the commissioners of quarantine at the port of New York, upon a commissioner of quarantine at the port of New York and upon the board of commissioners of quarantine at the port of New York shall on and after such date be conferred and imposed upon the health officer for the port of New York. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 materially changed former section which read as follows:

**§ 100. Quarantine commissioners; organization.** There shall continue to be a board of commissioners of quarantine at the port of New York consisting of three members appointed by the governor by and with the advice and consent of the senate. Each shall be a resident of the county of New York, Kings or Richmond, and shall hold office for three years and receive an annual salary of twenty-five hundred dollars. The board shall elect one of their number president, who shall hold office during the pleasure of the board, but not after he shall cease to be commissioner. The president shall appoint a secretary of the board who shall hold office during the pleasure of the president and receive an annual salary of eighteen hundred dollars to be paid by the state.

**§ 101. Other officers and employees.** (*Repealed by L. 1909, ch. 375, in effect June 1, 1909.*)

Section repealed read as follows:

**§ 101. Other officers and employees.** The board shall appoint the following officers who shall receive the following annual salaries to be paid by the state:

A superintendent of the Swinburne island hospital, twenty-five hundred dollars.

A superintendent of Hoffman island, fifteen hundred dollars.

An engineer at Swinburne island, eleven hundred and fifty dollars.

An engineer at Hoffman island, ten hundred and fifty dollars.

A carpenter at Swinburne island, nine hundred dollars.

Two laborers at Swinburne island, sixty dollars per month.

Two laborers at Hoffman island, sixty dollars per month, and such other employees as emergency may require.

**§ 102. Meetings; report.** (*Repealed by L. 1909, ch. 375, in effect June 1, 1909.*)

Section repealed read as follows:

**§ 102. Meetings; report.** The commissioners shall hold daily meetings, Sundays and holidays excepted, from May first until November first in each year, and as often in the other months as they may deem necessary. They shall annually report to the legislature at its opening a report of their proceedings and the condition of the quarantine establishment.

**§ 103. Custody of quarantine establishment.** The health officer shall be the custodian of the quarantine establishment to be held by him in trust for the people of the state, in accordance with the provisions of this chapter. He may make such rules and regulations not inconsistent with law as they shall deem necessary for the care and protection of each portion of the quarantine establishment; for the government of the employees therein; for



the regulation of the conduct of all quarantinable persons and shall pay all salaries of persons appointed by him at Hoffman and Swinburne islands from money appropriated by the state. He shall collect from the owners, agents or consignees of vessels all bills for the care and maintenance of persons detained in quarantine, and shall have power to enforce such payment by process of law against the vessel upon which such detained persons have arrived, or against the agents, or owners, or consignees of such vessels, and, in case of an emergency arising, shall use all means conducive to the protection of the public health, except, when such emergency calls for the expenditure of money beyond such amount as may be in his hands, when such expenditure may be made only by and with the approval of the attorney-general and comptroller. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 materially changed former section which read as follows:

§ 103. **Custody of quarantine establishment.** The commissioners of quarantine shall be the custodians of the quarantine establishment to be held by them in trust for the people of the state, in accordance with the provisions of this chapter. They may make such rules and regulations not inconsistent with law as they shall deem necessary for the care and protection of each portion of the quarantine establishment; for the government of the employees therein; for the regulation of the conduct of all quarantinable persons provided the same do not interfere with the duties of the health officer. They shall pay all salaries of persons appointed by them from money appropriated by the state. They shall collect from the owners, agents or consignees of vessels all bills for the care and maintenance of persons detained in quarantine, and shall have power to enforce such payment by process of law against the vessel upon which such detained persons have arrived, or against the agents, or owners, or consignees of such vessels, and, in case of an emergency arising, the quarantine commissioners shall, upon the certificate of the health officer that such an emergency really exists, use all means conducive to the protection of the public health, except, when such emergency calls for the expenditure of money beyond such amount as may be in the hands of the commissioners, when such expenditure may be made only by and with the approval of the attorney-general and comptroller.

§ 104. **Quarantine establishment.** Quarantine for the protection of public health shall be maintained in and for the port of New York, for all vessels arriving thereat from other ports, and for the crews, passengers, equipage, cargoes and other property on board the same. The quarantine establishment at such port shall consist of:

1. Docks and wharves.
2. Anchorage for vessels.
3. Stationary hospital.
4. Boarding station.
5. Crematory.
6. Residence for officers and men.
7. Such other places and structures as have been or may be authorized by law for quarantine purposes.

**§ 105. Docks and wharves.** The existing docks and wharves with their appurtenances shall be maintained, and if any such additional structures are required, they shall be constructed at such expense and in such place in the lower bay of New York, as the health officer may determine, with the approval of the commissioners of the land office. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 struck out the words "quarantine commissioners and" before the words "health officer."

**§ 106. Anchorage.** The anchorage for vessels under quarantine shall be within the waters of New York harbor at such place as may be designated by the health officer. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 struck out the words "and commissioners of quarantine" at end of section.

**§ 107. Boarding station.** The boarding station for vessels from any place where disease subject to quarantine existed at the time of their departure, or which shall have stopped at any such place during their voyage, or on board of which during the voyage any case of such disease shall have occurred, arriving between the first day of April and the first day of November, shall be at such place as the health officer may designate. And all such vessels immediately on their arrival shall anchor where directed and there remain with all persons arriving thereon until discharged by the health officer. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 struck out the words "and quarantine commissioners" preceding the words "may designate" at the end of the first sentence.

**§ 108. The Swinburne island hospital.** The Swinburne island hospital in the lower bay of New York, with its docks, wharves and appurtenances, shall be kept in the best possible condition by the health officer and be in constant readiness for use as a hospital for the reception of persons sick with infectious diseases, arriving in quarantinable vessels, and shall be provided with all necessary furniture, fixtures and other facilities for the care of the sick, and for the prompt and efficient discharge of the duties of the health officer. The expense of the care and the support of every person received into such hospital shall be fixed and determined by the health officer, and shall be paid to him by the master, owner or consignee of the vessel in which such person shall have arrived, and the payment thereof may be enforced by the same remedies as the payment of other quarantine charges. The structures on Hoffman island now used for that purpose shall

continue to be used for the reception and temporary detention of persons under quarantine who have been exposed to infectious diseases and who may be sent there by the health officer pursuant to law. And the health officer shall use every effort to maintain this island and the buildings thereon in the best possible condition for the safe and comfortable occupancy of detained persons, and shall provide appliances for the cleansing and the disinfection of persons, baggage, and other goods. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 substituted "health officer" for "commissioners of quarantine" throughout the section, struck out the word "such" preceding the word "appliances" near the end of the last sentence and struck out the words "as the health officer may require" at the end of the section.

**§ 109. Crematory.** The health officer shall maintain upon Swinburne island, in the harbor of New York, a crematory of such form and construction as he may deem advisable. He shall cause to be incinerated therein the bodies of persons dying at the quarantine hospital from infectious diseases, except of persons whose religious views as communicated by them while living, or by their friends within twenty-four hours after their decease, are opposed to cremation. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 substituted the words "health officer" for "board of commissioners of quarantine" in the first line of the first sentence and the word "he" for the word "they" preceding the words "may deem advisable" at the end thereof and substitute the word "he" for the words "The health officer" at the beginning of the second sentence.

**§ 110. Remains of persons cremated.** The remains of persons cremated upon Swinburne island shall be placed in receptacles provided by the health officer for this purpose, and the same shall be properly labeled for identification, and the health officer shall deliver such receptacles to the proper claimants, when such appear, and when no such claimant is known, shall place the receptacle in a proper place to be provided for this purpose. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 substituted the words "health officer" for "commissioners of quarantine" preceding the words "for this purpose" and for the words "said commissioners" preceding the words "shall deliver."

**§ 111. Burying ground.** The health officer may make use of such parts of Swinburne island in the harbor of New York, as \*they may find necessary for the interment of the bodies of persons dying at the quarantine hospital from infectious diseases, which are not authorized to be cremated or which may not be

\* So in original.

designated for cremation. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

**Amendment of 1909** substituted the words "health officer" for "commissioners of quarantine" in the first line.

## ARTICLE 7

### Health Officer of the Port of New York

- Section 120. Appointment.  
121. Residence and general powers.  
122. Appointment of assistants, nurses, boatmen and others employed.  
123. Examinations; warrants for offenders.  
124. Boarding vessels.  
125. Bills of health.  
126. Effects of deceased persons.  
127. Department of health of the city of New York.  
128. Power over master, owner or consignee of vessel.  
129. Quarantinable diseases.  
130. Quarantinable vessels and period of quarantine.  
131. Detention for examination of vessels.  
132. Sanitary measures; admission to pratique.  
133. The yellow flag.  
134. Vaccination.  
135. Duty of pilots.  
136. Removal of vessels, persons and things from the city of New York.  
137. Payment of expenses of quarantine.  
138. Lien for services and expenses.  
139. When master of vessel must provide for passenger.  
140. Policemen.  
141. Confinement of offenders.  
142. Jurisdiction over offenses and in actions.  
143. Special port warden.  
144. Fees and compensation of health officer; payment of salaries and expenses.  
145. Annual report.

**§ 120. Appointment.** There shall continue to be a health officer for the port of New York appointed by the governor, by and with the advice and consent of the senate, whose term of office shall be four years, and who shall be a doctor of medicine of good standing of at least ten years' experience in the practice of his profession and practically familiar with quarantinable diseases.

**§ 121. Residence and general powers.** The health officer for the port of New York shall reside at quarantine. He shall have the general supervision and control of the quarantine establishment, and the care and treatment of the sick thereat, and shall carry into effect the provisions of this and the preceding article. He shall, in the presence of immediate danger, of which he shall be the judge, take the responsibility of applying such additional measures as may be deemed indispensable for the protection of the public health. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 inserted the words "and the preceding" preceding the word "article" at the end of the second sentence.

**§ 122. Appointment of assistants, nurses, boatmen and others employed.** The health officer may appoint and dismiss at pleasure deputy health officers, a resident physician and an engineer of the Swinburne island hospital, and a superintendent and engineer of Hoffman island, who may perform, subject to his direction, any duty required of the health officer, and for whose conduct he shall be responsible. He may appoint and dismiss at pleasure as many nurses, boatmen and other employees as may be necessary for the proper performance of the duties of his office. The compensation of all persons employed under this section, unless established by law, shall be fixed by the health officer. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 materially changed former section which read as follows:

**§ 122. Appointment of assistants, nurses, boatmen and others employed.** The health officer may appoint and dismiss at pleasure two deputy health officers and a resident physician of the Swinburne island hospital, who may perform, subject to his direction, any duty required of the health officer, and for whose conduct he shall be responsible. He may appoint and dismiss at pleasure as many nurses, boatmen and employees of the boarding station as may be necessary for the proper treatment and care of the inmates thereof, and in conjunction with the quarantine commissioners, license such lightermen, stevedores, laborers and other employees necessary for the care and treatment of vessels, merchandise, baggage, dunnage and other property in quarantine. The compensation of all persons employed under this section, unless established by law, shall be fixed by the health officer.

**§ 123. Examinations; warrants for offenders.** The health officer may administer oaths in all examinations to be conducted by him, or under his direction, prescribed by this article, and relative to any alleged violation of quarantine law or regulations. He may issue a warrant to any constable or other citizen for the pursuit and arrest of any person violating any quarantine law or regulation, or obstructing the health officer in the performance of his duty, and for the delivery of any person arrested to the health officer, to be detained in quarantine until discharged by

him, not exceeding twenty days. Every constable or other citizen to whom any such warrant shall be delivered shall obey the direction thereof.

**§ 124. Boarding vessels.** The health officer shall board every quarantinable vessel as soon after her arrival as practicable, between sunrise and sunset; shall ascertain by the inspection of the bill of health, manifest, log book or otherwise, as to the health of all persons on board, and the condition of the vessel and cargo; shall examine on oath as many persons on board or elsewhere as he may deem expedient to enable him to determine the period of quarantine and the regulations to which the vessel and cargo shall be made subject. It shall be the duty of the health officers at the several ports of entry within the state of New York to require the masters of all merchant ships and vessels arriving at said ports from any foreign port, to present a bill of health, duly executed by the consul, vice-consul, or other consular officer of the United States, or by the medical officer attached to the United States consulate by appointment of the United States government, or the representative of the United States government resident at said port of departure, which shall set forth the sanitary condition and history of said vessel; also the sanitary condition of the cargo and of the crew and passengers; also the sanitary condition of the food, water and ventilation of said vessel; the number of cases at such port of yellow fever, plague, cholera, small-pox, typhus fever, relapsing fever, scarlatina, measles, diphtheria and other infectious diseases, the total number of deaths from each of these diseases, and from all causes the week preceding the date of said bill of health, as far as can be ascertained by the said consul, vice-consul or other consular officer of the United States, or the medical officer attached to such consulate. Said bill of health shall contain, in addition to the above, a statement of any circumstances affecting the public health in relation to infectious diseases at the port of departure, or the community adjacent thereto. Vessels that touch at other ports on the passage shall bring a bill of health from each and every port, or shall have indorsed upon the original bill of health by the consul, vice-consul, consular officer or medical officer of the consulate, the facts and conditions of those ports as to the existence and prevalence of the infectious diseases mentioned in this section. All persons coming from or through any foreign port or place who may arrive at the port of New York, shall be liable to an examination by the health officer or his deputies, as regards their protection from small-pox. In case any person so arriving shall refuse to submit to such examination, or upon such examination shall be

found not sufficiently protected from small-pox, or refuses to be protected by vaccination, such person, and in case such person be a minor, then also the person having him or her under charge, shall be detained in quarantine until he or she shall have passed the incubative period from date of last possible exposure; and the expense of such detention shall be chargeable by the health officer upon the consignees or owners of the vessel having such person on board, and such expenses as may be incurred shall be a lien upon such vessel. The master of a vessel who shall refuse or neglect to comply with the provisions of this section shall be guilty of a misdemeanor, and be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 substituted the words "health officer" for the words "commissioners of quarantine" preceding the words "upon the consignees or owners" near end of next to last sentence.

**§ 125. Bills of health.** The health officer shall require the masters of all merchant ships and vessels at such port from any foreign port to present a bill of health, duly executed by the consul, vice-consul or other consular officer of the United States, or by the medical officer attached to the United States consulate, by appointment of the United States government, or the representative of the United States government, resident at such port of departure, setting forth the sanitary condition of the vessel, its cargo, crew, passengers, food, waters and ventilation and the sanitary history of the vessel, the number of cases at such port of yellow fever, plague, cholera, small-pox, typhus fever, relapsing fever, scarlatina, measles, diphtheria and other infectious diseases, the total number of deaths from each of these diseases, and from all causes the week preceding the date of the bill of health, as far as can be ascertained by the officer executing such bill of health, and a statement of any circumstances affecting the public health in relation to infectious diseases at such port of departure or the community adjacent thereto. Vessels touching other ports on the passage shall also bring a bill of health from each port, or shall have indorsed on the original bill of health by one of such United States officers thereat, the facts and conditions of the ports touched, as to the existence or prevalence there of any such infectious disease.

**§ 126. Effects of deceased persons.** The health officer shall secure the effects of deceased persons in quarantine from waste and embezzlement, make a true inventory thereof, and if the rightful claimants thereto do not appear within three months, deliver the same to the public administrator of the city

of New York, unless they ought not to be removed or ought to be destroyed under the provisions of this article.

**§ 127. Department of health of the city of New York.** The health officer shall keep the department of health of the city of New York informed of the number of cases of quarantinable diseases and the character of the same held at quarantine and he may receive any vessel or merchandise sent to him by the health authorities of New York which in his opinion is dangerous to the public health.

**§ 128. Power over master, owner or consignee of vessel.** If the master, owner or consignee of any quarantinable vessel shall neglect or refuse to do any act or thing lawfully directed to be done by the health officer, or to comply with any lawful order or direction of the health officer, or with any regulation relative to such vessel or any person or thing on board thereof, the health officer may employ such assistance as may be necessary to enforce any such order, direction or regulation. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

**Amendment of 1909** struck out the last sentence which read as follows:

"The health officer in the lightering, stowage and storage of quarantinable vessels and merchandise may permit the captains and owners thereof to employ men upon their own account, subject to the same restrictions for the protection of the public health as if licensed by the health officer and quarantine commissioners."

**§ 129. Quarantinable diseases.** The quarantinable diseases are yellow fever, plague, cholera, typhus or ship fever and small-pox, and any other infectious disease which has been or may be determined to be quarantinable by the health officer. Persons with insufficient evidence of vaccination and known to have been recently exposed to small-pox, shall be vaccinated as soon as practicable and detained until the vaccination shall have taken effect, under regulations prescribed by the health officer.

**§ 130. Quarantinable vessels and period of quarantine.** Every vessel arriving at the port of New York from any place where a quarantinable disease existed at the time of departure, or which shall have arrived at any such place and proceeded therefrom to New York, or on board of which during the voyage any case of any such disease shall have occurred, shall remain at quarantine until the health officer grant a permit for the discharge of such vessel or cargo or both. Every vessel arriving at the port of New York from any foreign port and every vessel from a domestic port shall, on their arrival at the quarantine ground, be subject to visitation by the health officer. No quarantinable vessel shall depart from quarantine without the



written permission of the health officer which shall be delivered by the master of the vessel to the department of health of the city of New York, according to the destination of the vessel within twenty-four hours after the permit is received by him.

**§ 131. Detention for examination of vessels.** If a vessel which has not had, during the voyage, a case of quarantinable disease, is found in a condition which the health officer deems dangerous to the public health, it shall be held and treated as the health officer may deem necessary.

**§ 132. Sanitary measures; admission to pratique.** The health officer may require before admission to pratique of any vessel, baths and other bodily care of the persons on board in addition to the treatment of the vessel and cargo. Admission to pratique shall be preceded by as many visits to the vessel by the health officer as he may deem necessary.

**§ 133. The yellow flag.** The health officer shall cause all vessels, warehouses and merchandise in quarantine to be designated by a yellow flag, and shall prohibit communication with or passage within range of the same, except under such restrictions as he may designate compatible with the public safety.

**§ 134. Vaccination.** All persons coming from or through any foreign port or place, who may arrive at the port of New York, shall be liable to an examination by the health officer or his deputies, as regards their protection from small-pox. If any such person shall refuse to submit to such examination or on such examination shall be found not sufficiently protected from small-pox, or shall refuse to be protected by vaccination, such person together with the person having him in charge if he be a minor, shall be detained in quarantine until he shall have passed the incubative period from the date of the last possible exposure; and the expense of such detention shall be charged by the health officer to the consignees or owners of the vessel having such person on board, and such expenses so incurred shall be lien upon such vessel. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 substituted the words "health officer" for commissioners of quarantine" preceding the words "to the consignees or owners" near the end of the section.

**§ 135. Duty of pilots.** Every pilot belonging to the port of New York shall use his utmost endeavors to supply the health officer with such information as may aid him in protecting the public health.

**§ 136. Removal of vessels, persons and things from the city of New York.** The health officer may, whenever in his judgment the public health requires it, order any vessel at the wharves of the city of New York to the quarantine grounds and may require all persons, articles or things introduced into the city from such vessel to be seized, and returned on board thereof. If the master, owner or consignee of such vessel can not be found, or shall neglect or refuse to obey any such order of removal, the health officer may employ such assistance as may be necessary to effect such removal at the expense of such master, owner or consignee. He shall have the aid of the health and police departments of the city of New York in securing the return of the persons and things above referred to. Such vessel or person shall not return to the city without the written permission of the health officer. Any person employed to remove any such vessel, articles or things pursuant to this section, shall have a lien on such vessel, its tackle, apparel and furniture for his services and expenses in effecting such removal, which may be enforced in the manner prescribed in the lien law for the enforcement of a lien upon vessels.

**§ 137. Payment of expenses of quarantine.** The expenses incurred and services rendered by the health officer or any of his subordinates or employees in the discharge of any duty imposed by law in relation to vessels, merchandise, baggage, dunnage, persons or burials of persons under quarantine shall be paid to the health officer by the master of the vessels for which the expenses shall have been incurred, or the services rendered, or in which such merchandise, baggage, dunnage and persons shall have arrived. Persons conveyed to and from the quarantine establishment in the quarantine steamboat shall pay the health officer for such transportation, unless conveyed for the master of a vessel, in which case the master shall pay for the same.

**§ 138. Lien for services and expenses.** All such expenses, services and charges shall be a lien on the vessels, merchandise or other property in relation to which they shall have been made, incurred or rendered, and if such master, owner or consignee shall omit to pay the same within three days after the presentation of such account, the health officer may proceed to enforce such lien in the manner provided in the lien law for the enforcement of liens upon vessels; or he may have or maintain an action against such master, owner or consignee to recover the amount of such expenses, services and charges, and such master,

owner or consignee shall be deemed indebted to him in such amount and may recover from any passenger liable to pay the same the amount of any expenses incurred on account of such passenger. The health officer shall have the same remedies to enforce any other lien or to recover for any expenses, services or charges which are by law made payable to him if they remain unpaid for three days after payment shall have been demanded by him. The vessel, cargo or other property upon which any lien exists by virtue of any provision of this article, shall be held in quarantine until the amount due for the expenses, services or charges constituting such lien is paid, unless such master, owner or consignee shall execute to the health officer a bond with sufficient sureties to be approved by him, conditioned for the payment thereof within ten days thereafter. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 struck out all references to commissioners of quarantine and substituted the words "health officer" "he" or "him" throughout the section and inserted the word "other" preceding the word "lien" in the second sentence.

**§ 139. When master of vessel must provide for passenger.** All passengers on board any vessel under quarantine shall be provided for by the master of the vessel on which they arrive. If the master neglects or refuses to provide for them, or if they have been transferred to some other point within the jurisdiction of the health officer, they shall be maintained by the health officer at the expense of the vessel, her owners or consignees, and the health officer may in his discretion refuse to permit the vessel to leave quarantine until such expenses have been paid or secured. The health officer may maintain an action against such owners or consignees to recover for such expenses, which shall be a lien upon the vessel, to be enforced as other liens thereon by him. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

Amendment of 1909 struck out the words "quarantine commissioners" preceding the words "at the expense" near the middle of the second sentence and substituted the words "health officer," struck out the word "commissioner" and substituted the words "health officer" near the beginning of the last sentence and struck out the words "the commissioners" and substituted "him" at the end of the sentence.

**§ 140. Policemen.** The health officer may appoint policemen, whose services shall be paid for by him, and may dismiss them at pleasure and appoint others in their places. Such policemen shall perform patrol or police duty under the direction of the health officer, in connection with the quarantine establishment, and upon the waters of the bay of New York. They shall have all the powers possessed by policemen in the city of New

York and any person arrested by any such policeman for violating any law or regulation relating to quarantine in such port, may be taken by him before any court of criminal jurisdiction or any magistrate or police justice in said city, and thereupon such court, magistrate or police justice shall have jurisdiction to hear, try and punish the person arrested for the offense committed by him in the same manner and with the same effect, as if the offense had been committed within the territory over which such court, magistrate or police justice has jurisdiction to hear, try and punish for offenses committed within such territory.

**§ 141. Confinement of offenders.** The health officer upon the application of the master of any vessel under quarantine may confine in any suitable place on shore, any person on board of the vessel charged with the commission of any offense punishable by the laws of this state or of the United States, and who can not be secured on board of such vessel. Such confinement may continue during the quarantine of such person, or until he shall be proceeded against in due course of law. The expenses of such confinement shall be charged and collected in the same manner as the expenses of providing for passengers, which the master of the vessel is required to pay.

**§ 142. Jurisdiction over offenses and in actions.** Exclusive jurisdiction of the offenses specified in this article is hereby given to the court of general sessions of the county of New York and the court of special sessions of the city of New York, but the punishment in the last-named court for offenses shall not exceed ten days' imprisonment, or a fine of one hundred dollars, or both such fine and imprisonment, and it shall be the duty of the district attorneys of the county of New York, and the county of Kings, and the county of Richmond, respectively, to prosecute all persons guilty of such offenses in preference to any indictment then in their courts, and for such courts to hear and try the offenses against the provisions of this chapter in preference to all other cases pending before them; and whenever any person shall be convicted on a trial for such offense, the court shall forthwith proceed to pronounce judgment upon him according to the terms prescribed in this chapter. For the purpose of determining all questions of jurisdiction in any civil or criminal action growing out of any act or thing done upon or connected with the Swinburne island hospital, such hospital shall be deemed to be within the county of New York. If any action has been or shall hereafter be commenced or any criminal prosecution instituted against the health officer, or any of his deputies or em-

ployees, or any of them, or against any person engaged in performing any duty or rendering any service in any matter or thing connected with the quarantine establishment, or any part thereof, before any court or officer within the county of Richmond, or when such county shall be the place of trial named in the complaint in any such action, the defendant therein may apply to any justice of the supreme court for an order directing that such action shall be tried either in the county of New York or in the county of Kings, and such justice shall thereupon make an order removing such action from the county of Richmond to the county of New York or the county of Kings. If the action is pending in the supreme court, the order shall designate in which of the other counties herein named the trial shall be had; if the action is pending in the county court, such order shall remove the action into the supreme court, and designate one of such other counties as the county wherein it shall be tried. If the action shall have been commenced in the municipal court for the borough of Richmond, the order shall designate the court before which the action shall be tried in the county to which it is removed as herein required; and if it is a criminal action, the order shall direct to which officer or court the complaint or indictment shall be sent for trial, and shall provide for giving bail in such form and amount as such justice shall deem proper. The court or officer to which any action shall be transferred, pursuant to this section, shall proceed to the trial thereof in the same manner and with the same effect as if the action had been commenced before such court or officer and the cause of action had arisen in the county to which the action shall have been removed. An action may be brought by and in the name of the health officer to recover any penalty, forfeiture, sum of money or other cause of action incurred or required to be paid or authorized to be brought pursuant to any provision of this article or the preceding article. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

**Amendment of 1909** struck out the words "or against the quarantine commissioners" succeeding the words "deputies or employees" near the middle of the third sentence, and substituted "health officer" for "quarantine commissioners" in last sentence.

**§ 143. Special port warden.** There shall continue to be a special port warden in and for the port of New York, appointed by the governor, by and with the advice and consent of the senate, whose term of office shall be two years. He shall act as warden in regard to vessels under or subject to quarantine, but not in regard to vessels while stopping at quarantine for the purpose of visitation only by the health officer, but not detained. He shall have all the powers of a port warden of the port of New

York with reference to vessels or merchandise under or subject to quarantine, but he shall be subject to such regulations as the health officer may impose, for the protection of the public health. He shall receive for each survey or examination made by him the sum of five dollars, and shall make returns to the warden's office in the city of New York of each survey made by him, within twenty-four hours after it shall be made. He may appoint a deputy, who during his absence or inability to serve, may perform all his duties and exercise all his powers. No other port warden shall be appointed under quarantine.

**§ 144. Fees and compensation of health officer; payment of salaries and expenses.** The health officer shall receive fees for his services at not exceeding the following rates, namely: For inspection of any vessel from a foreign port, five dollars. For inspection of every vessel from a domestic port, south of Cape Henlopen, between May first and November first in each year, steamers, three dollars; other vessels, one dollar. For medical inspection of every one hundred or fraction of one hundred steerage passengers upon transatlantic steamers, two dollars. For each special permit issued for the discharge of cargo, portion of cargo or baggage brought as freight, twenty-five cents. For sanitary inspection of every vessel after the discharge of cargo or ballast, ten dollars. For fumigation and disinfection of every vessel from an infected port, or of such vessel as in the judgment of the health officer shall require fumigation and disinfection by reason of exposure to infection or contagion, fifty dollars, or such sum not more than fifty dollars or less than five dollars as may in the judgment of the health officer be deemed reasonable. For boarding every vessel and giving a permit between sunset and sunrise, at the request of the owner, consignee or master of the vessel when such pratique can be given without danger to the public health, five dollars. For vaccination of persons on vessels, each twenty-five cents. But no charge shall be made for the vaccination of any person who shall have been successfully vaccinated by the medical officer of the ship. He shall pay all the salaries and wages of the deputy health officers and such bargemen, nurses, stewards and other employees as may be necessary for the performance of the duties imposed upon him by law for the carrying on of the quarantine establishment, and shall pay the current expenses of running a steamboat for the transportation of persons to and from the establishment, for visitation and for burying the dead. The health officer shall be entitled to receive a total compensation of twelve thousand five hundred dollars per annum, and in case the aggre-

gate amount of such fees remaining in the hands of the health officer at the end of each year, during which he shall continue in office, after payment by him of the salaries, wages and expenses which he is required by law to pay, shall be less than the sum of twelve thousand five hundred dollars, the balance shall be paid by the state treasurer on the warrant of the comptroller out of any money appropriated therefor. In case the aggregate amount of fees exceeds the sum of twelve thousand five hundred dollars per annum, and the expenses to be paid out of the same specified in this section, the surplus shall be used for the purchase of necessary books, scientific apparatus and other necessary appliances as the health officer may decide or for the preservation and repair of the structures belonging to the quarantine establishment. The health officer shall keep an account of all moneys received or disbursed by him under this section. This section shall not affect the liability of masters or owners of vessels, passengers or other persons to pay for such services, labor or work as they are respectively required to pay or discharge by law. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

**Amendment of 1909** struck out the sentence reading as follows: "He shall report annually to the board of quarantine commissioners all fees received by him." near the middle of the section and also that part of the succeeding sentence, following the words "quarantine establishment," reading as follows: "except the salaries of the commissioners of quarantine."

**§ 145. Annual report.** The health officer shall make a report to the legislature annually on or before January fifteenth for the preceding fiscal year, containing an itemized statement of all his receipts and disbursements and of the general condition of the quarantine establishment, the statistics of the establishment in detail, and such other information and suggestions in regard to it as he may deem advisable. A duplicate of said report shall at the same time be filed by said health officer with the comptroller. (*Thus amended by L. 1909, ch. 375, in effect June 1, 1909.*)

**Amendment of 1909** substituted the word "legislature" for "quarantine commissioners" preceding the word "annually" near the beginning of the section and changed "first" to "fifteenth" succeeding the word "January" immediately thereafter.

## ARTICLE 8

### Practice of Medicine

Section 160. Definitions.

161. Qualifications.

162. The state board of medical examiners.

163. Certificate of appointment; oath; powers.

164. Expenses.

165. Officers; meetings; quorum; committees.

- Section 166. Admission to examination.  
167. Questions.  
168. Examinations and reports.  
169. Licenses.  
170. Registry; revocation of license; annulment of registry.  
171. Registry in another county.  
172. Certificate presumptive evidence; unauthorized registration and license prohibited.  
173. Construction of this article.  
174. Penalties and their collection.

**§ 160. Definitions.** As used in this article:

1. "The education department" means the education department of the state of New York as provided for by the education law.
2. "University" means university of the state of New York.
3. "Regents" means board of regents of the university of the state of New York.
4. "Board" means the board of medical examiners of the state of New York.
5. "Medical examiner" means a member of the board of medical examiners of the state of New York.
6. "Medical school" means any medical school, college or department of a university, registered by the regents as maintaining a proper medical standard and as legally incorporated.
7. The practice of medicine is defined as follows: A person practices medicine within the meaning of this article, except as hereinafter stated, who holds himself out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition, and who shall either offer or undertake, by any means or method, to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition.
8. "Physician" means a practitioner of medicine.

**§ 161. Qualifications.** No person shall practice medicine, unless registered and legally authorized prior to September first, eighteen hundred and ninety-one, or unless licensed by the regents and registered under article eight of chapter six hundred and sixty-one of the laws of eighteen hundred and ninety-three and acts amendatory thereto, or unless licensed by the regents and registered as required by this article; nor shall any person practice under this article who has ever been convicted of a felony by any court, or whose authority to practice is suspended or revoked by the regents on recommendation of the state board.



The conviction of a felony shall include the conviction of any offense which if committed within the state of New York would constitute a felony under the laws thereof.

**§ 162. The state board of medical examiners.** The state board of medical examiners is continued. The members of said board now in office shall continue in office until the expiration of their respective terms. Said board shall consist of nine members who shall be appointed by the regents and who shall hold office for three years from August first of the year in which appointed. The regents shall annually appoint three members to fill the vacancies caused by expiration of term of office, and may at any time fill vacancies on the board caused by death, resignation, or removal from office. No person shall be appointed a member of the board of medical examiners who is not eligible to receive a license to practice from the regents in accordance with the provisions of this article or of chapter six hundred and sixty-one of the laws of eighteen hundred and ninety-three and acts amendatory thereof and who has not been in practice in this state for at least five years prior to date of appointment. The regents may remove any member of the board of examiners for misconduct, incapacity or neglect of duty. The regents shall appoint a secretary to the board of examiners, who shall not be a member of the board, and who shall hold office during the pleasure of the regents and who shall receive an annual compensation of four thousand dollars, payable from the fees received under this article. The secretary shall be a duly licensed physician.

**§ 163. Certificate of appointment; oath; powers.** Every medical examiner shall receive a certificate of appointment from the regents and before beginning his term of office shall file with the secretary of state the constitutional oath of office. The board, or any committee thereof, may employ counsel, shall have the power to compel the attendance of witnesses, and may take testimony and proofs concerning all matters within its jurisdiction. The board may, subject to the regents' approval, make all by-laws and rules not inconsistent with law needed in performing its duties; but no by-law or rule by which more than a majority vote is required for any specified action by the board shall be amended, suspended or repealed by a smaller vote than that required for action thereunder.

**§ 164. Expenses.** The fees derived from the operation of this article shall be paid into the state treasury, and the legislature shall annually appropriate therefrom for the education department an amount sufficient to pay all proper expenses incurred pursuant to this article.

**§ 165. Officers; meetings; quorum; committees.**

The board shall annually elect from its members a president and a vice-president for the academic year, and shall hold one or more meetings each year pursuant to call of the regents. At any meeting a majority shall constitute a quorum; but questions prepared by the board may be grouped and edited, or answer papers of candidates may be examined and marked by committees duly authorized by the board and approved by the regents.

**§ 166. Admission to examination.** The regents shall admit to examination any candidate who pays a fee of twenty-five dollars and submits evidence, verified by oath, and satisfactory to the regents, that he

1. Is more than twenty-one years of age.
2. Is of good moral character.
3. Had prior to beginning the second year of medical study the general education required preliminary to receiving the degree of bachelor or doctor of medicine in this state.
4. Has studied medicine not less than four school years, including four satisfactory courses of at least seven months each in four different calendar years in a medical school registered as maintaining at the time a standard satisfactory to the regents. New York medical schools and New York medical students shall not be discriminated against by the registration of any medical school out of the state whose minimum graduation standard is less than that fixed by statute for New York medical schools. The regents may, in their discretion, accept as the equivalent for any part of the third and fourth requirement, evidence of five or more years' reputable practice, provided that such substitution be specified in the license, and, as the equivalent of the first year of the fourth requirement, evidence of graduation from a registered college course, provided that such college course shall have included not less than the minimum requirements prescribed by the regents for such admission to advanced standing. The regents may also in their discretion admit conditionally to the examination in anatomy, physiology, hygiene, sanitation, and chemistry, applicants nineteen years of age certified as having studied medicine not less than two years, including two satisfactory courses of at least seven months each, in two different calendar years, in a medical school registered as maintaining at the time a satisfactory standard, provided that such applicants meet the second and third requirements.
5. Has either received the degree of bachelor or doctor of medicine from some registered medical school, or a diploma or license conferring full right to practice medicine in some foreign country

unless admitted conditionally to the examinations as specified above, in which case all qualifications, including the full period of study, the medical degree and the final examinations in surgery, obstetrics, gynecology, pathology, including bacteriology, and diagnosis, must be met. The degree of bachelor or doctor of medicine shall not be conferred in this state before the candidate has filed with the institution conferring it the certificate of the regents that before beginning the first annual medical course counted toward the degree, unless matriculated conditionally as hereinafter specified, he had either graduated from a registered college or satisfactorily completed a full course in a registered academy or high school; or had a preliminary education considered and accepted by the regents as fully equivalent; or held a regents' medical student certificate; or passed regents' examinations securing sixty academic counts, or their full equivalent, before beginning the first annual medical course counted toward the degree, unless admitted conditionally as hereinafter specified. A medical school may matriculate conditionally a student deficient in not more than one year's academic work or fifteen counts of the preliminary education requirement, provided the name and deficiency of each student so matriculated be filed at the regents' office within three months after matriculation, and that the deficiency be made up before the student begins the second annual medical course counted toward the degree.

6. Where the application be for a license to practice osteopathy, the applicant shall produce evidence that he has studied osteopathy not less than three years including three satisfactory courses of not less than nine months each in three different calendar years in a college of osteopathy maintaining at the time a standard satisfactory to the regents. After nineteen hundred and ten the applicant for a license to practice under this article shall produce evidence that he has studied not less than four years including four satisfactory courses of not less than seven months each in four different calendar years in a college maintaining at the time a standard satisfactory to the regents.

**§ 167. Questions.** The board shall submit to the regents, as required, lists of suitable questions for thorough examination in anatomy, physiology, hygiene, sanitation, chemistry, surgery, obstetrics, gynecology, pathology, including bacteriology, and diagnosis. From these lists the regents shall prepare question papers for all these subjects, which at any examination shall be the same for all candidates, except that the examination may be divided as provided in section one hundred and sixty-six.

**§ 168. Examinations and reports.** Examinations for licenses shall be given in at least four convenient places in this state and at least four times annually, in accordance with the regents' rules, and shall be exclusively in writing and in English. Each examination shall be conducted by a regents' examiner who shall not be one of the medical examiners. At the close of each examination the regents' examiner in charge shall deliver the questions and answer papers to the board or its duly authorized committee, who, without unnecessary delay, shall examine and mark the answers and transmit to the regents an official report, signed by its president and secretary, stating the standing of each candidate in each branch, his general average and whether the board recommends that a license be granted. Such report shall include the questions and answers and shall be filed in the public records of the university. If a candidate fails on first examination, he may, after not less than six months' further study, have a second examination without fee. If the failure is from illness or other cause satisfactory to the regents they may waive the required six months' study.

**§ 169. Licenses.** On receiving from the state board an official report that an applicant has successfully passed the examinations and is recommended for license, the regents shall issue to him a license to practice according to the qualifications of the applicant. Every license shall be issued by the university under seal and shall be signed by each acting medical examiner and by the officer of the university who approved the credential which admitted the candidate to examination, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, preliminary and medical education and all other matters required by law, and that after full examination he has been found properly qualified to practice. Applicants examined and licensed by other state examining boards registered by the regents as maintaining standards not lower than those provided by this article and applicants who matriculated in a New York state medical school before June fifth, eighteen hundred and ninety, and who received the degree of doctor of medicine from a registered medical school before August first, eighteen hundred and ninety-five, may without further examination, on payment of twenty-five dollars to the regents and on submitting such evidence as they may require, receive from them an indorsement of their licenses or diplomas conferring all rights and privileges of a regents' license issued after examination. The commissioner of education may in his discretion on the approval of the board of regents indorse a license or diploma of a physician from another state, provided the applicant

has met all the preliminary and professional qualifications required for earning a license on examination in this state, has been in reputable practice for a period of ten years, and has reached a position of conceded eminence and authority in his profession. If any person, whose registration is not legal because of some error, misunderstanding or unintentional omission, shall submit satisfactory proof that he had all requirements prescribed by law at the time of his imperfect registration and was entitled to be legally registered, he may on unanimous recommendation of the state board of medical examiners receive from the regents under seal a certificate of the facts which may be registered by any county clerk and shall make valid the previous imperfect registration. Before any license is issued it shall be numbered and recorded in a book kept in the regents' office, and its number shall be noted in the license; and a photograph of the licensee filed with the records. This record shall be open to public inspection, and in all legal proceedings shall have the same weight as evidence that is given to a record of conveyance of land.

**§ 170. Registry; revocation of license; annulment of registry.** Every license to practice medicine shall, before the licensee begins practice thereunder, be registered in a book kept in the clerk's office of the county where such practice is to be carried on, with name, residence, place and date of birth, and source, number and date of his license to practice. Before registering, each licensee shall file, to be kept in a bound volume in a county clerk's office, an affidavit of the above facts, and also that he is the person named in such license, and had, before receiving the same, complied with all requirements as to attendance, terms and amount of study and examinations required by law and the rules of the university as preliminary to the conferment thereof; that no money was paid for such license, except the regular fees paid by all applicants therefor; that no fraud, misrepresentation or mistake in any material regard was employed by any one or occurred in order that such license should be conferred. Every license, or if lost a copy thereof legally certified so as to be admissible as evidence, or a duly attested transcript of the record of its conferment, shall, before registering, be exhibited to the county clerk, who, only in case it was issued or indorsed as a license under seal by the regents, shall indorse or stamp on it the date and his name preceded by the words, "registered as authority to practice medicine in the clerk's office of . . . county." The clerk shall thereupon give to every physician so registered a transcript of the entries in the register with a certificate, under seal that he has filed the prescribed affidavit. The licensee shall pay to the county clerk a total fee of one dollar for registration,

affidavit and certificate. The regents shall have power at any and all times to inquire into the identity of any person claiming to be a licensed or registered physician and after due service of notice in writing, require him to make reasonable proof, satisfactory to them, that he is the person licensed to practice medicine under the license by virtue of which he claims the privilege of this article. { When the regents find that a person claiming to be a physician, licensed under this article, is not in fact the person to whom the license was issued, they shall reduce their findings to writing and file them in the office of the clerk of the county in which said person resides or practices medicine. Said certificate shall be prima facie evidence that the person mentioned therein is falsely impersonating a practitioner or a former practitioner of a like or different name. The regents may revoke the license of a practitioner of medicine, or annul his registration, or do both, in any of the following cases:

(a) A practitioner of medicine who is guilty of any fraud or deceit in his practice, or who is guilty of a crime or misdemeanor, or who is guilty of any fraud or deceit by which he was admitted to practice; or

(b) Is an habitual drunkard or habitually addicted to the use of morphine, opium, cocaine, or other drugs having a similar effect; or

(c) Who undertakes or engages in any manner or by any ways or means whatsoever, to procure or perform any criminal abortion as the same is defined by section eighty of the penal law; or

(d) Who offers or undertakes by any manner or means to violate any of the provisions of section eleven hundred and forty-two of the penal law.

Proceedings for revocation of a license or the annulment of registration shall be begun by filing a written charge or charges against the accused. These charges may be preferred by any person or corporation, or the regents may on their own motion direct the executive officer of the board of regents to prefer said charges. Said charges shall be filed with the executive officer of the board of regents, and a copy thereof filed with the secretary of the board of medical examiners. The board of medical examiners, when charges are preferred, shall designate three of their number as a committee to hear and determine said charges. A time and place for the hearing of said charges shall be fixed by said committee as soon as convenient, and a copy of the charges, together with a notice of the time and place when they will be heard and determined, shall be served upon the accused or his counsel, at least ten days before the date actually fixed for said hearing. Where personal service or service upon counsel can not

be effected, and such fact is certified on oath by any person duly authorized to make legal service, the regents shall cause to be published for at least seven times, for at least twenty days prior to the hearing, in two daily papers in the county in which the physician was last known to practice, a notice to the effect that at a definite time and place a hearing will be had for the purpose of hearing charges against the physician upon an application to revoke his license. At said hearing the accused shall have the right to cross-examine the witnesses against him and to produce witnesses in his defense, and to appear personally or by counsel. The said committee shall make a written report of its findings and recommendations, to be signed by all its members, and the same shall be forthwith transmitted to the executive officer of the board of regents. If the said committee shall unanimously find that said charges, or any of them, are sustained, and shall unanimously recommend that the license of the accused be revoked or his registration be annulled, the regents may thereupon in their discretion, revoke said license or annul said registration, or do both. If the regents shall annul such registration, they shall forthwith transmit to the clerk of the county or counties in which said accused is registered as a physician, a certificate under their seal certifying that such registration has been annulled, and said clerk shall, upon receipt of said certificate, file the same and forthwith mark said registration "annulled." Any person who shall practice medicine after his registration has been marked "annulled" shall be deemed to have practiced medicine without registration. Where the license of any person has been revoked, or his registration has been annulled as herein provided, the regents may, after the expiration of one year, entertain an application for a new license, in like manner as original applications for licenses are entertained; and upon such new application they may in their discretion, exempt the applicant from the necessity of undergoing any examination.

**§ 171. Registry in another county.** A practicing physician having registered a lawful authority to practice medicine in one county, and removing such practice or part thereof to another county, or regularly engaging in practice or opening an office in another county shall show or send by registered mail to the clerk of such other county, his certificate of registration. If such certificate clearly shows that the original registration was of an authority issued under seal by the regents, or if the certificate itself is indorsed by the regents as entitled to registration, the clerk shall thereupon register the applicant in the latter county, on receipt of a fee of twenty-five cents, and shall stamp or indorse on such certificate the date and his name preceded by the words.

“registered also in . . . . . county,” and return the certificate to the applicant.

**§ 172. Certificate presumptive evidence; unauthorized registration and license prohibited.** Every unrevoked certificate and indorsement of registry, made as provided in this article, shall be presumptive evidence in all courts and places, that the person named therein is legally registered. Hereafter no person shall register any authority to practice medicine unless it has been issued or indorsed as a license by the regents. No such registration shall be valid unless the authority registered constituted, at the time of registration, a license under the laws of the state then in force. No diploma or license conferred on a person not actually in attendance at the lectures, instruction and examinations of the school conferring the same, or not possessed at the time of its conferment of the requirements then demanded of medical students in this state as a condition of their being licensed so to practice, and no registration not in accordance with this article shall be lawful authority to practice medicine, nor shall the degree of doctor of medicine be conferred *causa honoris* or *ad eundem* nor if previously conferred shall it be a qualification for such practice.

**§ 173. Construction of this article.** This article shall not be construed to affect commissioned medical officers serving in the United States army, navy or marine hospital service, while so commissioned; or any one while actually serving without salary or professional fees on the resident medical staff of any legally incorporated hospital; or any legally registered dentist exclusively engaged in practicing dentistry; or any person or manufacturer who mechanically fits or sells lenses, artificial eyes, limbs or other apparatus or appliances, or is engaged in the mechanical examination of eyes, for the purpose of constructing or adjusting spectacles, eye glasses and lenses; or any lawfully qualified physician in other states or countries meeting legally registered physicians in this state in consultation; or any physician residing on a border of a neighboring state and duly licensed under the laws thereof to practice medicine therein, whose practice extends into this state, and who does not open an office or appoint a place to meet patients or receive calls within this state; or any physician duly registered in one county called to attend isolated cases in another county, but not residing or habitually practicing therein; or the furnishing of medical assistance in case of emergency; or the domestic administration of family remedies; or the practice of chiropody; or the practice of the religious tenets of any church. This article shall be construed to repeal all acts or parts of acts authorizing



conferment of any degree in medicine *causa honoris* or *ad eundem* or otherwise than on students duly graduated after satisfactory completion of a preliminary medical course not less than that required by this article as a condition of license. It is further provided that any person who shall be actively engaged in the practice of osteopathy in the state of New York on the thirteenth day of May, nineteen hundred and seven, and who shall present to the board of regents satisfactory evidence that he is a graduate in good standing of a regularly conducted school or college of osteopathy within the United States which at the time of his or her graduation required a course of study of two years or longer, including the subjects of anatomy, physiology, pathology, hygiene, chemistry, obstetrics, diagnosis and the theory and practice of osteopathy, with actual attendance of not less than twenty months, which facts shall be shown by his or her diploma and affidavit, shall upon application and payment of ten dollars be granted, without examination, a license to practice osteopathy, provided application for such license be made within six months after the thirteenth day of May, nineteen hundred and seven. A license to practice osteopathy shall not permit the holder thereof to administer drugs or perform surgery with the use of instruments. Licenses to practice osteopathy shall be registered in accordance with the provisions of this article, and the word osteopath be included in such registration; and such license shall entitle the holder thereof to the use of the degree D. O., or doctor of osteopathy.

**§ 174. Penalties and their collection.** Any person who, not being then lawfully authorized to practice medicine within this state and so registered according to law, shall practice medicine within this state without lawful registration or in violation of any provision of this article; and any person who shall buy, sell or fraudulently obtain any medical diploma, license, record or registration, or who shall aid or abet such buying, selling or fraudulently obtaining, or who shall practice medicine under cover of any medical diploma, license, record or registration illegally obtained, or signed, or issued unlawfully or under fraudulent representations or mistake of fact in a material regard, or who, after conviction of a felony, shall attempt to practice medicine, or shall so practice, and any person who shall in connection with his name use any designation tending to imply or designate him as a practitioner of medicine within the meaning of this article without having registered in accordance therewith, or any person who shall practice medicine or advertise to practice medicine under a name other than his own, or any person not a

registered physician who shall advertise to practice medicine, shall be guilty of a misdemeanor. Any person who shall practice medicine under a false or assumed name, or who shall falsely personate another practitioner or former practitioner of a like or different name, shall be guilty of a felony. When any prosecution under this article, or under sections eleven hundred and forty-two, eighty, eighty-one, eighty-two, seventeen hundred and forty-seven of the penal law, and any amendments thereto, is made on the complaint of any incorporated medical society of the state, or any county medical society entitled to representation in a state society, any fines collected shall be paid to the society making the complaint, and any excess of the amount of fines so paid over the expense incurred by the said society in enforcing the medical laws of this state, shall be paid at the end of the year to the county treasurer.

## ARTICLE 9

### Dental Societies and the Practice of Dentistry

- Section 190. Definitions.
- 191. State dental society.
  - 192. District dental societies.
  - 193. Powers of district dental societies.
  - 194. Licentiates.
  - 195. State board of dental examiners.
  - 196. Examinations.
  - 197. Degrees.
  - 198. Licenses.
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  - 200. Examination fees.
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  - 202. Construction of this article.
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**§ 190. Definitions.** As used in this article, the terms "university," "regents" and "physicians" have respectively the meanings defined in article eight of this chapter. "Board," where not otherwise limited, means the board of dental examiners of the state of New York. "Registered medical or dental school" means a medical or dental school, college or department of a university, registered by the regents as maintaining a proper educational standard and legally incorporated. "Examiner," where not otherwise qualified, means a member of the board. "State dental society," means the dental society of the state of New York.

**§ 191. State dental society.** The dental society of the state of New York is continued, and shall be composed of eight delegates from each district society divided into four classes of two delegates, each to be elected annually, and of two delegates from each incorporated dental school of the state to be elected annually. The state dental society shall annually meet on the second Wednesday of May, or at such other time and at such place as may be determined on in the by-laws of the society or by resolution, at the preceding annual meeting. Twenty members shall be a quorum. The society shall elect annually a president, vice-president, secretary and treasurer, who shall hold their offices for one year, and until others shall be chosen in their places, and may elect not more than sixteen permanent members at any annual meeting from among eminent dentists of the state, who shall have all the privileges of delegate members. The society may elect honorary members from any state or country not eligible to regular membership, who shall not be entitled to vote or hold any office in the society.

**§ 192. District dental societies.** The existing district dental societies are continued. In any judicial district in which a district dental society is not now incorporated, fifteen or more dentists of such district authorized to practice dentistry in this state may become a district dental society of such district, by publishing a call for a meeting of the dentists of the district to be held at a time and place mentioned therein within the district, in at least one newspaper in each county of the district, at least once a week for at least four weeks immediately preceding the time when such meeting is to be held, and by meeting at the time and place specified in such notice with such dentists authorized to practice dentistry in the district as may respond to such call, and by making and filing with the secretary of the state dental society a certificate, to be executed and acknowledged by the dentists so meeting, or by at least fifteen of them, which shall set forth that such meeting has been held pursuant to such notice, the corporate name of the society, which shall be the district dental society of the judicial district where located, the names and places of residence of the officers of the society for the first year, or until the first annual meeting, which officers shall be a president, vice-president, secretary and treasurer, the time and place of the annual meeting of the society, the general objects and purposes of the association and the names of eight delegates to the state society divided into four classes of two delegates each, to hold office until the first, second, third and fourth annual meeting thereafter, respectively. And thereon the persons executing such certificate and all other dentists in good standing and authorized to practice

dentistry in such district, who shall subscribe to its by-laws, shall be a corporation by the name expressed in such certificate.

**§ 193. Powers of district dental societies.** Every licensed and registered dentist in the judicial district in which such society is formed, shall be eligible to membership in the district society of the district where he resides or practices dentistry. Every district society shall at every annual meeting choose two delegates to the state dental society, each to serve four years, and may fill all vacancies occurring in their respective delegations in the state society. Every district dental society shall at its annual meeting appoint not less than three nor more than five censors to continue in office for one year and until others are chosen, who shall constitute a district board of censors. The dental societies of the respective districts of the state shall have power to make all needful by-laws not inconsistent with the laws of this state for the management of their affairs and property and the admission and expulsion of members; providing, that no by-law of any district society shall be repugnant to or inconsistent with the by-laws of the state society. Said societies may purchase and hold real and personal estate for the purposes of their incorporation; provided that the property of a district society shall not exceed in value five thousand dollars, and the property of the state society shall not exceed in value twenty-five thousand dollars.

**§ 194. Licentiates.** Only the following persons shall be deemed licensed to practice dentistry:

1. Those duly licensed and registered as dentists in this state prior to the first day of August, eighteen hundred and ninety-five, pursuant to the laws in force at the time of their license and registration.

2. Those duly licensed and registered after the first day of August, eighteen hundred and ninety-five, pursuant to the provisions of this chapter.

**§ 195. State board of dental examiners.** The existing state board of dental examiners shall be divided into four classes and their terms of office shall continue except that said terms shall expire on the thirty-first day of July in each year. Before the day when the official terms of the members of any of said classes shall expire, the regents shall appoint their successors, to serve for the term of four years from said day. Such appointment shall be made from nominations in number twice the number of the outgoing class made by such society to the regents prior to the second Tuesday in June of each year. In de-

fault of such nominations, the regents shall appoint such examiners from the legally qualified dentists in the state belonging to the state dental society. The regents, in the same manner, shall also fill vacancies in the board that may occur. All nominations and appointments shall be so made that every vacancy in the board shall be filled by a resident of the same judicial district in which the last incumbent of the office resided. The board shall elect at its annual meeting from its members a president and a secretary and shall hold one or more meetings each year pursuant to call of the regents. No person shall be appointed an examiner unless he shall have received a dental degree from a body lawfully entitled to confer the same, and in good standing at the time of its conferment, and shall have been engaged within the state during not less than five years prior to his appointment in the actual and lawful practice of dentistry. Nor shall any person connected with a dental school as professor, trustee or instructor be eligible to such appointment. Cause being shown before them the regents may remove an examiner from office on proven charges of inefficiency, incompetency, immorality or unprofessional conduct.

**§ 196. Examinations.** The regents shall admit to examination any candidate who shall pay the fee herein prescribed and submit satisfactory evidence, verified by oath if required, that he:

1. Is more than twenty-one years of age;
2. Is of good moral character;
3. Has a preliminary education equivalent to graduation from a four year high school course registered by the regents, or an education accepted by the regents as fully equivalent.
4. Subsequently to receiving such preliminary education either has been graduated in course with a dental degree from a registered dental school, or else, having been graduated in course from a registered medical school with a degree of doctor of medicine, has pursued thereafter a course of special study of dentistry for at least two years in a registered dental school and received therefrom its degree of doctor of dental surgery, or else holds a diploma or license conferring full right to practice dentistry in some foreign country and granted by some registered authority. Provided that any person who then being a bona fide student of dentistry in this state under private preceptorship was entitled to file on or before the thirty-first day of July, eighteen hundred and ninety-five, with the secretary of the state dental society a certificate of study under private preceptorship and who did at any time prior to the first day of January, nineteen hundred and four, upon sworn proof of such fact file such a certificate with the regents, may be admitted to examination before the board. Any

member of the board may inquire of any applicant for examination concerning his qualifications and may take testimony of any one in regard thereto, under oath, which he is hereby empowered to administer.

**§ 197. Degrees.** No degree in dentistry shall be conferred in this state except the degree of doctor of dental surgery. Said degree shall not be conferred upon any one unless he shall have satisfactorily completed a course of at least three years in a registered dental school, or having been graduated in course from a registered medical school with the degree of doctor of medicine shall have pursued satisfactorily thereafter a course of special study of dentistry for at least two years in a registered dental school; nor shall said degree be conferred upon any one, unless prior to matriculation in the institution conferring his professional degree, or before beginning the second course of lectures counted toward such degree he shall have filed with said institution a regents' certificate that he has received the required preliminary education evidenced as aforesaid; provided further, however, that the regents may confer upon all persons who shall have received the degree of master of dental surgery under the laws of this state, prior to March twenty-eighth, nineteen hundred and one, the degree of doctor of dental surgery in lieu of said master's degree.

**§ 198. Licenses.** On certification by the board of dental examiners that a candidate has successfully passed its examinations and is competent to practice dentistry, the regents shall issue to him their license so to practice pursuant to the rules established by them. On the recommendation of the board, the regents may also, without the examination hereinbefore provided for, issue their license to any applicant therefor who shall furnish proof satisfactory to them that he has been duly graduated from a registered dental school and has been thereafter lawfully and reputably engaged in such practice for six years next preceding his application; or who holds a license to practice dentistry in any other state of the United States granted by a state board of dental examiners, indorsed by the dental society of the state of New York, provided, that in either case his preliminary and professional education shall have been not less than that required in this state. Every license so issued shall state on its face the grounds on which it is granted and the applicant may be required to furnish his proofs on affidavit.

**§ 199. Registration.** Every person practicing dentistry in this state and not lawfully registered before April seventeenth, eighteen hundred and ninety-six, shall register in the office of the

clerk of the county where his place of business is located, in a book kept by the clerk for such purpose, his name, age, office and post-office address, date and number of his license to practice dentistry and the date of such registration, which registration he shall be entitled to make only upon showing to the county clerk his license or a duly authenticated copy thereof, and making an affidavit stating name, age, birthplace, the number of his license and the date of its issue; that he is the identical person named in the license; that before receiving the same he complied with all the preliminary requirements of this article and the rules of the regents and board as to the terms and the amount of study and examination; that no money, other than the fees prescribed by this article and said rules, was paid directly or indirectly for such license, and that no fraud, misrepresentation or mistake in a material regard was employed or occurred in order that such license should be conferred. The county clerk shall preserve such affidavit in a bound volume and shall issue to every licentiate duly registering and making such affidavit, a certificate of registration in his county, which shall include a transcript of the registration. Such transcript and the license may be offered as presumptive evidence in all courts of the facts stated therein. The county clerk's fee for taking such registration and affidavit and issuing such certificate, shall be one dollar. A practicing dentist having registered a lawful authority to practice dentistry in one county of the state and removing such practice or part thereof to another county, or regularly engaging in practice or opening an office in another county, shall show or send by registered mail to the clerk of such other county his certificate of registration. If such certificate clearly shows that the original registration was of an authority issued under seal by the regents, or if the certificate itself is indorsed by the regents as entitled to registration, the clerk shall thereupon register the applicant in the latter county, on receipt of a fee of twenty-five cents, and shall stamp or indorse on such certificate, the date and his name, preceded by the words, "registered also in . . . . . county," and return the certificate to the applicant. Any person who having lawfully registered as aforesaid shall thereafter change his name in any lawful manner shall register the new name with marginal note of the former name; and shall note upon the margin of the former registration the fact of such change and a cross reference to the new registration. A county clerk who knowingly shall make or suffer to be made upon the book of registry of dentists kept in his office any other entry than is provided for in this section shall be liable to a penalty of fifty dollars to be recovered by the state dental society in a suit in any court having jurisdiction.

**§ 200. Examination fees.** Every applicant for license to practice dentistry shall pay a fee of not more than twenty-five dollars. From the fees provided by this article the regents may pay all proper expenses incurred by them under its provisions, and any surplus at the end of any academic year shall be paid to the society nominating the examiners to defray its expenses incurred under the law.

**§ 201. Revocation of licenses.** If any practitioner of dentistry be charged under oath before the board, with unprofessional or immoral conduct, or with gross ignorance, or inefficiency in his profession, the board shall notify him to appear before it at an appointed time and place, with counsel, if he so desires, to answer said charges, furnishing to him a copy thereof. Upon the report of the board that the accused has been guilty of unprofessional or immoral conduct, or that he is grossly ignorant or inefficient in his profession, the regents may suspend the person so charged from the practice of dentistry for a limited season, or may revoke his license. Upon the revocation of any license, the fact shall be noted upon the records of the regents and the license shall be marked as canceled, of the date of its revocation. Upon presentation of a certificate of such cancellation to the clerk of any county wherein the licentiate may be registered, said clerk shall note the date of the cancellation on the register of dentists and cancel the registration. A conviction of felony shall forfeit a license to practice dentistry, and upon presentation to the regents or a county clerk by any public officer or officer of a dental society of a certified copy of a court record showing that a practitioner of dentistry has been convicted of felony, that fact shall be noted on the record of license and clerk's register, and the license and registration shall be marked "canceled." Any person who, after conviction of a felony shall practice dentistry in this state, shall be subject to all the penalties prescribed for the unlicensed practice of dentistry, providing that if such conviction be subsequently reversed upon appeal and the accused acquitted or discharged, his license shall become again operative from the date of such acquittal or discharge.

**§ 202. Construction of this article.** This article shall not be construed to prohibit an unlicensed person from performing merely mechanical work upon inert matter in a dental office or laboratory, or the student of a licentiate from assisting the latter in his performance of dental operations while in the presence and under the personal supervision of his instructor; or a student in an incorporated dental school or college from performing operations for purposes of clinical study under the supervision



and instruction of preceptors; or a duly licensed physician from treating diseases of the mouth or performing operations in oral surgery. But nothing in this article shall be construed to permit the performance of independent dental operations by an unlicensed person under cover of the name of a registered practitioner or in his office. Nor shall anything in this article be construed to require of students matriculated in registered dental or medical schools before the first day of January, nineteen hundred and five, any other or higher qualification for the dental license or degree than was demanded by existing laws as interpreted by the regulations of the regents at the date of their matriculation.

**§ 203. Penalties.** A. A person who, in any county of this state, practices or holds himself out to the public as practicing dentistry, not being at the times of said practice or holding out, a dentist licensed to practice as such in this state and registered in the office of the clerk of such county, pursuant to the general laws regulating the practice of dentistry, is guilty of a misdemeanor and punishable upon conviction of a first offense by a fine of not less than fifty dollars, and upon conviction of a subsequent offense by a fine of not less than one hundred dollars, or by imprisonment for not less than two months or by both such fine and imprisonment. Any violation of this section by a person theretofore convicted under the then existing laws of this state of practicing dentistry without license or registration, shall be included in the term "a subsequent offense." Every conviction of unlawful practice or holding out subsequent to a first conviction thereof shall be a conviction of a second offense. Every practitioner of dentistry must display in a conspicuous place upon the house or in the office wherein he practices his full name. If there are more dental chairs than one in any office or dental parlor the name of the practitioner must be displayed on or by said chair in plain sight of the patient. Any person who shall practice dentistry without displaying his name as herein prescribed; and any proprietor, owner or manager of a dental office, establishment or parlor who shall fail so to display or cause to be displayed the name of each person employed as a practicing dentist or practicing as a dentist in said office, establishment or parlor, shall be guilty of a misdemeanor and punishable upon a first conviction by a fine of fifty dollars, and upon every subsequent conviction by a fine of not less than one hundred dollars, or by imprisonment for not less than sixty days, or by both fine and imprisonment.

B. A person shall be deemed guilty of a misdemeanor, and upon every conviction thereof shall be punished by a fine of not less than two hundred and fifty dollars, or by imprisonment for not less than six months, or by both fine and imprisonment, who

1. Shall sell or barter or offer to sell or barter any diploma or document conferring or purporting to confer any dental degree or any certificate or transcript made or purporting to be made pursuant to the laws regulating the license and registration of dentists; or,

2. Shall purchase or procure by barter any such diploma, certificate or transcript with intent that the same shall be used as evidence of the qualifications to practice dentistry of any person other than the one upon whom it was lawfully conferred or in fraud of the laws regulating such practice; or,

3. Shall, with fraudulent intent, alter in a material regard any such diploma, certificate or transcript; or,

4. Shall use or attempt to use any such diploma, certificate or transcript which has been purchased, fraudulently issued, counterfeited or materially altered either as a license or color of license to practice dentistry or in order to procure registration as a dentist; or,

5. Shall practice dentistry under a false or assumed name; or,

6. Shall assume the degree of bachelor of dental surgery, doctor of dental surgery, or master of dental surgery, or shall append the letters B. D. S., D. D. S., M. D. S., to his name, not having had duly conferred upon him by diploma from some college, school or board of examiners legally empowered to confer the same, the right to assume said titles; or shall assume any title or append or prefix any letters to his name with the intent to represent falsely that he has received a medical or dental degree or license; or,

7. Shall falsely personate another at any examination, held by the regents or by the board, of the preliminary or professional education of candidates for dental students' certificates, dental degrees or licenses, or who shall induce another to make or aid and abet in the making of such false personation, or who shall knowingly avail himself of the benefit of such false personation, or who shall knowingly or negligently make falsely any certificate required by the regents or board in connection with their examinations.

C. Any person who in any affidavit or examination required of an applicant for examination, license or registration under the laws regulating the practice of dentistry, or under the laws, ordinances or regulations governing the regents' examinations of the preliminary education required for a dental student's certificate shall make wilfully a false statement in a material regard shall be guilty of perjury, and punishable upon conviction thereof by imprisonment not exceeding ten years.

D. All courts of special sessions and police justices sitting as courts of special sessions shall have jurisdiction in the first

instance to hear and determine all charges of misdemeanors mentioned in this article committed within their local jurisdiction, and to impose all the penalties provided for misdemeanors in this article; provided, however, that the power of said courts and justices to hear and determine such charges shall be divested, if before the commencement of a trial before such court or justice, a grand jury shall present an indictment against the accused person for the same offense, or if a justice of the supreme court or a county judge of the county shall grant a certificate in the manner provided by law in cases of misdemeanor, that it is reasonable that such charge be prosecuted by indictment.

E. All fines, penalties and forfeitures of bail imposed or collected on account of violations of the laws regulating the practice of dentistry must be paid to the state dental society. Said society may prefer complaints for violations of the law regulating the practice of dentistry before any court, tribunal or magistrate having jurisdiction thereof and may by its officers, counsel and agents aid in presenting the law and the facts before such court, tribunal or magistrate in any proceeding instituted by it.

## **ARTICLE 10**

### **Veterinary Medicine and Surgery**

Section 210. Definitions.

211. Qualifications for practice.

212. State board of veterinary medical examiners.

213. Certificate of appointment; oath; powers.

214. Expenses.

215. Officers; meetings; quorum; committees.

216. Admission to examination.

217. Questions.

218. Examinations and reports.

219. Licenses.

220. Registry.

221. Registration in another county.

222. Certificate presumptive evidence; unauthorized registration and license prohibited.

223. Construction of this article.

224. Penalties and their collection.

**§ 210. Definitions.** As used in this article:

1. "University" means university of the state of New York.
2. "Regents" means board of regents of the university of the state of New York.
3. "Board" means a board of veterinary medical examiners of the state of New York.

4. "Veterinary medical examiner" means a member of a board of veterinary medical examiners of the state of New York.

5. "Veterinary school" means any veterinary school, college or department of a university, registered by the regents as maintaining a proper veterinary medical standard and as legally incorporated.

6. "Veterinary medicine" means veterinary medicine and surgery, or any branch thereof.

7. "Veterinarian" means veterinary physician and surgeon.

**§ 211. Qualifications for practice.** No person shall practice veterinary medicine after July first, eighteen hundred and ninety-five, unless previously registered and legally authorized, unless licensed by the regents and registered as required by this article; nor shall any person practice veterinary medicine who has ever been convicted of a felony by any court, or whose authority to practice is suspended or revoked by the regents on recommendation of the state board. Any person, a citizen of the United States and of the state of New York, who matriculated in a reputable veterinary medical school prior to January first, eighteen hundred and ninety-five, and who received his degree therefrom prior to January first, eighteen hundred and ninety-seven, or any person who was engaged in the practice of veterinary medicine prior to the year eighteen hundred and eighty-six, shall be admitted to the veterinary examination for license to practice, as conducted by the regents of the university of the state of New York.

**§ 212. State board of veterinary medical examiners.** There shall be a board of veterinary medical examiners of five members, each of whom shall hold office for five years from August first of the year in which appointed. The New York state veterinary medical society shall at each annual meeting nominate twice the number of examiners to be appointed that year on the board. The names of such nominees shall be annually transmitted under seal by the president and secretary prior to May first, to the regents who shall, prior to August first, appoint from such lists the examiners required to fill any vacancies that will occur from expiration of term on July thirty-first. Any other vacancy, however occurring, shall likewise be filled by the regents for the unexpired term. Each nominee before appointment, shall furnish to the regents proof that he has received a degree in veterinary medicine from a registered veterinary medical school and that he has legally practiced veterinary medicine in this state for at least five years. If no nominees are legally before them from the society, the regents may appoint from members in good stand-

ing in the veterinary profession without restriction. The regents may remove any examiner for misconduct, incapacity or neglect of duty.

**§ 213. Certificate of appointment; oath; powers.**

Every veterinary medical examiner shall receive a certificate of appointment from the regents, and before beginning his term of office shall file with the secretary of state the constitutional oath of office. The board, or any committee thereof, may take testimony and proofs concerning all matters within its jurisdiction. The board may, subject to the regents' approval, make all by-laws and rules not inconsistent with law needed in performing its duties, but no by-laws or rules by which more than a majority vote is required for any specified action by the board shall be amended, suspended or repealed by a smaller vote than that required for the action thereunder.

**§ 214. Expenses.** From the fees provided by this article the regents may pay all proper expenses incurred by its provisions, except compensation to veterinary medical examiners, and any surplus at the end of the academic year shall be apportioned among the members of the board pro rata according to the number of candidates whose answer papers have been marked by each.

**§ 215. Officers; meetings; quorum; committees.**

The board shall annually elect from its members a president and secretary for the academic year, and shall hold one or more meetings each year pursuant to the call of the regents. At any meeting a majority shall constitute a quorum; but questions prepared by the board may be grouped and edited, or answer papers of candidates may be examined and marked by committees duly authorized by the board and by the regents.

**§ 216. Admission to examination.** The regents shall admit to examination any candidate who pays a fee of ten dollars and submits satisfactory evidence, verified by oath if required, that he (first) is more than twenty-one years of age; (second) is of good, moral character; (third) has the general education required in all cases after July first, eighteen hundred and ninety-seven, preliminary to receiving a degree in veterinary medicine; (fourth) has studied veterinary medicine not less than three full years, including three satisfactory courses, in three different academic years, in the veterinary medical school registered as maintaining at the time a satisfactory standard; (fifth) has received a degree as veterinarian from some registered veterinary medical school. The degree in veterinary medicine shall not be conferred in this state before the candidate has filed with the

institution conferring it, the certificate of the regents that three years before the date of the degree, or before or during his first year of veterinary medical study in this state, he has either graduated from a registered college or satisfactorily completed an academic course in a registered academy or high school; or has a preliminary education considered and accepted by the regents as fully equivalent; or has passed regents' examinations equivalent to the minimum requirement in such preliminary education for candidates for medical or dental degrees in this state. The regents may, in their discretion, accept as the equivalent for any part of the third and fourth requirement, evidence of five or more years' reputable practice in veterinary medicine, provided that such substitution be specified in the license.

**§ 217. Questions.** Each member of the board shall submit to the regents, as required, lists of suitable questions for thorough examination in comparative anatomy, physiology and hygiene, in chemistry, and in veterinary surgery, obstetrics, pathology and diagnosis and therapeutics, including practice and materia medica. From these lists the regents shall prepare question papers for all these subjects, which at any examination shall be the same for all candidates.

**§ 218. Examinations and reports.** Examination for license shall be given in at least four convenient places in this state and at least four times annually, in accordance with the regents' rules, and shall be exclusively in writing and in English. Each examination shall be conducted by a regents' examiner, who shall not be one of the veterinary medical examiners. At the close of each examination, the regents' examiner in charge shall deliver the questions and answer papers to the board, or to its duly authorized committee, and such board, without unnecessary delay, shall examine and mark the answers and transmit to the regents an official report, signed by its president and secretary, stating the standing of each candidate in each branch, his general average and whether the board recommends that a license be granted. Such report shall include the questions and answers and shall be filed in the public records of the university. If a candidate fails on his first examination, he may, after not less than six months' further study, have a second examination without fee. If the failure is from illness or other cause satisfactory to the regents, they may waive the required six months' study.

**§ 219. Licenses.** On receiving from the state board an official report that an applicant has successfully passed the examination and is recommended for license, the regents shall

issue to him, if in their judgment he is duly qualified therefor, a license to practice veterinary medicine. Every license shall be issued by the university under seal and shall be signed by each acting veterinary medical examiner of the board and by the officer of the university who approved the credential which admitted the candidate to examination, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, preliminary and veterinary medical education and all other matters required by law, and that after full examination he has been found duly qualified to practice. Applicants examined and licensed before July first, eighteen hundred and ninety-seven, by other state examining boards registered by the regents as maintaining standards not lower than those provided by this article, and applicants who matriculated in a New York state veterinary medical school before July first, eighteen hundred and ninety-six, and who received the veterinary degree from a registered veterinary medical school before July first, eighteen hundred and ninety-seven, may without further examination, on payment of ten dollars to the regents, and on submitting such evidence as they may require, receive from them an indorsement of their license or diplomas conferring all rights and privileges of a regents' license issued after examination. If any person, whose registration is not legal or who is not registered because of some error, misunderstanding or unintentional omission, shall submit satisfactory proof that he had all requirements prescribed by law at the time required for registration and was entitled to be legally registered, he may, on unanimous recommendation of the state board of veterinary medical examiners, receive from the regents under seal a certificate of the facts which may be registered by any county clerk and shall make valid the previous imperfect registration. Before any license is issued it shall be numbered and recorded in a book kept in the regents' office and its number shall be noted in the license. This record shall be open to public inspection, and in all legal proceedings shall have the same weight as evidence that is given to a record of conveyance of land.

**§ 220. Registry.** Every license to practice veterinary medicine shall, before the licensee begins practice thereunder, be registered in a book to be known as the "veterinary medical register," which shall be provided by and kept in the clerk's office of the county where such practice is to be carried on, with name, residence, place and date of birth, and source, number and date of its license to practice. Before registering, each licensee shall file, to be kept in a bound volume in the county clerk's office, an affidavit of the above facts, and also that he is the person named in such license, and had, before receiving the same,

complied with all requisites as to attendance, terms and amount of study and examination required by law and the rules of the university as preliminary to the conferment thereof, and no money was paid for such license, except the regular fees, paid by all applicants therefor; that no fraud, misrepresentation or mistake in any material regard was employed by anyone or incurred in order that such license should be conferred. Every license, or if lost, a copy thereof, legally certified so as to be admissible as evidence, or a duly attested transcript of the record of its conferment, shall, before registering, be exhibited to the county clerk, who, only in case it was issued or indorsed as a license under seal by the regents, shall indorse or stamp on it the date and his name preceded by the words, "registered as authority to practice veterinary medicine, in the clerk's office of . . . . . county." The clerk shall thereupon give to every veterinarian so registered a transcript of the entries in the register, with a certificate under seal that he has filed the prescribed affidavit. The licensee shall pay to the county clerk a total fee of one dollar for registration, affidavit and certificate.

**§ 221. Registration in another county.** A practicing veterinarian having registered a lawful authority to practice veterinary medicine in one county, and removing such practice or part thereof to another county, or regularly engaging in practice or opening an office in another county, shall show or send by registered mail to the clerk of such other county, his certificate of registration. If such certificate clearly shows that the original registration was of an authority issued under seal by the regents, or if the certificate itself is indorsed by the regents as entitled to registration, the clerk shall thereupon register the applicant in the latter county, on receipt of a fee of twenty-five cents, and shall stamp or indorse on such certificate the date and his name, preceded by the words, "registered also in . . . . . county" and return the certificate to the applicant.

**§ 222. Certificate presumptive evidence; unauthorized registration and license \*prohibitd.** Every unrevoked certificate and indorsement of registry, made as provided in this article, shall be presumptive evidence in all courts and places that the person named therein is legally registered. Hereafter no person shall register any authority to practice veterinary medicine unless it has been issued or indorsed as a license by the regents. No diploma or license conferred on a person not actually in attendance at the lectures, instructions and examinations of the school conferring the same, or not possessed at the time of its conferment of the requirements then demanded of

\*So in original.



veterinary medical students in this state as a condition of their being licensed so to practice, and no registration not in accordance with this article shall be lawful authority to practice veterinary medicine, nor shall the degree of doctor of veterinary medicine be conferred *causa honoris* or *ad eundem*, nor if previously conferred shall it be a qualification for such practice.

**§ 223. Construction of this article.** This article shall not be construed to affect commissioned veterinary medical officers serving in the United States army, or in the United States bureau of animal industry while so commissioned; or any person for giving gratuitous services in case of emergency; or any lawfully qualified veterinarian in other states or countries meeting legally registered veterinarians in this state in consultation; or any veterinarian residing on a border of a neighboring state and duly authorized under the laws thereof to practice veterinary medicine therein, whose practice extends into this state, and who does not open an office or appoint a place to meet patients or receive calls within this state; or any veterinarian duly registered in one county called to attend isolated cases in another county, but not residing or habitually practicing therein. This article shall be construed to repeal all acts or parts of acts authorizing conferment of any degree in veterinary medicine, *causa honoris* or *ad eundem*, or otherwise, than on students duly graduated after satisfactory completion of a preliminary and veterinary medical course, not less than that required by this article, as a condition of license.

**§ 224. Penalties and their collection.** Every person who shall practice veterinary medicine within this state without lawful registration or in violation of any provision of this article shall forfeit to the county wherein such person shall so practice, or in which any violation shall be committed, fifty dollars for every such violation, and for every day of such unlawful practice, and any incorporated veterinary medical society of the state or any county veterinary medical society of such county entitled to representation in a state society, may bring an action in the name of such county for the collection of such penalties, and the expense incurred by such society in such prosecution, including necessary counsel fees, may be retained by such society out of the penalties so collected, and the residue, if any, shall be paid into the county treasury. Any person who shall practice veterinary medicine under a false or assumed name or who shall falsely personate another practitioner of a like or different name, shall be guilty of a felony; and any person guilty of violating any of the other provisions of this

article, not otherwise specifically punished herein, or who shall buy, sell or fraudulently obtain any veterinary medical diploma, license, record or registration, or who shall aid or abet such buying, selling or fraudulently obtaining, or who shall practice veterinary medicine under the cover of a diploma, or license illegally obtained, or signed or issued unlawfully or under fraudulent representation, or mistake of fact in material regard, or who, after conviction of a felony, shall attempt to practice veterinary medicine, and any person who shall, without having been authorized so to do legally, append any veterinary title to his or her name, or shall assume or advertise any veterinary title in such a manner as to convey the impression that he is a lawful practitioner of veterinary medicine or any of its branches, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than two hundred and fifty dollars or imprisonment for six months for the first offense, and on conviction of a subsequent offense by a fine of not less than five hundred dollars or imprisonment for not less than one year, or by both fine and imprisonment.

## ARTICLE 11

### Pharmacy

- Section 230. State board of pharmacy; election of members; term of office; how organized; vacancies, how filled; revenue.
231. Powers and duties of the board.
232. Licenses of existing boards of pharmacy of this state, their rights and privileges.
233. Licenses of state board; how granted; rights under; revocation.
234. Registration of pharmacies and drug stores; proprietors' names to be displayed.
235. Adulteration or substitution of drugs, chemicals and medicines.
236. Poisons; retailing of.
237. Application of article limited.
238. Apprentices and employees.
239. Penalties; expenses.
240. Working hours and sleeping apartments of pharmacist or drug clerk.

**§ 230. State board of pharmacy; election of members; term of office; how organized; vacancies, how filled; revenue.** 1. For the purpose of this article, the state shall be divided into three sections, by counties, to be known re-

spectively as the eastern, western and middle sections. (a) The eastern (New York) section shall consist of the counties of New York, Kings, Queens, Nassau, Suffolk, Richmond and Westchester; (b) The western (Erie) section shall consist of the counties of Erie, Niagara, Orleans, Genesee, Wyoming, Allegany, Cattaraugus and Chautauqua; and (c) the middle (Albany) section shall consist of the county of Albany and all other counties not contained in the other two sections.

2. The state board of pharmacy shall consist of fifteen members, five members from each of the above named sections. No person shall be eligible for election to the state board of pharmacy unless he be a citizen of the state of New York and a resident and licensed pharmacist of that section of the state from which elected; and, if elected from the eastern section, unless he also be a member of an incorporated pharmaceutical society or association as provided in subdivision four of this section.

3. At the expiration of the terms of the members of the state board of pharmacy now in office, members thereof shall be elected for the term of five years and shall hold office during such term, or until their successors shall have been duly elected and qualified. Each member of such board before entering upon the discharge of his duties shall take and subscribe the oath of office, which he shall file in the office of the secretary of state, to the effect that he will support the constitution of the United States, and the constitution of the state of New York, and that he will faithfully discharge the duties of the office of member of the state board of pharmacy of the state of New York, according to the best of his ability.

4. The election of the members of said state board of pharmacy for the eastern section shall occur in the month of June of each year. The state board of pharmacy shall designate a date in said month and a place in the borough of Manhattan and a place in the borough of Brooklyn for said election and shall give fifteen days' notice of said time and place to the societies or associations in said section, hereinafter described. At the time and place so designated in the borough of Manhattan three members for said section shall be elected, and no person shall be eligible for election, or to vote at such election, unless he be a resident of one of the counties of New York or Westchester and a member of the New York state pharmaceutical association, provided he be a licensed pharmacist or druggist, or of an incorporated pharmaceutical association or society in one of said counties, whose members are required to be licensed pharmacists or druggists. At the time and place designated as aforesaid in the borough of Brooklyn, two members for said section shall be elected and no person shall

be eligible for election, or to vote at such election, unless he be a resident of one of the other counties in said section and a member of the New York state pharmaceutical association, provided he be a licensed pharmacist or druggist, or of one of the incorporated pharmaceutical associations or societies in said other counties, whose members are required to be licensed pharmacists or druggists. The election of the members of the state board of pharmacy for the western section shall occur at a meeting of the licensed pharmacists and druggists residing in such section, to be held in the month of June of each year, called by the Erie county pharmaceutical association at the Buffalo college of pharmacy, or at such other place as may be designated by the state board of pharmacy, and such election shall be by ballot. The election of the members of the state board of pharmacy for the middle section shall occur at the annual meeting of the state pharmaceutical association, at which meeting all licensed pharmacists and druggists residing in such middle section are entitled to vote, and such election shall be by ballot.

5. The members of the state board of pharmacy who have duly qualified, shall meet annually on the first Monday in January of each year, at the college of pharmacy building in the city of Albany, or at such other building in said city of Albany as may be designated by the state board of pharmacy, at twelve o'clock, noon, and shall proceed by ballot to elect a president and a secretary, who shall also be treasurer, both of whom shall be members of such state board and shall hold office for the term of one year and until their successors are elected and have qualified. The state board shall fix the salaries of the secretary of the state board and the secretaries of the branches for the eastern, western and middle sections. Such secretaries shall each execute a bond in such sum and with such conditions for the faithful performance of their duties, as the state board of pharmacy may prescribe. The secretaries shall perform all the duties devolving upon them under this article and such further duties as may be imposed by the state board of pharmacy, or by the several branches thereof.

6. Immediately after the organization of the state board of pharmacy as hereinbefore provided, the members of the state board from the respective sections shall organize branches, to be known as the eastern, western and middle branches respectively. The officers of each of such branches shall be a chairman and a secretary, who shall also be treasurer and such officers shall be elected by the members of the state board comprising such branches respectively. The secretary of the state board of pharmacy shall also perform the duties of the secretary and treasurer

of the branch of the section wherein he resides and no local secretary shall be elected for such branch. Vacancies occurring in the state board of pharmacy for any cause, other than expiration of term of office, may be filled by appointment by the president of the state board until the next annual election in the section wherein the member whose office has become vacant resided, of an eligible pharmacist, residing in such section.

7. Each branch of the state board is hereby authorized and empowered to receive and collect for its section the revenue, authorized by this article, for the purposes herein provided, and each branch is hereby authorized and empowered, subject to the approval of the state board of pharmacy, to enforce and carry into effect within its section the provisions of this article and to perform such other duties, as may be lawfully imposed by the state board of pharmacy. Each member of the state board of pharmacy shall be entitled to and receive five dollars for each day actually engaged in the performance of services as a member of such board, or any one of its branches, provided that no member shall receive more than one hundred and fifty dollars in any one year, together with his necessary expenses and disbursements.

**§ 231. Powers and duties of the board.** 1. Powers of the board. The state board of pharmacy shall have power:

(a) To make such by-laws, rules and regulations not inconsistent with the laws of the state, as may be necessary for the protection of the public health, and the lawful performance of its powers.

(b) To regulate the practice of pharmacy.

(c) To regulate the sale of poisons.

(d) To regulate and control the character and standard of drugs and medicines dispensed in the state.

(e) To investigate all complaints as to quality and strength of all drugs and medicines and to take such action as may be necessary to prevent the sale of such as do not conform to the standard and tests prescribed in the latest edition of the United States pharmacopœia.

(f) To regulate the number of hours constituting a day's work of employees in a drug store, or pharmacy, in cities having at the last state or United States census a population of a million or more inhabitants, which shall not exceed one hundred and thirty-six hours in each two consecutive weeks.

(g) To employ inspectors of pharmacy and to inspect during business hours all pharmacies, dispensaries, stores, or places in which drugs, medicines and poisons are compounded, dispensed or retailed.

(h) To hold meetings as often as its business shall require and to conduct examinations of applicants for licenses monthly, when so determined by the board, except in July and August, and not less frequently than once in three months.

(i) To examine all applicants for license or registration and to issue two grades of licenses to be known respectively as that of "licensed druggist" and "licensed pharmacist," and one grade of certificates as "registered apprentice," except that in cities having at the last state or United States census a population of a million or more inhabitants a license for the grade of "licensed druggist" shall not be issued.

(j) To investigate all alleged violations of the provisions of this article, or any other law of this state regulating the dispensing or sale of drugs, medicines or poisons, or the practice of pharmacy, which may come to its notice and whenever there appears reasonable cause therefor to take and hear testimony with reference to the same and in the discretion of such board to bring the same to the notice of the proper prosecuting authorities, or bring actions in the name of the state board of pharmacy, for the recovery of penalties in such cases as may be provided by law. The state board of pharmacy and each of its branches shall be deemed to be a board within the meaning of sections eight hundred and forty-three and eight hundred and fifty-four of the code of civil procedure.

(k) To require and provide for the annual registration of every pharmacy, store, dispensary or place in which there are compounded, dispensed or sold, drugs, medicines or poisons, and to require as a prerequisite for such registration the furnishing of evidence satisfactory to the board that the same is conducted in full compliance with the law, and the rules and regulations of the board and to charge and to receive the sum of two dollars for each such registration.

(l) To revoke any license issued by any board of pharmacy of the state for cause, and after an opportunity for a hearing, as herein provided.

#### 2. Duties of the board.

(a) The board shall preserve a record of all licenses issued by former boards of the state and make and keep a record of all licenses issued by it. Such records shall be open to inspection by any citizen of the state.

(b) The state board of pharmacy shall render annually to the governor and to the state pharmaceutical association a report of its proceedings, including receipts and disbursements, during the preceding year.

**§ 232. Licenses of existing boards of pharmacy of this state, their rights and privileges.** 1. The licensees

of the several legally constituted boards of pharmacy in this state shall continue to enjoy in their respective sections the rights and privileges conferred upon them by their licenses or registration so long as they comply with the formal requirements of this article and of the state board of pharmacy.

2. Any person who, on the first day of January, nineteen hundred and one, lawfully held a license or certificate of registration granted upon examination as an "assistant pharmacist" from any legally constituted board of pharmacy of this state, the same not having been revoked, may apply to the state board of pharmacy surrendering his or her certificate of license or registration accompanied by a fee of one dollar and his or her affidavit that he or she has had three years' practical experience in the compounding, dispensing and retailing of drugs, medicines or poisons and may be granted a license as a "licensed druggist" entitling him or her to practice as such throughout the state, except in cities having at the last state or United States census a population of a million or more inhabitants.

3. Any person who held a license or certificate of registration as a "pharmacist" granted by any legally constituted board of pharmacy of the state of New York previous to the first day of January, nineteen hundred and one, may make application to the board of pharmacy, surrendering his or her certificate of license or registration accompanied by a fee of five dollars and may be granted by said board a license to practice as a "licensed pharmacist" anywhere within the state.

**§ 233. Licenses of state board; how granted; rights under; revocation.** 1. Every place in which drugs, medicines or poisons are retailed or dispensed or physicians' prescriptions compounded shall be deemed to be a pharmacy, or a drug store, and the same shall be under the personal supervision of a licensed pharmacist or druggist respectively.

2. Every licensed pharmacist who shall take into his employ an apprentice for the purpose of becoming a pharmacist shall report to the board within three months thereafter such facts as the board may require for registration. The board may issue to such apprentice, when his character and qualifications are satisfactory, a certificate of registration as a "registered apprentice" and the date of the certificate shall be proof of the time when practical experience began with the apprentice named therein. The fee for such registration shall be fifty cents.

3. Except as specified in a preceding section no person shall be granted a license as a licensed druggist until he or she shall have made written application to said board setting forth upon affidavit that he or she has had not less than three years'

practical experience where drugs, medicines and poisons were dispensed and retailed and prescriptions compounded, at least two years of such experience having been within five years last preceding the date of such application, shall have paid such license fee as shall have been fixed by such board, not exceeding five dollars, and shall have passed an examination satisfactory to said board for the granting of such license.

4. It shall be lawful for a licensed druggist under this article, who shall conform to the rules and regulations of the state board of pharmacy, to take, exhibit and use the titles, "licensed druggist," and "drug store," and to have charge of, engage in, conduct or carry on, on his own account or for another, the dispensing, compounding or retailing of drugs, medicines or poisons, in any place which by the last state or United States census had a population of less than one thousand, but no licensed druggist shall have charge of more than one drug store at the same time.

5. A licensed druggist may be employed for the purpose of dispensing, compounding or retailing drugs, medicines and poisons, in a duly registered pharmacy, or drug store under the management and supervision of a licensed pharmacist and during his temporary absence therefrom, except in cities having at the last state or United States census a population of a million or more inhabitants.

6. Except as specified in a preceding section no person shall be granted a license as a licensed pharmacist, until he shall have made written application to the board, setting forth by affidavit that he is of the age of twenty-one years, or upwards, that he has had at least four years' practical experience where drugs, medicines and poisons were dispensed and retailed and prescriptions compounded, of which experience one year must have been had within the five years last preceding the date of such application, in a pharmacy or store in the United States under the personal supervision of a licensed pharmacist, and until he shall have presented to the said board the diploma of any pharmacy school, college or department of a university maintaining a two years' course in pharmacy, and upon the request or with the approval of said board registered by the regents of the university of the state of New York as legally incorporated and as maintaining a proper pharmacy standard, provided such pharmacy school, college or department of a university shall require as a condition for entrance a satisfactory examination in subjects designated by said regents of not less than twelve regents' counts or an educational equivalent acceptable to said regents, and until he shall have paid such license fee as is fixed by said board not exceeding the sum of ten dollars, and until he shall have passed an examination satisfactory to said board for the granting of such license; provided,



however, that in place of the diploma above provided for the said board may in its discretion accept the certificate of the board of pharmacy of any other state, issued prior to January first, nineteen hundred and five, showing that the person to whom said certificate was issued was upon an examination equivalent to any examination conducted by the said board licensed or otherwise authorized to practice pharmacy in the jurisdiction of the board of pharmacy issuing said certificate.

7. It shall be lawful for a licensed pharmacist under this article, who shall conform to the rules and regulations of the state board of pharmacy, to take, use and exhibit the titles "licensed pharmacist," and "pharmacy," and "licensed druggist" and "drug store," to have charge of, engage in, or carry on for himself, or another, the dispensing, compounding or sale of drugs, medicines or poisons, anywhere within the state, but no licensed pharmacist shall have personal supervision of more than one pharmacy or drug store at the same time.

8. Except as prescribed in this article, it shall not be lawful for any person to practice as a pharmacist, assistant pharmacist or druggist or to engage in, conduct, carry on or be employed in the dispensing, compounding or retailing of drugs, medicines or poisons within this state.

9. Every person practicing as a licensed or registered pharmacist, assistant pharmacist or druggist must at all times display his certificate of license or registration conspicuously in the place in which he practices under such license or registration.

10. In case of a failure of an applicant upon his or her first application to pass a satisfactory examination before the said board, a second examination shall be granted him or her without further payment of fee, if applied for within six months from the presentation of such first application for examination.

**§ 234. Registration of pharmacies and drug stores; proprietors' names to be displayed.** 1. The proprietor of every place, in which drugs, medicines or poisons are compounded, dispensed or retailed, shall in the month of January, in each year, make a statement under oath to the board of pharmacy showing what license is in charge of the same and what other licensees or registered apprentices are engaged or employed therein together with any other facts, or data, that may be required by the board, and shall pay a fee of two dollars, and shall receive from the board of pharmacy a certificate of registration which must at all times be conspicuously displayed in said place with the certificate of registration of license of the person in charge thereof.

2. Every person, partnership, association or corporation doing business as the proprietor or proprietors of a place, in which drugs, medicines or poisons are retailed, or physicians' prescriptions are compounded or dispensed, shall cause the actual name of such proprietor or proprietors to be displayed upon a sign which shall be kept conspicuously placed upon the exterior of the premises where such business is conducted. The name or names so displayed upon the sign shall be deemed presumptive evidence of ownership of such pharmacy, drug store or business.

**§ 235. Adulteration or substitution of drugs, chemicals and medicines.**

1. Unless otherwise prescribed for, or specified by the customer, all pharmaceutical preparations, sold or dispensed in a pharmacy, dispensary, store or place, shall be of the standard strength, quality and purity, established by the latest edition of the United States pharmacopœia.

2. Every proprietor of a wholesale or retail drug store, pharmacy, or other place where drugs, medicines or chemicals are sold, shall be held responsible for the quality and strength of all drugs, chemicals or medicines sold or dispensed by him except those sold in original packages of the manufacturer, and those articles or preparations known as patent or proprietary medicines.

3. Any person who shall knowingly, wilfully or fraudulently falsify or adulterate any drug, medical substance or preparation, authorized or recognized in the said pharmacopœia, or used or intended to be used in medical practice, or shall knowingly, wilfully or fraudulently offer for sale, sell or cause the same to be sold, shall be guilty of a misdemeanor; all drugs, medical substances or preparations so falsified or adulterated shall be forfeited to the board and by the board destroyed.

**§ 236. Poisons; retailing of.** It shall be unlawful for any person to sell at retail or furnish any of the poisons named in the schedules hereinafter set forth, without affixing or causing to be affixed, to the bottle, box, vessel or package, a label containing the name of the article and the word "poison" distinctly shown, with the name and place of business of the seller, all printed in red ink, together with the name of such poisons printed or written thereupon in plain, legible characters, which schedules are as follows, to wit:

**SCHEDULE A.**

Arsenic, cyanide of potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable alkaloids and their salts, oil of bitter almonds, containing hydrocyanic acid, opium and its preparations, except paregoric and such others as contain less than two grains of opium to the ounce.

## SCHEDULE B.

Aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic acid, paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life in quantities of sixty grains or less. Every person who shall dispose of or sell at retail or furnish any poisons included under schedule A shall, before delivering the same, make or cause to be made an entry in a book kept for that purpose, stating the date of sale, the name and address of the purchaser, the name and the quantity of the poison, the purpose for which it is represented by the purchaser to be required and the name of the dispenser, such book to be always open for inspection by the proper authorities, and to be preserved for at least five years after the last entry. He shall not deliver any of said poisons without satisfying himself that the purchaser is aware of its poisonous character and that the said poison is to be used for a legitimate purpose. The foregoing portions of this section shall not apply to the dispensing of medicines or poisons on physicians' prescriptions. Wholesale dealers in drugs, medicines, pharmaceutical preparations or chemicals shall affix or cause to be affixed to every bottle, box, parcel or outer inclosure of an original package containing any of the articles enumerated in schedule A of this article, a suitable label or brand in red ink with the word "poison" upon it. The board of pharmacy shall have authority to add to either of the above schedules, from time to time, whenever it shall deem such action necessary for the protection of the public.

**§ 237. Application of article limited.** This article shall not apply to the practice of a practitioner of medicine who is not the proprietor of a store for the dispensing or retailing of drugs, medicines and poisons, or who is not in the employ of such a proprietor, and shall not prevent practitioners of medicine from supplying their patients with such articles as they may deem proper, and except as to the labeling of poisons it shall not apply to the sale of medicines or poisons at wholesale when not for the use or consumption of the purchaser, or to the sale of paris green, \*while hellebore and other poisons for destroying insects, or any substance for use in the arts, or to the manufacture and sale of proprietary medicines, or to the sale by merchants of ammonia, bicarbonate of soda, borax, camphor, castor oil, cream of tartar,

\*So in original.

dye stuffs, essence of ginger, essence of peppermint, essence of wintergreen, non-poisonous flavoring essences or extracts, glycerine, licorice, olive oil, salammmoniac, saltpetre, sal soda, epsom salts, rochelle salts, sulphur, cod liver oil, vaseline, petroleum jollies, oil of organum, oil of spike, magnesia, flaxseed, rock candy, butter color, malt extract, extract of beef, beef iron and wine, extract of witch hazel, quinine, quinine pills, cathartic pills, seidlitz powders, senna, herbs in packages, bay rum, perfumes, toilet water, tumeric, talcum powder, composition, porous plasters, court plasters, copperas, alum, gum arabic, lithia water, and when sold in original packages, bearing the name of a licensed pharmacist, spirits of camphor, spirits of nitre, tincture of arnica, except as herein provided. Provided, however, that in the several places in this state outside of incorporated cities and villages, and in incorporated villages of the fourth class, said places and villages not having therein or within three miles thereof a regularly licensed pharmacy or drug store, physicians may compound medicines, fill prescriptions, and sell poisons, duly labeling the same as required by this article, and merchants and retail dealers may sell the ordinary non-poisonous domestic remedies. Any division of the state board of pharmacy, having within its territory any such village or place, shall, whenever the necessity therefor is shown to exist, grant to some resident therein, who has had experience in dealing in drugs, medicines and poisons, a permit to compound medicines, fill prescriptions and sell poisons for a period not exceeding one year, upon the payment of a fee not exceeding three dollars. Such permit shall be limited to the village or place in which such person resides and may be limited to one or more of the above classifications and to the sale of certain kinds or classes of poisons.

**§ 238. Apprentices and employees.** This article shall not be so construed as to prohibit the employment in licensed pharmacies, or drug stores, of apprentices or assistants for the purpose of being instructed in the practice of pharmacy; but such apprentices or other unlicensed employees or assistants shall not be allowed to prepare or dispense receipts or prescriptions or to sell or furnish medicines or poisons, except in the presence of and under the personal supervision of a licensed pharmacist or licensed druggist, who must either be the proprietor or owner of said pharmacy or drug store or must be in the actual employ of such proprietor or owner, and where violations of this article occur on the part of the said apprentices or other unlicensed employees in any pharmacy or store, the person, partnership, association or corporation, being the proprietor of such pharmacy or drug store, shall be equally liable as principal, for such violation.

**§ 239. Penalties; expenses.** 1. The state board of pharmacy shall not grant a license to any applicant if satisfied that the safety of the public health will be endangered by reason of the habits or character of said applicant. If any person shall have obtained a license by misrepresentation or fraud or shall become unfit or incompetent by reason of negligence, habits or other cause, to practice as a pharmacist, assistant pharmacist or druggist, the state board of pharmacy shall have power to revoke such license after giving such person reasonable notice and an opportunity to be heard and if any licensee shall wilfully and repeatedly violate any of the provisions of this article or the rules and regulations established by the board of pharmacy, such board may revoke his or her license upon sufficient evidence of such violation, in addition to any other punishment by law imposed for such violation.

2. Whenever the board shall revoke the license or registration of any pharmacist or druggist, or apprentice, it shall notify the licensed or registered person of such action and he or she shall immediately deliver to the board or its representative his or her certificate of license or registration.

3. Any person who shall attempt to procure or who shall procure a license or registration for himself, herself, or for any other person, under this article, by making or causing to be made any false representations, shall be guilty of a misdemeanor. Any licensed pharmacist who shall permit the compounding and dispensing of prescriptions of medical practitioners in his store or place of business by any person or persons not licensed or registered; any person not licensed by said board who shall prepare or dispense a medical prescription or physician's prescription or dispense or sell at retail poisons or medicines except under the immediate supervision of a duly licensed person, whose certificate, license or registration is displayed in the place where the same are prepared, dispensed or sold; any person not licensed by said board who shall open or conduct or have charge of or supervise any pharmacy or drug store for retailing, dispensing or compounding medicines or poisons; any person who shall fraudulently represent himself or herself to be licensed, or any person, who knowingly refuses to permit any member of said board or inspector of pharmacy employed by said board to enter a pharmacy or drug store for the purpose of lawfully inspecting the same or intentionally prevents the lawful inspection of any place in which drugs, medicines or poisons are retailed or dispensed, or physicians' prescriptions compounded; any person whose license or certificate of registration has been duly revoked by said board and who refuses to deliver up his or her certificate

or license to said board; any proprietor whose name does not appear upon the sign as hereinabove provided, any holder of a license or certificate of registration who fails to display the same as above provided; or any person who shall violate any of the provisions of this article, in relation to the retailing and dispensing of drugs, medicines and poisons, for which violation no other punishment is hereinbefore imposed, shall for such offense be guilty of a misdemeanor.

4. Any person violating any of the provisions of this article, in addition to, or irrespective of the punishment hereinbefore provided, shall forfeit to the state board of pharmacy the sum of twenty-five dollars for every such violation, which may be sued for and recovered in the name of said board and shall be paid to the state board of pharmacy for its use, as in this article provided. All fines imposed and collected, under any of the provisions of this article, shall be paid over to the state board of pharmacy.

5. Of the three branches of the state board of pharmacy, each shall collect and receive the amounts due from all sources in its section of the state, and apply the same to the payment of the lawful expenses of such board and the necessary expenses incurred in carrying out the provisions of this article, and of any surplus remaining thereafter in the eastern section three-fifths shall be used for the benefit of the college of pharmacy of the city of New York, situated in the borough of Manhattan, and two-fifths for the benefit of the Brooklyn college of pharmacy, situated in the borough of Brooklyn. Any surplus remaining thereafter in the western and middle sections shall be paid into the state treasury. Said surplus shall be determined by the annual report each year, and shall be payable immediately after the annual meeting of the board, and the sums so paid to the trustees of the said colleges shall form and be known as the library fund of the colleges named.

**§ 240. Working hours and sleeping apartments of pharmacist or drug clerk.** No pharmacist or drug clerk employed in any pharmacy or drug store shall be required or permitted to work more than seventy hours per week. Nothing in this section shall prohibit the working six hours overtime during any week, for the purpose of making a shorter succeeding week, provided, however, that the aggregate number of hours in any such two weeks, shall not exceed one hundred and thirty-six hours. The working hours per day shall be consecutive, allowing one hour for each meal. The hours shall be so arranged that an employee shall be entitled to and shall receive at least one full day off in two consecutive weeks.

No proprietor of any drug store shall require or permit any clerk to sleep in any room or apartment in or connected with such store, which does not comply with the sanitary regulations of the local board of health.

A failure to comply with any of the provisions of this section shall be deemed a misdemeanor.

This section shall apply only to cities of one million or more inhabitants.

## ARTICLE 12

### Registration of Nurses

Section 250. Who may practice as registered nurses.

251. Board of examiners; examination; fees.

252. Waiver of examination.

253. Violations of this article.

#### § 250. Who may practice as registered nurses.

Any resident of the state of New York, being over the age of twenty-one years and of good moral character, holding a diploma from a training school for nurses connected with a hospital or sanitarium giving a course of at least two years, and registered by the regents of the university of the state of New York as maintaining in this and other respects proper standards, all of which shall be determined by the said regents, and who shall have received from the said regents a certificate of his or her qualifications to practice as a registered nurse, shall be styled and known as a registered nurse, and no other person shall assume such title, or use the abbreviation R. N. or any other words, letters or figures to indicate that the person using the same is such a registered nurse. Before beginning to practice nursing every such registered nurse shall cause such certificate to be recorded in the county clerk's office of the county of his or her residence with an affidavit of his or her identity as the person to whom the same was so issued and of his or her place of residence within such county. In every thirty-sixth month from the month of January, nineteen hundred and six, every registered nurse shall again cause his or her certificate to be recorded in the said county clerk's office, with an affidavit of his or her identity as the person to whom the same was issued, and of his or her place of residence at the time of such re-registration. Nothing contained in this article shall be considered as conferring any authority to practice medicine or to undertake the treatment or cure of disease in violation of article eight of this chapter.

§ 251. Board of examiners; examination; fees. The board of examiners of nurses appointed pursuant to laws of nineteen hundred and three, chapter two hundred and ninety-three, is

continued. The New York state nurses' association at each annual meeting shall nominate for examiners two of their members who have had not less than five years' experience in their profession. Upon the expiration of the term of office of any examiner now in office the regents of the university of the state of New York shall from the candidates so nominated fill the vacancy for a term of five years and until his or her successor is chosen. An unexpired term of an examiner caused by death, resignation or otherwise, shall be filled by the regents in the same manner as an original appointment is made. The said regents, with the advice of the board of examiners above provided for, shall make rules for the examination of nurses applying for certification under this article, and shall charge for examination and for certification a fee of five dollars to meet the actual expenses, and shall report annually their receipts and expenditures under the provisions of this article, to the state comptroller, and pay the balance of receipts over expenditures to the state treasurer. The said regents may revoke any such certificate for sufficient cause after written notice to the holder thereof and hearing thereon. No person shall thereafter practice as a registered nurse under any such revoked certificate.

**§ 252. Waiver of examination.** The regents of the university of the state of New York may upon the recommendation of said board of examiners, waive the examination of any persons possessing the qualifications mentioned in section two hundred and fifty, who shall have been graduated before, or who were in training on the twenty-fourth day of April, nineteen hundred and three, and shall thereafter be graduated.

**§ 253. Violations of this article.** Any violation of this article shall be a misdemeanor. When any prosecution under this article is made on the complaint of the New York state nurses' association, the certificate of incorporation of which was filed and recorded in the office of the secretary of state on the second day of April, nineteen hundred and two, the fines collected shall be paid to said association and any excess in the amount of fines so paid over the expenses incurred by said association in enforcing the provisions of this article shall be paid at the end of each year to the treasurer of the state of New York.

## ARTICLE 13

### Chiropody

- Section 270. Pedic society of the state of New York.  
271. Eligibility to membership without examination.  
272. Board of examiners.



**Section 273. Fee for certificate of qualification.**

- 274. Real and personal property.
- 275. Rules and regulations.
- 276. Privileges and immunities.
- 277. Falsely and knowingly claiming to have a certificate, or to be a member of such society, a misdemeanor.
- 278. Practicing without registering prohibited.
- 279. Person not entitled to register unless holding a certificate.
- 280. Duty of county clerk.
- 281. Penalty for violations or neglect to comply with this article.
- 282. Construction of this article.

**§ 270. Pedic society of the state of New York.**

The pedic society of the state of New York is continued and the officers thereof shall hold office until the expiration of their respective terms.

**§ 271. Eligibility to membership without examination.**

All chiropodists practicing as such within the state of New York, on the third day of June, eighteen hundred and ninety-five, shall be eligible to membership in said society, without the examination hereinafter directed, and shall receive from the board of examiners mentioned in section two hundred and seventy-two of this chapter, upon application, a certificate or diploma under the hands of said examiners and the seal of said society, which certificate shall entitle the person to whom it is issued to practice chiropody within this state, upon first filing the same with the county clerk of the county in which such person resides, or if such person be not a resident of this state, with the county clerk of the county in which such person has his office within this state.

**§ 272. Board of examiners.** Upon the expiration of the terms of office of the board of examiners of such society, in office when this article takes effect, such society shall elect three members of such board of examiners to continue in office for three years from such election and until their successors shall be elected. It shall be the duty of such board to examine all applicants, except as provided in section two hundred and seventy-one of this article, for the certificate or diploma of said society, permitting such applicant to practice chiropody within the state of New York. Such examination shall be conducted in the English language by oral or written questions or both at least twice in each year, at such times and places as may be appointed by the said board of examiners, and the applicants must show an average

proficiency of seventy-five per centum to entitle them to receive such certificate. The following branches shall be the subjects upon which such examinations shall proceed: The anatomy and physiology of the feet, therapeutics, chemistry, minor surgery and bandaging. An examination fee of ten dollars, payable in advance, may be exacted by the said board of examiners from each applicant, and each applicant shall be entitled to not more than three examinations on payment of said fee; but no person shall be so examined or receive such certificate unless he or she shall be a resident of the state of New York, at the time of taking such examination, and over the age of twenty-one years at said time. The said board of examiners and each member thereof may be removed from office by a majority vote of the advisory board for cause upon charges preferred, and after opportunity to be heard, subject, however, before such removal shall take effect, to the approval of the said "The pedic society of the state of New York," expressed by a two-thirds vote of the members present at any regular meeting.

**§ 273. Fee for certificate of qualification.** Every person on receiving the certificate of qualification mentioned in the preceding section shall pay into the treasury of said society the sum of fifteen dollars.

**§ 274. Real and personal property.** The said "The pedic society of the state of New York" may purchase and hold such real and personal estate as the purposes of its corporation may require, but such property shall not exceed in value the sum of one hundred and fifty thousand dollars.

**§ 275. Rules and regulations.** The said "The pedic society of the state of New York" may make all needful by-laws, rules and regulations not inconsistent with any existing law, for the management of its affairs and property. The said "The pedic society of the state of New York" shall adopt and from time to time revise, add to, alter, amend or annul rules and formulas for the proper use of antiseptics in the practice of chiropody for the purpose of preventing diseases of the feet. And any chiropodist who performs any act of chiropody after receiving a copy of such rules and formulas without complying therewith and thereby causes septicemia or pyemia or other diseases shall on proof thereof be liable to the person so injured in damages to be sued for and ascertained, in an action at law before any court of record of this state and proof of non-compliance with such rules and formulas or any of them after notice shall in any such action, be presumptive evidence of malpractice.

**§ 276. Privileges and immunities.** The said "The podic society of the state of New York" shall be entitled to all the privileges and immunities granted to medical, dental and veterinary societies of this state.

**§ 277. Falsely and knowingly claiming to have a certificate, or to be a member of such society, a misdemeanor.** Any person who shall knowingly and falsely claim or pretend to have or hold a certificate of qualification or diploma granted by the said "The podic society of the state of New York," or who shall falsely and with intent to deceive the public, claim or pretend to be a member of said society, not being such member, shall be deemed guilty of a misdemeanor and punished accordingly.

**§ 278. Practicing without registering prohibited.** No person shall practice chiropody or any branch thereof as a profession in this state, for compensation, or shall, either directly or indirectly, receive or accept for his or her services as a practitioner of chiropody, any fee or reward, except he or she be duly registered as hereinafter provided, in the book kept for that purpose in the office of the clerk of the county in which he or she resides.

**§ 279. Person not entitled to register unless holding a certificate.** No person shall be entitled to register as such practitioner unless he or she shall hold a certificate of qualification from "The podic society of the state of New York."

**§ 280. Duty of county clerk.** The county clerk of each county shall provide a book to be known as the register of chiropodists, in which shall be recorded the name of the registrant, the place of his birth and the date of his receiving the certificate of qualification mentioned in section two hundred and seventy-nine of this chapter. Every applicant who shall have complied with the foregoing provisions and shall be admitted to registration shall pay to the clerk of said county the sum of two dollars, which shall be received as full compensation for such registration.

**§ 281. Penalty for violations or neglect to comply with this article.** Any person who shall present to any county clerk for the purpose of registration, any certificate of qualification which has been fraudulently obtained, or shall obtain any certificate of qualification from said "The podic society of the state of New York," by any false or fraudulent statement or representation, or shall practice chiropody without conforming to the requirements of this article, or shall otherwise violate or neglect to comply with any of the provisions of this article, shall be guilty of a

misdemeanor, and shall, on conviction, for each and every offense be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment for a term not less than thirty days and not more than one year, or by both fine and imprisonment. Any certificate of qualification obtained from "The pedic society of the state of New York," by means of any false or fraudulent statement or representation, may on conviction of the person so obtaining such certificate, be canceled and declared null and void by "The pedic society of the state of New York." Any county clerk of this state upon receiving notice under the hand of the secretary of said society and the seal of said society of such cancellation shall forthwith mark upon his register of chiropodists opposite the name of the person who is affected thereby, the word "canceled" with the date of such cancellation. But nothing in this article shall be construed to prohibit any duly and legally licensed or authorized physician or surgeon from practicing chiropody or any branch thereof. When any prosecution under this article is made on the complaint of "The pedic society of the state of New York" the fines when collected shall be paid to the said "The pedic society of the state of New York" and any excess of the amount of such fines over the expenses incurred by the said society in enforcing the law of this state relating to the practice of chiropody shall be paid at the end of the year by the said society to the treasurer of the state of New York for the common school fund.

§ 282. **Construction of this article.** For the purpose of this article "chiropody" is understood to be the surgical treatment of abnormal nails, all superficial excrescences occurring on the hands and feet, such as corns, warts or callosities, and the treatment of bunions; but it shall not confer the right to operate upon the hands or feet for congenital or acquired deformities, or for conditions requiring the use of anesthetics other than local, or incisions involving structures below the level of the true skin.

## ARTICLE 14

### Embalming and Undertaking

- Section 290. Board of embalming examiners.  
 291. Corporate name; powers and duties of board.  
 292. Examination questions and appointments for examinations.  
 293. Application for license and examination.  
 294. Duty of state board of health concerning reports of examination.  
 295. License to practice undertaking.

**Section 296.** License not assignable; exception.

297. Application of income derived from licenses.

298. Prohibiting practice of embalming or undertaking without a license.

**§ 290. Board of embalming examiners.** The board of embalming examiners of the state of New York is continued. The members of said board now in office shall continue in office until the expiration of their respective terms. The board shall consist of five members, appointed by the governor, each of whom shall serve for a term of three years. Any vacancies occurring in said board shall be filled by the governor for the unexpired term. The governor may remove from office any member of said board of examiners for continued neglect of any of the duties imposed upon him by this article or for incompetency or improper conduct. No person shall be eligible to appointment as a member of said board unless he shall have had an experience of at least five years as a practical embalmer.

**§ 291. Corporate name; powers and duties of board.** Said board shall be known by the name "Board of embalming examiners of the state of New York." Every person appointed to serve on said board shall receive a certificate of his appointment from the governor of the state of New York, and within ten days after receiving such certificate, shall take, subscribe and file, in the office of the secretary of state, the oath prescribed by the twelfth article of the constitution of the state of New York. The board may adopt a common seal and shall elect from its membership a president and secretary. Said board shall ascertain what constitute the best tests for determining whether life is extinct, and shall prescribe the using of such tests, before embalming, as they may deem necessary; and all persons thereafter embalming the dead shall apply such tests prescribed before injecting any fluid into any body. Said board by its presiding officer may issue subpoenas and administer oaths to witnesses, and a quorum of said board, which shall consist of not less than three members, and any committees thereof, is hereby authorized to take testimony concerning matters within its jurisdiction. Said board shall, from time to time, make and adopt rules, regulations and by-laws not inconsistent with law, whereby the performance of the duties of said board and the transaction of the business and the practice of embalming shall be regulated and performed, subject to the approval of the state department of health. A certified copy of any of said rules and regulations, attested as true and correct by the secretary of said board of embalmers, shall be presumptive evidence of the regular

making, adoption and approval thereof. The said board may investigate all alleged violations of the statutes relating to embalming and undertaking, and of all rules and regulations adopted as provided in this section. It may revoke any license upon proof that the same was procured by fraud or that the holder thereof has been guilty of a violation of any of such statutes or rules and regulations.

**§ 292. Examination questions and appointments for examinations.** For the purpose of providing for and securing uniform examination throughout the state, and requiring a proper standard of qualification for all candidates, the said board of embalming examiners shall, from time to time, submit to the state department of health, lists of examination questions for the thorough examination of applicants for license as embalmers, in accordance with the rules and regulations made, adopted and approved as hereinbefore prescribed. Said examination questions shall pertain to embalming, sanitation and disinfection. For the purpose of examining applicants for license as embalmers the said state department of health shall appoint the times and places for holding examinations, which examinations shall be held at least once in each three months. Such appointment shall be made with due regard to the convenience of applicants and the public service. Said state department of health shall also prescribe the mode and manner of such examinations and appoint the examiner to conduct the same, and such examinations shall be had and taken upon questions selected by said state department of health from the lists hereinbefore required to be submitted by said board of embalming examiners, and upon such other questions as they shall deem proper.

**§ 293. Application for license and examination.** Every person desiring to engage in the business or practice of embalming, within the state of New York, and not already engaged therein, shall make a written application to the said board of embalming examiners for an embalmer's license, accompanying the same with the application fee of five dollars, and with a certificate of some reputable person, that said applicant is more than twenty-one years of age, is of good moral character, and has obtained a common school education, whereupon the secretary of said board of embalming examiners shall issue to said applicant a permit to enter any examination held pursuant to the provisions of this article. At the close of every such examination, the questions submitted and the answers made thereto by the applicant, shall be forthwith delivered, by the examiner conducting such examination, to the board of em-

balming examiners, who shall, without unnecessary delay, transmit to the state board of health an official report thereon, signed by its president and secretary, stating in detail the result of the examination of each candidate. Such report shall embrace all the examination papers, questions and answers thereto, and shall be kept for reference and inspection among the public records of the state board of health.

**§ 294. Duty of state board of health concerning reports of examination.** On receiving such official reports of the examination of applicants for license, the state board of health shall examine and verify the same, and thereupon recommend for license by the board of embalming examiners, those applicants who shall, in their judgment, be duly qualified to practice embalming of human dead bodies in the state of New York, upon said applicant paying to the secretary of the board of embalming examiners an examining and licensing fee of ten dollars. Said license, when issued, shall be recorded by the board of embalming examiners, and such record shall be open to public inspection, and a copy thereof, duly certified as correct by the secretary of the board of embalming examiners, shall be entitled to be admitted in evidence in any of the courts of this state, and shall be presumptive evidence as to the facts therein contained. And any person licensed pursuant to laws of eighteen hundred and ninety-eight, chapter five hundred and fifty-five, or under this article, shall register that fact at the office of the board of health of the city, town or place in which it is proposed to carry on said business, and shall display said license in a conspicuous place in the office or place of business of such licensee.

**§ 295. License to practice undertaking.** From and after May nineteenth, nineteen hundred and five, a person not already engaged in the business of undertaking shall not engage in such business unless he shall have been duly licensed as an embalmer and shall have been employed as an assistant to a licensed undertaker continuously for a period of at least three years. Such person shall make an application to the state board of embalming examiners for a license to engage in the business of undertaking. Such application shall contain the name, residence and place of business of the applicant, and shall state the date of his license as an embalmer and the times and places where he has been employed as an assistant to a licensed undertaker. Such application shall be registered by the state board of embalming examiners in a book to be provided for that purpose, upon payment of a registration fee of two dollars, whereupon the said board shall issue to said applicant a license to engage in the practice of undertaking

If a firm or corporation shall desire to engage in the business or practice of undertaking, each member of the firm or the manager of each place of business conducted by the corporation shall be a licensed undertaker. All applications for licenses under this section shall be verified by the applicant before an officer authorized by law to take acknowledgment of deeds. A person licensed as an undertaker shall cause his license to be registered at the office of the board of health of the city, town or village in which he proposes to engage in business as an undertaker, and he shall display said license in a conspicuous place in his office or place of business. No person shall practice or hold himself or herself out as practicing undertaking unless licensed as provided herein or pursuant to laws of nineteen hundred and four, chapter four hundred and ninety-eight, as amended by laws of nineteen hundred and five, chapter five hundred and seventy-two; nor shall a firm or corporation practice or hold itself out as practicing undertaking unless each member of such firm, or the manager of each place of business conducted by such corporation, is so licensed.

**§ 296. License not assignable; exception.** No license granted or issued under the provisions of laws of eighteen hundred and ninety-eight, chapter five hundred and fifty-five, as amended, or of this article shall be assignable, and every such license shall specify by name the person to whom it shall be issued, and not more than one person shall carry on the business of undertaking or practice embalming under one license. This section shall not apply to any personal representative of any deceased undertaker to whom a license shall have been issued under said chapter or this article, who engages in the business of undertaking and embalming with a person duly authorized to practice the same under the provisions of this article.

**§ 297. Application of income derived from licenses.** From the income derived under this article, the board of embalming examiners may pay, not to exceed said income, all proper expenses incurred by reason of its provisions, including those incurred by the said state board of health.

**§ 298. Prohibiting practice of embalming or undertaking without a license.** No person to whom a license has not been issued as prescribed by laws of eighteen hundred and ninety-eight, chapter five hundred and fifty-five, as amended, or who has not passed the examination herein prescribed and been licensed as herein specified, shall transact or practice or hold himself or herself out as transacting or practicing the business or practice of undertaking or embalming or undertaking and em-



balming of dead human bodies within this state, except that nothing in this article contained shall apply to commissioned medical officers in the army of the United States, or in the United States marine hospital service while so commissioned, or any one actually serving as a member of the resident medical staff of any legally incorporated hospital, or to any person duly licensed to practice as a physician or surgeon in this state.

## ARTICLE 15

### Optometry

Section 300. Definition; application of article.

301. State board of examiners.

302. Powers of board.

303. Examinations; certificates \*for practitioners.

304. Certificate to be recorded and displayed.

305. Fees.

306. Revocation of certificate.

307. Violations of article.

308. Construction of article.

**§ 300. Definition; application of article.** The practice of optometry is defined to be the employment of any means, other than the use of drugs, for the measurement of the powers of vision and the adaptation of lenses for the aid thereof.

**§ 301. State board of examiners.** The board of examiners in optometry is continued. The members of said board now in office shall continue in office until the expiration of their respective terms. Such board of examiners shall consist of five persons, appointed by the state board of regents, and shall possess sufficient knowledge of theoretical and practical optics to practice optometry and shall have been residents of this state actually engaged in the practice of optometry for at least five years. The term of each member of said board shall be three years, or until his successor is appointed, and vacancies shall be filled for the unexpired term only.

**§ 302. Powers of board.** Said board of examiners shall, subject to the approval of the regents, make such rules and regulations, not inconsistent with the law, as may be necessary for the proper performance of its duties; any member of the board may upon being duly designated by the board, or a majority thereof, administer oaths or take testimony concerning any matter within the jurisdiction of the board.

\* So in original. See page 3119.

**§ 303. Examinations; certificates of practitioners.**

Every person desiring to commence or to continue the practice of optometry after January first, nineteen hundred and nine, except as hereinafter provided, upon presentation of satisfactory evidence, verified by oath, that he is more than twenty-one years of age, of good moral character, has a preliminary education equivalent to at least two years in a registered high school, and has also studied at least three years in a registered optometrist's office, or has graduated from a school of optometry, maintaining a standard satisfactory to said board of regents, shall take an examination before said board of examiners to determine his qualifications therefor. Every candidate successfully passing such examination shall be registered by said board of regents as possessing the qualifications required by this article, and shall receive from said board of regents a certificate thereof, but any person who shall submit to said board of examiners satisfactory proof as to his character, competency, and qualifications, and that he has been continuously engaged in the practice of optometry in this state for more than two years next prior to the time that chapter four hundred and sixty of the laws of nineteen hundred and eight took effect, may upon the recommendation of said board of examiners receive from the board of regents a certificate of exemption from such examination, which certificate shall be registered and entitle him to practice optometry under this article. Every person who was, on the twenty-first day of May, nineteen hundred and eight, when section two hundred and nine-d of the public health law, as then known, took effect, entitled to a certificate of exemption as therein provided, but who failed or neglected to make application therefor and present evidence to entitle him thereto, on or before January first, nineteen hundred and nine, as provided by said section, must make such application and present such evidence on or before July first, nineteen hundred and nine, or he shall be deemed to have waived his right to such certificate. Before any certificate is issued it shall be numbered and recorded in a book kept in the regents' office and its number shall be noted upon the certificate. A photograph of the person registered shall be filed with the record and a duplicate thereof affixed to the certificate. In all legal proceedings the record and photograph so kept in the regents' office or certified copies thereof shall be prima facie evidence of the facts therein stated. (*Thus amended by L. 1909. ch. 134, in effect March 31, 1909.*)

**Amendment of 1909** materially changed former section which read as follows:

**§ 303. Examinations; certificates of practitioners.** Every person desiring to commence or to continue the practice of optometry after January first, nineteen hundred and nine, except as hereinafter provided, upon presentation

of satisfactory evidence, verified by oath, that he is more than twenty-one years of age, of good moral character, has a preliminary education equivalent to at least two years in a registered high school, and has also studied at least three years in a registered optometrist's office, or has graduated from a school of optometry, maintaining a standard satisfactory to said board of regents, shall take an examination before said board of examiners to determine his qualifications therefor. Every candidate successfully passing such examination shall be registered by said board of regents as possessing the qualifications required by this article, and shall receive from said board of regents a certificate thereof, but any person who shall submit to said board of examiners satisfactory proof as to his character, competency, and qualifications, and that he has been continuously engaged in the practice of optometry in this state for more than two years next prior to the passage of this article, may upon the recommendation of said board of examiners receive from the board of regents a certificate of exemption from such examination, which certificate shall be registered and entitle him to practice optometry under this article. Every person entitled to a certificate of exemption as herein provided must make application therefor and present the evidence to entitle him thereto, on or before January first, nineteen hundred and nine, or he shall be deemed to have waived his right to such certificate. Before any certificate is issued it shall be numbered and recorded in a book kept in the regents' office and its number shall be noted upon the certificate. A photograph of the person registered shall be filed with the record and a duplicate thereof affixed to the certificate. In all legal proceedings the record and photograph so kept in the regents' office or certified copies thereof shall be prima facie evidence of the facts therein stated.

**§ 304. Certificate to be recorded and displayed.**

Every person to whom a certificate of either registration or exemption shall be issued shall immediately cause the same to be recorded in the clerk's office in the county of his residence, and also in the clerk's office of each other county wherein he shall then practice or thereafter commence the practice of optometry; every person practicing optometry must also display his certificate of registration or exemption in a conspicuous place in the principal office wherein he practices optometry and, whenever required, exhibit such certificate to said board of examiners or its authorized representatives. And whenever practicing said profession of optometry outside of, or away from, said office or place of business, he shall deliver to each customer or person so fitted with glasses, a bill of purchase, which shall contain his signature, home post-office address, and the number of his certificate of registration or exemption, together with a specification of the lenses furnished and the price charged therefor.

**§ 305. Fees.** The fee for such examination shall be fifteen dollars; for a certificate of registration, ten dollars, and for a certificate of exemption, five dollars, to be paid to the board of regents and constitute a fund for expenses made necessary by

this article. Such fees shall be paid into the state treasury and the legislature shall annually appropriate therefrom for the education department an amount sufficient to pay all proper expenses incurred pursuant to this article. The fee to be paid to the county clerk for recording a certificate shall be fifty cents.

**§ 306. Revocation of certificate.** The board of regents shall have power to revoke any certificate of registration or exemption granted by it under this article, the holder of which is guilty of any fraud or deceit in his practice, has been convicted of crime, or is an habitual drunkard, or grossly incompetent to practice optometry. Proceedings for revocation of a certificate or the annulment of registration shall be begun by filing a written charge or charges against the accused. These charges may be preferred by any person or corporation, or the regents may on their own motion direct the executive officer of the board of regents to prefer said charges. Said charges shall be filed with the executive officer of the board of regents, and a copy thereof filed with the secretary of the board of optometry examiners. The board of optometry examiners, when charges are preferred, shall designate three of their number as a committee to hear and determine said charges. A time and place for the hearing of said charges shall be fixed by said committee as soon as convenient, and a copy of the charges, together with a notice of the time and place when they will be heard and determined, shall be served upon the accused or his counsel, at least ten days before the date actually fixed for said hearing. Where personal service or service upon counsel cannot be effected, and such fact is certified on oath by any person duly authorized to make legal service, the regents shall cause to be published for at least seven times for at least twenty days prior to the hearing, in two daily papers in the county in which the optometrist was last known to practice, a notice to the effect that at a definite time and place a hearing will be had for the purpose of hearing charges against the optometrist upon an application to revoke his certificate. At said hearing the accused shall have the right to cross-examine the witnesses against him and to produce witnesses in his defense, and to appear personally or by counsel. The said committee shall make a written report of its findings and recommendations, to be signed by all its members, and the same shall be forthwith transmitted to the executive office of the board of regents. If the said committee shall unanimously find that said charges, or any of

them, are sustained, and shall unanimously recommend that the certificate of the accused be revoked or his registration be annulled, the regents may thereupon, in their discretion, revoke said certificate or annul said registration, or do both. If the regents shall annul such registration, they shall forthwith transmit to the clerk of the county or counties in which said accused is registered as an optometrist, a certificate under their seal certifying that such registration has been annulled, and said clerk shall, upon receipt of said certificate, file the same and forthwith mark said registration "annulled." Any person who shall practice optometry after his registration has been marked "annulled" shall be deemed to have practiced optometry without registration. Where the certificate of any person has been revoked, or his registration has been annulled as herein provided, the regents may, after the expiration of one year, entertain an application for a new certificate, in like manner as original applications for certificates are entertained; and upon such new application they may in their discretion exempt the applicant from the necessity of undergoing any examination.

**§ 307. Violations of article.** No person not a holder of a certificate of registration or exemption duly issued to him and recorded as above provided shall after January first, nineteen hundred and nine, practice optometry within this state. No person shall falsely personate a registered optometrist of a like or different name, nor buy, sell, or fraudulently obtain a certificate of registration or exemption issued to another. Practicing or offering to practice optometry, or the public representation of being qualified to practice the same by any person not authorized to practice optometry, shall be sufficient evidence of a violation of this article. Any violations of the provisions of this article shall be a misdemeanor and courts of special sessions shall have jurisdiction of all such violations.

**§ 308. Construction of article.** Nothing in this article shall be construed to apply to duly licensed physicians authorized to practice medicine under the laws of the state of New York nor to persons who neither practice nor profess to practice optometry, who sell spectacles, eyeglasses or lenses either on prescription from such physicians or from such duly qualified optometrists, or as merchandise from permanently located and established places of business.

**ARTICLE 16****Preservation of Life and Health; Cadavers for Medical and Surgical Study**

- Section 310. Vaccination of school children.
311. Appointment of physician.
312. Regulating the sanitary condition of bathing establishments and the preservation of life at bathing places.
313. Examination and quarantine of children admitted to institutions for orphan, destitute or vagrant children or juvenile delinquents.
314. Monthly examination of inmates and reports.
315. Beds; ventilation.
316. Cadavers.
317. Cadavers in certain counties.
318. Prescription of opium, morphine, cocaine and chloral.
319. Consents requisite to the establishment of hospitals or camps for the treatment of pulmonary tuberculosis.
320. Reports of tuberculosis by physicians and others.
321. Examination of sputum.
322. Protection of records.
323. Disinfection of premises.
324. Health officer to direct disinfection, cleansing or renovation.
325. Prohibiting occupancy until order of health officer is complied with.
326. Prohibiting carelessness of a person having tuberculosis.
327. Protection of patient's family.
328. Providing that physicians shall make a complete statement of procedure and precautions on a blank to be furnished by the health officer.
329. Penalty for failure of physician to perform duties or for making false reports.
330. Reporting recovery of patient.
331. General penalty.
332. Application of provisions.
333. Like privileges in hospitals to be granted to matriculated students of medical colleges.
334. Iron stairways on outside of hospital buildings.

**§ 310. Vaccination of school children.** No child or person not vaccinated shall be admitted or received into any of the public schools of the state, and the trustees or other officers having the charge, management or control of such schools shall cause this provision of law to be enforced. They may adopt a resolution excluding such children and persons not vaccinated from such school until vaccinated, and when any such resolution has been adopted, they shall give at least ten days' notice thereof, by posting copies of the same in at least two public and conspicuous places within the limits of the school government, and shall announce therein that due provision has been made, specifying it, for the vaccination of any child or person of suitable age desiring to attend the school, and whose parents or guardians are unable to procure vaccination for them, or who are, by reason of poverty, exempted from taxation in such district.

**§ 311. Appointment of physician.** Such trustees or board may appoint a competent physician and fix his compensation, who shall ascertain the number of children or persons in a school district, or in a subdivision of a city school government, of suitable age to attend the common schools, who have not been vaccinated and furnish such trustees or board a list of their names. Every such physician shall provide himself with good and reliable vaccine virus with which to vaccinate such children or persons as such trustees or board shall direct, and give certificates of vaccination when required, which shall be evidence that the child or person to whom given has been vaccinated. The expenses incurred in carrying into effect the provisions of this and the preceding section, shall be deemed a part of the expense of maintaining such school, and shall be levied and collected in the same manner as other school expenses. The trustees of the several school districts of the state shall include in their annual report the number of vaccinated and unvaccinated children of school age in their respective districts.

**§ 312. Regulating the sanitary condition of bathing establishments and the preservation of life at bathing places.** It shall be unlawful for any person to maintain, either as owner or lessee, any bathing establishment of any kind, in this state, for the accommodation of persons, for pay, or any consideration, at a point less than five hundred feet from any sewer connection emptying therein, or thereat, so as to pollute in any way, the waters used by those using or hiring bathing houses at such bathing establishments; it shall be the duty of such owner or lessee to provide separate toilet rooms, with water-closets properly provided with sanitary plumbing, constructed in

a manner approved by the local board of health and in such a way as not to contaminate the waters used by the bathers; it shall also be the duty of such owner or lessee to thoroughly wash and disinfect, or cause to be thoroughly washed and disinfected, in a manner approved by the local board of health, all bathing suits that have been hired or used, before re-hiring or permitting the use of the same again; it shall be the duty of every person maintaining, as owner or lessee, any bathing establishment of any kind along the seashore of this state for the accommodation of persons for pay, to provide, for the safety of such bathers, two lines of sound, serviceable and strong manilla or hemp rope, not less than one inch in diameter, anchored at some point above high water, at the same distance apart as the lines of bathing houses, or space fronting on such beach occupied by him or them, is in width; and from the two points at which such life-lines are so anchored, such lines shall be made to extend as far into the surf as bathing is ordinarily safe and free from danger of drowning to persons not expert in swimming, and at such points of safety, such lines shall be anchored and buoyed. From the two points of such lines so extended, anchored and buoyed, a third rope shall be extended, of a similar size, connecting the two extremities, and buoyed at such points as to be principally above the surface of the water, thereby inclosing a space within such lines and the beach within which bathing is believed to be safe; and in addition thereto, there shall be sufficient ropes of a similar size as herein described, anchored from a point at high-water mark and buoyed or anchored on a parallel line or within the outer cross rope, so as to have not more than a space of seventy-five feet from one rope to another; every such person or persons maintaining such bathing establishments, shall cause to be painted and put up in some prominent place upon the beach near such bathing houses the following words: "Bathing beyond the lines dangerous." Such lines so placed, anchored and buoyed, and such notice so put up, shall continue and so be maintained by every such person or persons, during the entire season of surf bathing. Every such person or persons maintaining any such bathing establishment shall also keep and provide in connection therewith, for the facilitating of the rescue of persons in danger of drowning, a surf-boat, not less than sixteen feet long, on each side of which there shall be hanging ropes arranged so that persons in the water can easily catch hold of same, or be supported thereby, and such boats shall be equipped with two or more sets of oars and life-lines and life-belts, and at least one ring buoy or life preserver, with quarter-inch cotton line, not less than five hundred feet in length, with suitable reel attached thereto, and in addition thereto, there shall be anchored on the shore, a suitable reel with a half-inch cotton line not less than



five hundred feet in length, with a life-belt attached thereto, kept in good order and proper condition, so that it can readily be used by those assisting in saving life. At all such bathing establishments where there are equipments for two hundred bathers or more, said surf or life-boat shall be stationed in the water, opposite the lines, manned and in readiness for use, during bathing hours; there shall also be at every public bathing establishment a bathing master or life-guard, who shall be an expert swimmer, and who shall be in constant and watchful attendance during bathing hours. Any person or persons violating any of the provisions of this section shall forfeit and pay a penalty of not less than fifty dollars, nor more than two hundred dollars to be recovered by the sheriff of the county in which such violation is committed, except in the city of New York, when the penalty shall be sued for in the name of the department of health of the city of New York and collected by it. It shall be the duty of the sheriffs and constables of the several counties of this state abutting upon the seashore, to see that in their respective counties the provisions of this section are enforced, and to bring suit for the recovery of the penalty therein provided, unless some other person had already brought suit for the same. A separate penalty may be recovered for each day that any person subject to the provisions of this section may violate any of the provisions of the same; but no penalty shall be recovered for any other violation thereof than shall have occurred during the days when the owner or lessee, or other person or persons, maintaining the said bathing establishments, shall have kept the same open for the use of the public, or for such persons as may be the guests of any hotel that such bathing establishments may be connected with. The owner of a bathing house shall not be subject to the provisions of this section when it is used, occupied or maintained by a lessee for hire, but such lessee shall be deemed the keeper or proprietor or person or persons maintaining such bathing establishment thereof. Nothing in this section shall be construed in any way to affect any bathing establishments, in any city or municipality, at which there is maintained at public expense a life-saving guard.

**§ 313. Examination and quarantine of children admitted to institutions for orphan, destitute or vagrant children or juvenile delinquents.** Every institution in this state, incorporated for the express purpose of receiving or caring for orphan, vagrant or destitute children or juvenile delinquents, except hospitals, shall have attached thereto a regular physician of its selection duly licensed under the laws of the state and in good professional standing, whose name and address shall be kept posted conspicuously within such institution

near its main entrance. The words "juvenile delinquents" here used shall include all children whose commitment to an institution is authorized by the penal law. The officer of every such institution upon receiving a child therein, by commitment or otherwise, shall, before admitting it to contact with the other inmates, cause it to be examined by such physician, and a written certificate to be given by him, stating whether the child has diphtheria, scarlet fever, measles, whooping cough or any other contagious or infectious disease, especially of the eyes and skin, which might be communicated to other inmates and specifying the physical and mental condition of the child, the presence of any indication of hereditary or other constitutional disease, and any deformity or abnormal condition found upon the examination to exist. No child shall be so admitted until such certificate shall have been furnished, which shall be filed with the commitment or other papers on record in the case, by the officers of the institution, who shall, on receiving such child, place it in strict quarantine thereafter from the other inmates, until discharged from such quarantine by such physician, who shall thereupon indorse upon the certificate the length of quarantine and the date of discharge therefrom.

**§ 314. Monthly examination of inmates and reports.** Such physician shall at least once a month thoroughly examine and inspect the entire institution, and report in writing, in such form as may be approved by the state board of health, to the board of managers or directors of the institution, and to the local board of the district or place where the institution is situated, its condition, especially as to its plumbing, sinks, water-closets, urinals, privies, dormitories, the physical condition of the children, the existence of any contagious or infectious disease, particularly of the eyes or skin, their food, clothing and cleanliness, and whether the officers of the institution have provided proper and sufficient nurses, orderlies, and other attendants of proper capacity to attend to such children, to secure to them due and proper care and attention as to their personal cleanliness and health, with such recommendations for the improvement thereof as he may deem proper. Such boards of health shall immediately investigate any complaint against the management of the institution or of the existence of anything therein dangerous to life or health, and, if proven to be well founded, shall cause the evil to be remedied without delay.

**§ 315. Beds; ventilation.** The beds in every dormitory in such institution shall be separated by a passageway of not less than two feet in width, and so arranged that under

each the air shall freely circulate and there shall be adequate ventilation of each bed, and such dormitory shall be furnished with such means of ventilation as the local board of health shall prescribe. In every dormitory six hundred cubic feet of air space shall be provided and allowed for each bed or occupant, and no more beds or occupants shall be permitted than are thus provided for, unless free and adequate means of ventilation exist approved by the local board of health, and a special permit in writing therefor be granted by such board, specifying the number of beds or cubic air space which shall, under special circumstances, be allowed, which permit shall be kept conspicuously posted in such dormitory. The physician of the institution shall immediately notify in writing the local board of health and the board of managers or directors of the institution of any violation of any provision of this section.

**§ 316. Cadavers.** The persons having lawful control and management of any hospital, prison, asylum, morgue or other receptacle for corpses not interred, and every undertaker or other person having in his lawful possession any such corpse for keeping or burial may deliver and he is required to deliver, under the conditions specified in this section, every such corpse in their or his possession, charge, custody or control, not placed therein by relatives or friends in the usual manner for keeping or burial, to the medical colleges of the state authorized by law to confer the degree of doctor of medicine and to any university of the state having a medical preparatory course of instruction, and the professors and teachers in every such college or university may receive any such corpse and use it for the purpose of medical study. No corpse shall be so delivered or received if desired for interment by relatives or friends within forty-eight hours after death, or if known to have relatives or friends without the assent of such relatives or friends; or of a person who shall have expressed a desire in his last illness that his body be interred, but the same shall be buried in the usual manner. If the remains of any person so delivered or received shall be subsequently claimed by any relative or friend, they shall be given up to such relative or friend for interment. Any person claiming any corpse or remains for interment as provided in this section, may be required by the persons, college, university or officer or agent thereof, in whose possession, charge or custody the same may be, to present an affidavit stating that he is such relative or friend, and the facts and circumstances upon which the claim that he is such relative or friend is based, the expense of which affidavit shall be paid by the persons requiring it. If such person shall refuse to make such affidavit, such corpse or remains shall not be delivered to him but he shall for-

feit his claim and right to the same. Any such medical college or university desiring to avail itself of the provisions of this section shall notify such persons having the control and management of the institutions and places heretofore specified, and such undertakers and other persons having any such corpse in their possession, custody or control in the county where such college or university is situated, and in any adjoining county in which no medical college is situated, of such desire, and thereafter all such persons shall notify the proper officers of such college or university whenever there is any corpse in their possession, custody or control, which may be delivered to a medical college or university under this section, and shall deliver the same to such college or university. If two or more medical colleges located in one county are entitled to receive corpses from the same county or adjoining counties, they shall receive the same in proportion to the number of matriculated students in each college. The professors and teachers in every college or university receiving any corpse under this section shall dispose of the remains thereof, after they have served the purposes of medical science and study, in accordance with the regulations of the local board of health where the college or university is situated. Every person neglecting to comply with or violating any provision of this section, shall forfeit to the local board of health where such non-compliance or violation occurred, the sum of twenty-five dollars for every such non-compliance or violation, to be sued for by the health officer of such place, and when recovered to be paid over, less the costs and expenses of the action, to such board for its use and benefit.

**§ 317. Cadavers in certain counties.** The governors, keepers, wardens, managers, or persons having lawful control and management of any hospital, prison, almshouse, asylum, morgue or other receptacle for corpses not interred, in the counties of Onondaga, Oswego, Madison and Cortland, and the warden of the Auburn state prison, in the county of Cayuga, and every undertaker or other person in the counties of Onondaga, Oswego, Madison and Cortland, having in his lawful possession any such corpses for keeping or burial, may deliver, and they are hereby required to deliver, under the conditions specified in this section, every such corpse in their or his possession, charge, custody or control, not placed therein by relatives or friends in the usual manner for keeping or burial, to the medical colleges or schools in said counties of Onondaga, Oswego, Madison and Cortland, authorized by law to confer either the degree of doctor of medicine, or the degree of doctor of dental surgery and to all other colleges or schools incorporated under the laws of the state in said counties for the

purpose of teaching medicine, anatomy or surgery, and to any university in either of said counties having a medical preparatory course of instruction, and the professors and teachers in every such college, school or university may receive such corpses and use the same for the purposes of medical, anatomical or surgical science and study. No such corpse shall be so delivered if within forty-eight hours after death, it is desired for interment by relatives, or by friends, who will bear the expenses of its interment; nor shall a corpse be so delivered or received of any person known to have relatives, whose places of residence are also known, without the assent of such relatives; and such relatives shall be deemed to have assented thereto, unless they shall claim such corpse for the interment within twenty-four hours after being notified of the death of such person. If the remains of any person so delivered or received shall be subsequently claimed for interment by any relative or by any friend who will bear the expense of such interment, they shall be given up to such relative or friend for interment. Any person claiming any corpse or remains for interment, as provided in this section, may be required by the persons, college, school, university or officer or agent thereof, in whose possession, charge or custody the same may be, to present an affidavit stating that he is such relative or friend, and the facts and circumstances upon which the claim that he is such relative or friend is based, and, if a friend, that he will bear the expense of such interment, the expense of which affidavit shall be paid by the person requiring it. If such person shall refuse to make such affidavit, such corpse or remains shall not be delivered to him, but he shall forfeit his claim and right to the same. Any such college, school or university in either of said counties desiring to avail itself of the provisions of this section shall notify said governors, keepers, wardens, managers, undertakers and other persons hereinbefore specified in the county where said college, school or university is situated, or in any of said adjoining counties, in which no such college, school or university is situated, of such desire, and thereafter it shall be obligatory upon such governors, keepers, wardens, managers, undertakers and other persons hereinbefore specified, to immediately notify the proper officer or officers of said college, school or university, whenever there is any corpse in their possession, charge, custody or control, which may be delivered to a medical college, school or university under this section, and to deliver the same to such college, school or university. It shall be the duty of such governors, keepers, wardens, managers and persons having lawful control and management of the institutions hereinbefore mentioned, after being duly notified by any college, school or university of its desire to avail itself of the provisions of this section, to keep, if requested so to do by

such college, school or university, and if provided by such medical college, school or university with a suitable book for that purpose, a true and correct record of any and all corpses thereafter coming into their possession, charge, custody or control, and of the disposition made of the same, giving the name of such corpses, if known; the dates of death and burial, if known; the names and places of residence, if known, of the relatives of such corpses; the names of the persons by whom such corpses are claimed for interment and the names of the colleges, schools, universities or persons, to whom the same are delivered, and the dates of such deliveries; which said books shall be open to the inspection of the officers and agents of such college, school or university furnishing the same and to the officers and agents of any other medical college, school or university entitled to receive corpses from the same county. If two or more colleges, schools or universities located in any one of said counties are entitled to receive corpses from the same or from said adjoining counties, they shall receive the same in proportion to the number of matriculated students in each college. The professors and teachers in every college, school or university receiving any corpse under this section, shall dispose of the remains thereof, after they have served the purposes of medical, anatomical or surgical science and study, in accordance with the regulations of the local board of health where the college, school or university is situated. Any person neglecting to comply with or violating any provision of this section, shall forfeit and pay a penalty of twenty-five dollars for each and every such non-compliance or violation thereof, and it shall be the duty of the health officer, or person performing his duties, in the places where said medical colleges, schools or universities are situated, whenever he shall have knowledge or information of any non-compliance with, or violation of, any provision, or provisions, of this section, to sue for and recover, in his name of office, the aforesaid penalty, and to pay over the amount so recovered, less the cost and expenses of the action, to the health board of said locality, for its use and benefit.

**§ 318. Prescription of opium, morphine, cocaine and chloral.** No pharmacist, druggist, apothecary or other person shall refill more than once, prescriptions containing opium or morphine or preparations of either of them or cocaine or chloral, in which the dose of opium shall exceed one-quarter of a grain, or of morphine one-twentieth of a grain or of cocaine one-half of a grain or of chloral ten grains, except upon the written order of a physician.

**§ 319. Consents requisite to the establishment of hospitals or camps for the treatment of pulmonary tuberculosis.** A hospital, camp or other establishment for the treatment of patients suffering from the disease known as pulmonary tuberculosis, shall not be established in any town by any person, association, corporation or municipality except when authorized as provided by this section. The person, association, corporation or municipality proposing to establish such a hospital, camp or other establishment shall file with the state commissioner of health a petition describing the character thereof, stating the county and town in which it is to be located and describing the site in such town for such proposed hospital, camp or other establishment, and requesting the commissioner to fix a date and place for a hearing on such petition before the state commissioner of health and the local health officer, who shall constitute a board to approve or disapprove the establishment of such hospital, camp or other establishment in accordance with such petition. The state commissioner of health shall fix a date and place for a hearing on such petition, which date shall be not less than thirty nor more than forty days after the receipt thereof. A notice of such hearing specifying the date and place thereof and briefly describing the proposed site for such hospital, camp or other establishment shall be mailed to the person, association, corporation or municipality proposing to establish the same and to the health officer and each member of the board of health of the town in which it is proposed to establish such hospital, camp or other establishment at least twenty days before the hearing, and also \*publish twice in a local newspaper of the town, or if there is no such paper published therein, then in the newspapers of the county designated in pursuance of law to publish the session laws. At the time and place fixed for such hearing the state commissioner of health and the local health officer shall hear the petitioner and any person who desires to be heard in reference to the location of such hospital, camp or other establishment, and they shall within thirty days after the hearing, if they are able to agree, approve or disapprove of the location thereof and shall notify the person, association, corporation or municipality of their determination. The determination of the state commissioner of health and local health officer shall be final and conclusive; but if within thirty days after the hearing they are unable to agree, they shall within such thirty days notify the person, association, corporation or municipality proposing to establish such hospital, camp or other establishment that they are unable to agree. Within ten days after the receipt of

\* So in original.

such notice, such person, association, corporation or municipality may file in the office of the state commissioner of health a request that the petition be referred to a board consisting of the lieutenant-governor, the speaker of the assembly and the state commissioner of health. Such officers shall approve or disapprove of the proposed location of such hospital, camp or other establishment after a hearing of which notice shall be mailed to the person, association, corporation or municipality proposing to establish the same and to the health officer and to each member of the board of health of the town, or without a hearing, upon the evidence, papers and documents filed with the state commissioner of health or that may be submitted to them, as the board shall determine. They shall make their determination within thirty days after the request for such submission has been filed in the office of the state commissioner of health and cause a copy thereof to be mailed to the person, association, corporation or municipality proposing to establish such hospital, camp or other establishment and to the health officer of the town in which it is proposed to establish the same. Such determination shall be final and conclusive. (*Thus amended by L. 1909, ch. 171, in effect April 10, 1909.*)

Amendment of 1909 materially changed former section, which read as follows:

§ 319. Consents requisite to the establishment of hospitals or camps for the treatment of pulmonary tuberculosis. A hospital, camp or other establishment for the treatment of patients suffering from the disease known as pulmonary tuberculosis, shall not be established in any town by any person, association, corporation or municipality, unless the board of supervisors of the county, and the town board of the town, shall each adopt a resolution authorizing the establishment thereof, and describing the limits of the locality in which the same may be established.

**§ 320. Reports of tuberculosis by physicians and others.** Tuberculosis is hereby declared to be an infectious and communicable disease, dangerous to the public health. It shall be the duty of every physician in the state of New York, to report in writing, on a form to be furnished as hereinafter provided, the name, age, sex, color, occupation, place where last employed, if known, and address, of every person known by said physician to have tuberculosis, to the health officer of the city, town or village in which said person resides, within twenty-four hours after such fact comes to the knowledge of said physician. It shall also be the duty of the chief officer having charge for the time being of any hospital, dispensary, asylum or other similar private or public institution in said state of New York to report in like manner the name, age, sex, color, occupation, place where last employed if known, and previous address of every patient having tuberculosis who comes into his care or under his observation, within twenty-four hours thereafter.



**§ 321. Examination of sputum.** It shall be the duty of every health officer of a city, town or village, when so requested by any physician, or by authorities of any hospital or dispensary, to make or cause to be made a microscopical examination of the sputum forwarded to him as that of a person having symptoms of tuberculosis, which shall be forwarded to such officer accompanied by a blank giving name, age, sex, color, occupation, place where last employed if known, and address of the person whose sputum it is. It shall be the duty of said health officer promptly to make a report of the results of such examination, free of charge, to the physician or person upon whose application the same is made.

**§ 322. Protection of records.** It shall be the duty of every health officer of a city, town or village to cause all reports made in accordance with the provisions of section three hundred and twenty, and also all results of examinations, showing the presence of the bacilli of tuberculosis, made in accordance with the provisions of section three hundred and twenty-one, to be recorded in a register, of which he shall be the custodian. Such register shall not be open to inspection by any person other than the health authorities of the state and of the said city, town or village, and said health authorities shall not permit any such report or record to be divulged so as to disclose the identity of the person to whom it relates, except as may be necessary to carry into effect the provisions of this article.

**§ 323. Disinfection of premises.** In case of the vacation of any apartment or premises by the death or removal therefrom of a person having tuberculosis, it shall be the duty of the attending physician, or if there be no such physician, or if such physician be absent, of the owner, lessee, occupant, or other person having charge of the said apartments or premises, to notify the health officer of said city, town or village, of said death or removal within twenty-four hours thereafter, and such apartments or premises so vacated shall not again be occupied until duly disinfected, cleansed or renovated as hereinafter provided.

**§ 324. Health officer to direct disinfection, cleansing or renovation.** When notified of the vacation of any apartments or premises as provided in section three hundred and twenty-three hereof, the local health officer or one of his assistants or deputies, shall within twenty-four hours thereafter visit said apartments or premises and shall order and direct that, except for purposes of cleansing or disinfection, no infected article shall be removed therefrom until

properly and suitably cleansed or disinfected, and said health officer shall determine the manner in which such apartments or premises shall be disinfected, cleansed or renovated in order that they may be rendered safe and suitable for occupancy. If the health authorities determine that disinfection is sufficient to render them safe and suitable for occupancy, such apartments or premises together with all infected articles therein, shall immediately be disinfected by the health authorities at public expense, or, if the owner prefers, by the owner at his expense, to the satisfaction of the health authorities. Should the health authorities determine that such apartments or premises are in need of thorough cleansing and renovation, a notice in writing to this effect shall be served upon the owner or agent of said apartments or premises, and said owner or agent shall thereupon proceed to the cleansing or renovating of such apartments or premises in accordance with the instruction of the health authorities, and such cleansing and renovation shall be done at the expense of the said owner or agent. (*Thus amended by L. 1909, ch. 240, § 66, in effect April 22, 1909.*)

**Amendment of 1909** corrected reference by substituting the words "three hundred and twenty-three" for "four" following the word "section" near the beginning of the first sentence.

**§ 325. Prohibiting occupancy until order of health officer is complied with.** In case the orders or directions of the local health officer requiring the disinfection, cleansing or renovation of any apartments or premises or any articles therein as hereinbefore provided, shall not be complied with within forty-eight hours after such orders or directions shall be given, the health officer may cause a placard in words and form substantially as follows to be placed upon the door of the infected apartments or premises:

"Tuberculosis is a communicable disease. These apartments have been occupied by a consumptive and may be infected. They must not be occupied until the order of the health officer directing their disinfection or renovation has been complied with. This notice must not be removed under the penalty of the law except by the health officer or other duly authorized official."

**§ 326. Prohibiting carelessness of a person having tuberculosis.** Any person having tuberculosis who shall dispose of his sputum, saliva or other bodily secretion or excretion so as to cause offense or danger to any person or persons occupying the same room or apartment, house or part of a house, shall on complaint of any person or persons subjected to such offense

or danger, be deemed guilty of a nuisance and any persons subjected to such a nuisance may make complaint in person or writing to the health officer of any city, town, or village where the nuisance complained of is committed. And it shall be the duty of the local health officer receiving such complaint to investigate and if it appears that the nuisance complained of is such as to cause offense or danger to any person occupying the same room, apartment, house or part of a house, he shall serve a notice upon the person so complained of, reciting the alleged cause of offense or danger and requiring him to dispose of his sputum, saliva or other bodily secretion or excretion in such a manner as to remove all reasonable cause of offense or danger. Any person failing or refusing to comply with orders or regulations of the local health officer of any city, town or village, requiring him to cease to commit such nuisance, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not more than ten dollars.

**§ 327. Protection of patient's family.** It shall be the duty of a physician attending a patient having tuberculosis to take all proper precautions and to give proper instructions to provide for the safety of all individuals occupying the same house or apartment, and if no physician be attending such patient this duty shall devolve upon the local health officer, and all duties imposed upon physicians by any sections of this article shall be performed by the local health officer in all cases of tuberculosis not attended by a physician, or when the physician fails to perform the duties herein specified, and shall so report.

**§ 328. Providing that physicians shall make a complete statement of procedure and precautions on a blank to be furnished by the health officer.** It shall be the duty of the local health officer to transmit to a physician reporting a case of tuberculosis as provided in section three hundred and twenty, a printed statement and report, in a form approved by the state commissioner of health, naming such procedure and precautions as in the opinion of the said commissioner are necessary or desirable to be taken on the premises of a tuberculosis patient. It shall be the duty of the local health authorities to print and keep on hand an ample supply of such statements and reports and to furnish the same in sufficient numbers to all local physicians. Upon receipt of such statement and report the physician shall either carry into effect all such procedures and precautions as are therein prescribed, and shall thereupon sign and date the same and return it to the local health officer without delay, or, if such at-

tending physician be unwilling or unable to carry into effect the procedures and precautions specified, he shall so state upon this report and immediately return the same to the local health officer and the duties therein prescribed shall thereupon devolve upon said local health officer who shall receive the fee hereinafter provided as payment of the services of the physician if he comply with the duties herein prescribed. Upon receipt of this statement and report the local health officer shall carefully examine the same, and if satisfied that the attending physician has taken all necessary and desirable precautions to insure the safety of all persons living in the apartments or premises occupied by the person having tuberculosis, the said local health officer shall issue an order upon the treasurer of the city, town or village in favor of the attending physician, except where such physician is employed by and receives a salary from the state of New York, for the sum of one dollar, thereupon to be paid out of a fund which shall be provided by said city, town, or village. If the precaution taken or instructions given by the attending physician are, in the opinion of the local health officer, not such as will remove all reasonable danger or probability of danger to the persons occupying the said house or apartments or premises, the local health officer shall return to the attending physician the report with a letter specifying the additional precautions or instructions which the health officer shall require him to take or give; and the said attending physician shall immediately take the additional precautions and give the additional instructions specified and shall record and return the same on the original report to the local health officer. It shall further be the duty of the local health officer to transmit to the physician reporting any case of tuberculosis a printed requisition, in a form approved by the state commissioner of health, and printed by the local health authorities and issued in sufficient number to supply local physicians. Upon this requisition blank, shall be named the materials kept on hand by the local health officer for the prevention of the spread of tuberculosis and it shall be the duty of the local health officer to supply such materials as may be specified in such requisition. Any physician may return a duly signed requisition to the local health officer for such of the specified materials and in such amount as he may deem necessary to aid him in preventing the spread of the disease, and all local health officers shall honor, as far as possible, a requisition signed by the attending physician in such case. It shall be the duty of every local health officer to transmit to every physician reporting any case of tuberculosis, or to the person reported as

suffering from this disease, provided the latter has no attending physician, a circular of information approved by the state commissioner of health and which shall be provided in sufficient quantity by the local health authorities. This circular of information shall inform the consumptive of the best methods of treatment of his disease and of the precautions necessary to avoid transmitting the disease to others. (*Thus amended by L. 1909, ch. 426, in effect May 21, 1909.*)

Amendment of 1909 inserted the words "except where such physician is employed by and receives a salary from the state of New York" following the words "attending physician" near the end of the fourth sentence.

**§ 329. Penalty for failure of physician to perform duties or for making false reports.** Any physician or person practicing as a physician who shall knowingly report as affected with tuberculosis any person who is not so affected, or who shall wilfully make any false statement concerning the name, age, sex, color, occupation, place where last employed if known, or address of any person reported as affected with tuberculosis, or who shall certify falsely as to any of the precautions taken to prevent the spread of infection, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not more than one hundred dollars.

**§ 330. Reporting recovery of patient.** Upon the recovery of any person having tuberculosis, it shall be the duty of the attending physician to make a report of this fact to the local health officer, who shall record the same in the records of his office, and shall relieve said person from further liability to any requirements imposed by this article.

**§ 331. General penalty.** Any person violating any of the provisions of sections three hundred and twenty to three hundred and thirty, both inclusive, of this article, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished, except as in this article otherwise provided, by a fine of not less than five dollars nor more than fifty dollars.

**§ 332. Application of provisions.** No portion of sections three hundred and twenty to three hundred and thirty-one, both inclusive, shall apply to the city of New York, nor shall the passage of said sections modify or repeal any of the provisions of the charter of the city of New York, or any rule or regulation

issued by the department of health of said New York city. (*Thus amended by L. 1909, ch. 240, § 67, in effect April 22, 1909.*)

Amendment of 1909 substituted the word "to" for "and" following the words "three hundred and twenty" and the word "thirty-one" for "twenty-one" preceding the words "both inclusive" near the beginning of the first sentence.

**§ 333. Like privileges in hospitals to be granted to matriculated students of medical colleges.** Whenever the managers, governors, or person or persons having lawful control and management over any public hospital in any city or county in this state, shall grant to matriculated students of any legally incorporated medical college in said city or county, privileges of admission to such hospital for hearing clinics or lectures, or receiving medical or surgical instruction therein, the like privileges and advantages shall be granted to the matriculated students in each and all legally incorporated medical colleges in said city and county who may desire the same, without distinction or preference, and upon equal terms and conditions to all. Nothing in this section shall prevent the managers of hospitals from limiting the attendance of students in such hospitals to a number compatible with the welfare of patients. But in such limitation they shall receive students from such legally incorporated medical colleges applying for such admission in proportion to the number of students in attendance upon such college.

**§ 334. Iron stairways on outside of hospital buildings.** All hospital buildings used for general hospital purposes, or hospitals or asylums for the insane, or any hospital buildings which are more than two stories high, other than those which are fireproof in their construction, shall have properly constructed iron stairways on the outside thereof, with suitable doorways leading thereto from each story above the first, for use in case of fire. It shall be the duty of the trustees, managers, owners or proprietors of such hospitals or asylums to cause such stairways to be constructed and maintained. If the trustees or owners of any hospital as herein described, except those owned and maintained by a city, a county, or the state, shall fail to provide such stairways before the first day of October, eighteen hundred and ninety-six, then the local authorities shall proceed to erect such stairways, and the cost thereof may be recovered by an action at law from the property of said hospital.

The district attorney of each county is hereby charged with the execution of this statute, except in the case of hospitals erected or maintained by the state, city or by a county.

The provisions of this section shall not apply to any institution in any of the cities or counties of this state, which the fire department of said city or district attorney of the county shall certify in writing to be fireproof to an extent which will not require the appliances and fixtures provided for in this section. The certificate exempting institutions from the operations of this section shall be filed during the month of January in each year, in the office of the county clerk of the county.

## ARTICLE 17

### **Pasteur Institute and the Prevention of Hydrophobia**

Section 340. Persons to be sent to Pasteur institute, and by what officers.

341. Transportation, sustenance and treatment.

342. Charges for services of Pasteur institute.

343. Inspection of the institute.

**§ 340. Persons to be sent to Pasteur institute, and by what officers.** Overseers of the poor or other officers having charge of the dispensation of public charity in the several counties of this state may hereafter send to the Pasteur institute in the city of New York all persons duly certified by regular physicians to have been bitten by rabid animals or otherwise put in danger of infection with rabies.

**§ 341. Transportation, sustenance and treatment.** The transportation of such persons, with necessary attendant or attendants, to and from the city of New York, shall be a charge upon the counties in which they reside. The sustenance, nursing and preventive treatment of such persons, for the time adjudged necessary, shall be provided by the Pasteur institute of the city of New York.

**§ 342. Charges for services of Pasteur institute.** The charges for the services of the Pasteur institute of the city of New York for such poor persons shall be paid as is provided for by section forty-two of the poor law, at a rate not exceeding one hundred dollars a patient.

**§ 343. Inspection of the institute.** The Pasteur institute of the city of New York shall be at all times open to the inspection of the governor and of the state department of

health or of the accredited representative of either, and shall annually, on or before the fifteenth of January of each year, make its report to the legislature.

## ARTICLE 18

### Laws Repealed; When to Take Effect

Section 350. Laws repealed.

351. When to take effect.

**§ 350. Laws repealed.** Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

**§ 351. When to take effect.** This chapter shall take effect immediately.

#### SCHEDULE OF LAWS REPEALED.

Revised Statutes....	Part 1, chapter 9, title 7, section 6	
Revised Statutes....	Part 1, chapter 14.....	All
Laws of	Chapter	Section
1778.....	36.....	All
1784.....	57.....	All
1792.....	37.....	All
1794.....	53.....	All
1796.....	38.....	All
1797.....	16.....	1-4
1797.....	45.....	All
1797.....	67.....	All
1798.....	19.....	3
1798.....	65.....	4-12, 19-21, 28
1799.....	19.....	1-17
1800.....	120.....	All
1800.....	133.....	28
1801.....	86.....	1-14, 20-30, 33-36
1801.....	144.....	All
1803.....	48.....	All
1804.....	8.....	All
1804.....	79.....	All
1806.....	79.....	All
1806.....	138.....	4-7, 13-15
1807.....	104.....	5
1808.....	155.....	22



Laws of	Chapter	Section
1809.....	66.....	All
1809.....	181.....	All
1810.....	21.....	All
1811.....	175.....	All
1812.....	63.....	All
R. L. 1813....	37.....	All
R. L. 1813....	94.....	9, 10, 12, 18, 20-22
1818.....	206.....	1, 2, 3, beginning with the words "any three of whom" to end of section; 4, 7
1819.....	237.....	2
1820.....	229.....	All
1821.....	134.....	All
1823.....	71.....	All
1825.....	52.....	All
1825.....	212.....	All
1826.....	24.....	2
1827.....	185.....	All
1827.....	239.....	2
1828.....	21.....	1, §§ 140, 157, 258, 290, 383, 428, 507 (2d Mect.)
1830.....	126.....	All
1830.....	333.....	All
1831.....	304.....	All
1832.....	333.....	All
1833.....	221.....	All
1834.....	68.....	All
1835.....	45.....	All
1835.....	103.....	All
1835.....	305.....	All
1836.....	230.....	All
1836.....	532.....	1, 2
1837.....	25.....	All
1839.....	359.....	All
1840.....	19.....	All
1841.....	64.....	All
1842.....	238.....	All
1843.....	213.....	All
1844.....	275.....	All
1844.....	316.....	All

Laws of	Chapter	Section
1845.....	227.....	All
1846.....	300.....	All
1847.....	152.....	All
1847.....	195.....	14-19
1847.....	451.....	All
1847.....	483.....	1, 2, 4-8
1848.....	219.....	All
1849.....	309.....	All
1849.....	321.....	All
1849.....	350.....	6, 8-22
1849.....	364.....	All
1849.....	432.....	All
1850.....	28.....	All
1850.....	275.....	Tit. 2; tit. 3, § 38
1850.....	324.....	All
1850.....	339.....	3
1851.....	523.....	1, 5, 6, 8-11
1852.....	78.....	All
1853.....	218.....	All
1853.....	224.....	All
1853.....	317.....	All
1853.....	619.....	All
1854.....	123.....	All
1854.....	169.....	All
1855.....	474.....	All
1856.....	147.....	All
1857.....	68.....	All
1857.....	412.....	All
1857.....	579.....	All
1857.....	673.....	All
1860.....	438.....	All
1860.....	442.....	All
1862.....	273.....	All
1862.....	443.....	All
1863.....	358.....	All
1864.....	380.....	All
1864.....	398.....	All
1865.....	592.....	All
1865.....	613.....	All
1865.....	723.....	All

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1866.....	737.....	All
1866.....	751.....	All
1867.....	543.....	All
1867.....	790.....	All
1867.....	911.....	All
1868.....	152.....	All
1868.....	761.....	All
1868.....	832.....	All
1868.....	857.....	All
1869.....	808.....	All
1870.....	331.....	All
1870.....	384.....	All
1870.....	525.....	All
1870.....	559.....	All
1871.....	475.....	All
1871.....	722.....	All
1872.....	746.....	All
1872.....	817.....	All
1873.....	302.....	All
1874.....	436.....	All
1875.....	634.....	1, 52, 67, 102
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1879.....	328.....	1, 3, 4
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1879.....	502.....	All
1879.....	540.....	All
1880.....	322.....	All
1880.....	513.....	All
1881.....	186.....	All
1881.....	376.....	All
1881.....	407.....	All
1881.....	427.....	All
1881.....	431.....	All
1881.....	432.....	All
1881.....	550.....	All
1881.....	679.....	All
1882.....	145.....	All
1882.....	281.....	All
1882.....	308.....	All

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1882.....	351.....	All
1883.....	40.....	All
1883.....	286.....	All
1883.....	291.....	All
1883.....	443.....	All
1884.....	207.....	All
1884.....	272.....	All
1884.....	361.....	All
1884.....	411.....	All
1884.....	445.....	All
1885.....	72.....	All
1885.....	176.....	All
1885.....	270.....	All
1885.....	360.....	All
1885.....	382.....	All
1885.....	399.....	All
1885.....	534.....	All
1885.....	543.....	All
1886.....	272.....	All
1886.....	313.....	All
1886.....	329.....	All
1886.....	467.....	All
1886.....	477.....	All
1886.....	633.....	All
1887.....	166.....	All
1887.....	280.....	All
1887.....	477.....	All
1887.....	603.....	All
1887.....	636.....	All
1887.....	647.....	All
1887.....	676.....	All
1888.....	52.....	All
1888.....	53.....	All
1888.....	77.....	All
1888.....	146.....	All
1888.....	280.....	All
1888.....	309.....	All
1888.....	341.....	All
1888.....	431.....	All
1889.....	181.....	All

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Laws of	Chapter	Section
1889.....	247.....	All
1889.....	337.....	All
1889.....	397.....	All
1889.....	468.....	All
1889.....	481.....	All
1889.....	537.....	All
1890.....	100.....	All
1890.....	419.....	All
1890.....	468.....	All
1890.....	499.....	All
1890.....	500.....	All
1890.....	507.....	All
1891.....	311.....	All
1892.....	235.....	All
1892.....	486.....	All
1892.....	487.....	All
1892.....	528.....	All
1892.....	531.....	All
1892.....	616.....	All
1892.....	655.....	All
1893.....	250.....	All
1893.....	528.....	All
1893.....	661.....	All
1894.....	268.....	All
1894.....	404.....	All
1894.....	674.....	1, 2
1894.....	679.....	All
1895.....	203.....	All
1895.....	381.....	All
1895.....	398.....	All
1895.....	584.....	All
1895.....	626.....	All
1895.....	636.....	All
1895.....	770.....	All
1895.....	860.....	All
1895.....	861.....	All
1895.....	896.....	All
1895.....	927.....	All
1895.....	1013.....	All
1896.....	111.....	All

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Laws of	Chapter	Section
1896.....	253.....	All
1896.....	297.....	All
1896.....	302.....	All
1896.....	465.....	All
1896.....	840.....	All
1897.....	138.....	All
1897.....	169.....	All
1897.....	247.....	All
1897.....	282.....	All
1897.....	297.....	All
1898.....	208.....	All
1898.....	355.....	All
1898.....	555.....	1-9, 11
1899.....	211.....	All
1899.....	251.....	All
1899.....	324.....	All
1899.....	364.....	All
1899.....	505.....	All
1900.....	268.....	All
1900.....	453.....	All
1900.....	479.....	All
1900.....	667.....	All
1900.....	703.....	All
1901.....	29.....	All
1901.....	215.....	All
1901.....	231.....	All
1901.....	283.....	All
1901.....	321.....	2
1901.....	482.....	All
1901.....	616.....	All
1901.....	648.....	All
1902.....	210.....	All
1902.....	218.....	All
1902.....	243.....	All
1902.....	339.....	All
1903.....	222.....	All
1903.....	293.....	All
1903.....	383.....	All
1903.....	468.....	All
1903.....	632.....	All

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Laws of	Chapter	Section
1903.....	638.....	All
1904.....	211.....	All
1904.....	392.....	All
1904.....	484.....	All
1904.....	498.....	All
1904.....	554.....	All
1905.....	122.....	All
1905.....	284.....	All
1905.....	303.....	All
1905.....	454.....	All
1905.....	455.....	All
1905.....	572.....	All
1906.....	39.....	All
1906.....	253.....	All
1906.....	256.....	All
1906.....	582.....	All
1906.....	583.....	All
1907.....	65.....	All
1907.....	189.....	All
1907.....	224.....	All
1907.....	225.....	All
1907.....	344.....	All
1908.....	14.....	All
1908.....	339.....	All
1908.....	351.....	All
1908.....	396.....	All
1908.....	460.....	All

# PUBLIC LANDS LAW

## Laws 1909, Chap. 50.

AN ACT relating to the public lands, constituting chapter forty-six of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed by a two-thirds vote.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

## CHAPTER 46 OF THE CONSOLIDATED LAWS

### PUBLIC LANDS LAW

- Article
1. Short title (§ 1).
  2. Commissioners of land office (§§ 2-22).
  3. Unappropriated state lands (§§ 30-41).
  4. Abandoned canal lands (§§ 50, 51).
  5. Escheated lands (§§ 60-69).
  6. Grants of lands under water (§§ 75, 76).
  7. Mines (§§ 80-85).
  8. Mineral springs (§§ 90-92).
  9. State reservation at Niagara (§§ 100-108).
  10. Construction; laws repealed; when to take effect (§§ 110-112).

### ARTICLE 1

#### Short Title

Section 1. Short title.

§ 1. **Short title.** This chapter shall be known as the "Public Lands Law."

### ARTICLE 2

#### Commissioners of Land Office

- Section
2. Organization and procedure.
  3. Powers and duties; leases.
  4. Vesting of crown lands in the people of the state.



- Section 5. Letters patent, form and contents; to be recorded in the office of the secretary of state.
6. Refunding purchase money on failure of title.
7. Partition of lands held by the state in joint tenancy or tenancy in common.
8. Trespasses upon state lands.
9. Penalty for trespasses.
10. Power to investigate before grant.
11. Power to confirm defective grant.
12. Certain patents and grants ratified.
13. Grants to heirs or devisees.
14. Time of performing conditions of grant.
15. Prohibitions as to grants in Lake George.
16. Reservation of Esopus island.
17. Trespasses upon lands other than the forest preserve.
18. Payment of costs of actions directed by commissioners.
19. Payment of incumbrances on public lands.
20. Expenses chargeable to special funds.
21. Assessments for local improvements on state lands.
22. Grants of lands in Onondaga salt springs reservation designated on certain map.

**§ 2. Organization and procedure.** Three members of the board of commissioners of the land office, including the state engineer, or in his absence a majority of the commissioners, shall constitute a quorum. The secretary of state shall convene the commissioners as often as necessary for the transaction of business. The lieutenant-governor, or in his absence a chairman designated by the members present, shall preside at each meeting. The deputy secretary of state shall act as clerk, and enter the minutes of the proceedings in a book, to be provided for that purpose, which with the papers and documents presented to the board, shall be kept in the secretary's office in proper order. The speaker of the assembly shall be paid all expenses necessarily incurred by him in the discharge of his official duties as commissioner of the land office.

**§ 3. Powers and duties; leases.** Such commissioners shall have the general care and superintendence of all state lands, the superintendence whereof is not vested in some officer or board.

The commissioners may, from time to time, lease for terms not exceeding one year, and until disposed of as required by law, all such state lands as have improvements upon them and which are not appropriated to any immediate use. Such leases shall contain proper covenants to guard against trespass and waste.

**§ 4. Vesting of crown lands in the people of the state.** The absolute property of all messuages, lands, tenements and hereditaments, and of all rents, royalties, franchises, prerogatives, privileges, escheats, forfeitures, debts, dues, duties and services by whatsoever names respectively the same are called and known in the law, and all right and title to the same, which next and immediately before the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-six, did vest in, or belong, or was, or were due to the crown of Great Britain be, and the same and each and every of them hereby are declared to be, and ever since the said ninth day of July, in the year of our Lord one thousand seven hundred and seventy-six, to have been, and for ever after shall be vested in the people of this state, in whom the sovereignty and seigniority thereof, are and were united and vested, on and from the said ninth day of July, in the year of our Lord one thousand seven hundred and seventy-six.

**§ 5. Letters patent, form and contents; to be recorded in the office of the secretary of state.** All letters patent shall be in such form as the commissioners direct, and contain an exception and reservation of all gold and silver mines. All letters patent shall be recorded in a book or books to be kept for that purpose in the office of the secretary of state, and the record thereof in any such book or a copy of any letters patent duly certified by the secretary of state to be a copy of such record thereof, whether heretofore or hereafter recorded, shall be received in evidence in any court in this state with the same force and effect as the original of such letters patent.

**§ 6. Refunding purchase-money on failure of title.** Whenever the title of the state to lands granted under its authority fails, and a legal claim for compensation on account of such failure is preferred by any person entitled thereto, the commissioners of the land office shall direct the payment of the original purchase-moneys which may have been paid to the state by such person, with interest at the rate of six per centum from the time of such payment, to be paid out of the treasury on the warrant of the comptroller.

**§ 7. Partition of lands held by the state in joint tenancy or tenancy in common.** Whenever the state owns an undivided interest with any person in real property within this state, not a part of the forest preserve, or holds and is in possession of any such real property, as joint tenant or tenant in common with any person within this state who has an estate of freehold therein, such person may, on obtaining the written consent of

the comptroller thereto, maintain an action for the partition of such property according to the respective rights of the parties interested therein, and for a sale thereof, if it appears that actual partition can not be made without great prejudice to the owners, in the same manner as if the state were not entitled to exemption from legal proceedings, and with the same force and effect as in other cases, except that no costs against the state shall follow judgment thereon. A copy of the summons and complaint in such action shall be served upon the comptroller, who shall deliver the same to the attorney-general for proper appearance for the state. The attorney-general, when so directed by the commissioners of the land office, shall cause partition to be made of any real property held in joint tenancy or tenancy in common, in which the people of the state are interested, and for that purpose he may, in the name of the people, do all such acts as any joint tenant or tenant in common is authorized by law to do.

**§ 8. Trespasses upon state lands.** The commissioners of the land office may require the sheriff of any county to examine and report to them, and to the district attorney of his county, all trespasses committed upon Indian lands, or lands belonging to the state, other than the forest preserve, in such county. A district attorney, on receiving such report and whenever directed by the commissioners, shall commence and prosecute actions, in the name of the people of the state, against such trespassers, for damages and the penalties imposed by law; and may present the complaint against such trespassers to the grand jury of his county.

**§ 9. Penalty for trespasses.** Every person who shall trespass upon any land belonging to the people of the state, by cutting or carrying away timber growing thereupon, shall, for every such offense, forfeit to the people of the state the sum of twenty-five dollars for every tree cut or carried away by him or under his direction. The district attorney shall apply all such penalties, when collected, first to the payment of the costs and expenses incurred in the prosecution of such action, including a reasonable compensation to the plaintiff's witnesses, to be certified by the court before which the trial was had, and shall pay the residue thereof into the treasury of the county. Whenever execution shall be issued upon judgments recovered in actions for such penalties, and the body of any defendant shall be arrested thereon, he shall be imprisoned according to law, without being entitled to the liberties of the jail.

**§ 10. Power to investigate before grant.** Before granting any lands or any interest therein, including lands under

water, the commissioners may summarily inquire into the rights of the person applying for such grant, on such proof as, by regulation, they prescribe. They may take testimony and proofs in any matter or application before them, and the fees of witnesses and the expenses of procuring their attendance, on being certified by the commissioners, shall be paid by the treasurer on the warrant of the comptroller. They shall establish reasonable rules to guard against false or fraudulent applications and for such other purposes as they may deem proper.

**§ 11. Power to confirm defective grant.** Whenever a sale is lawfully made, or directed to be made by such commissioners, including a sale of land under water, if, at the time of the adoption of the resolution to make the grant, the necessary jurisdictional facts existed to authorize the grant, and by reason of accidental omission or manifest error, the patent is not actually issued, or has been issued to the applicant deficient or manifestly erroneous in description or otherwise, such commissioners may, in their discretion, and on such terms as seem to them proper, cause to be issued to such applicant, or to persons deriving claim or title from him subsequently to the passage of such resolution, a release or confirmatory grant of such lands or any parts thereof, which release or confirmatory grant shall vest in the grantee therein named such right and estate, to the extent of the right or title of the state in such lands, or parts thereof, as is therein named.

**§ 12. Certain patents and grants ratified.** All patents of lands issued before July eleventh, eighteen hundred and eighty-one, pursuant to resolutions of the commissioners of the land office, and sold by them at private sale to purchasers in good faith, purporting to convey the right, title and interest of the people of this state in and to any state lands, except lands under water in the bay or harbor of New York or adjacent thereto, have been ratified and confirmed, to as full an extent as though the same had been sold at public auction, according to law, but not so as to affect any action pending July eleventh, eighteen hundred and eighty-one, or to impair, release or discharge any right, claim or interest of any person in and to such lands. All grants made by the commissioners of the land office prior to March twenty-fifth, eighteen hundred and forty-one, of parts of lots for which payments were made and certified in the manner prescribed by law, have been confirmed.

**§ 13. Grants to heirs or devisees.** The heirs or devisees of any person to whom a grant of land is ordered, pur-

suant to law, but who dies before the issue thereof, shall be entitled to such grant, on complying with the conditions on which the grant was to have been made. If any of the purchase-money remains unpaid to the state, and if the execution of securities for the payment of such purchase-money or any part of it, is one of the conditions required of the grantee, the heirs and devisees, if of age, shall execute such securities, but if not of full age, the treasurer and comptroller shall open in their respective offices an account with them for such purchase-money, and the treasurer shall receive payments and give receipts on such accounts. When such account is paid in full, the grant shall issue to such heirs or devisees, and in case of default in the payment of the moneys due on such account, according to the condition of the grant, the commissioners may direct the state engineer to sell the land at public auction.

**§ 14. Time of performing conditions of grant.** The commissioners of the land office may, unless otherwise provided, fix a reasonable time, not less than one year, for the performance of conditions by the grantees of lands directed to be sold on the performance of conditions. A notice of the time so fixed shall be published in the state paper at least once a week for six successive weeks, and a copy of such notice shall be mailed to the persons interested, whose post-office addresses are known. If such conditions are not performed within the time limited by such notice, the persons entitled to any benefit under such grant shall forfeit all right to and title in the premises. When the time within which any condition contained in any grant of land is fixed by the terms of the grant, the commissioners of the land office may, for good cause shown before the expiration of such time, extend the time within which such condition is to be performed, not exceeding three years.

**§ 15. Prohibitions as to grants in Lake George.** No grant or lease of any of the islands in Lake George, or of any land upon any of such islands, shall be made by the commissioners of the land office.

**§ 16. Reservation of Esopus island.** Esopus island, in Dutchess county, is reserved from settlement, occupancy, lease or sale, and dedicated and set apart as a public park. The commissioners of the land office shall have the same powers to protect such island from trespass, as they have over other public lands.

**§ 17. Trespasses upon lands other than forest preserve.** The commissioners of the land office may

from time to time, appoint discreet agents to prosecute all trespassers upon lands belonging to the state, other than the forest preserve. Each agent shall give such reasonable security, from time to time, to the people of the state for the faithful execution of his trust, as the commissioners require and approve. He may maintain actions and proceedings, in the name of the people of the state, against all trespassers upon such lands. The costs and expenses incurred by him in any such action or proceeding, together with such compensation for services as the commissioners deem just, shall be paid to him out of the treasury; but no allowance shall be made to him for any action or proceeding, in which the defendant succeeds, unless the commissioners are satisfied that there was reasonable cause for bringing the same.

**§ 18. Payment of costs of actions directed by commissioners.** Whenever actions are brought by direction of the commissioners of the land office, pursuant to law, and the plaintiffs in such actions fail to recover therein, or the defendant is unable to pay the costs adjudged against him, the comptroller may audit and settle the amount of the taxable costs in such actions, and direct the payment thereof out of the treasury to the district attorneys or other persons entitled to the same.

**§ 19. Payment of incumbrances on public lands.** The commissioners of the land office, whenever they deem it for the best interests of the state, may order the treasurer, on the warrant of the comptroller, to pay off and cancel any charges, assessments or incumbrances, existing on any lands bought in by the state on the foreclosure of mortgages, to perfect in the state a title to any such lands.

**§ 20. Expenses chargeable to special funds.** All expenses of surveys, appraisements or other expenses attendant on the sale of any lands belonging to any of the special funds of the state, shall be chargeable on and paid out of the funds, respectively, to which such lands belong.

**§ 21. Assessments for local improvements on state lands.** A person, body or board authorized to assess lands for local improvements or purposes, shall serve on the comptroller of the state, at least three weeks prior to the confirmation of the same, a written notice of every assessment on state lands, showing the purpose for which the assessment is made, the state lands assessed and the amounts for which they are assessed, and referring to the law authorizing the assessment, and no such assessment shall be legal unless such notice is duly served. No fee,

interest, penalty or expense shall be added to or accrue on any such assessment against state lands, nor shall such lands be sold therefor; but such assessments shall, if confirmed and uncontested, be paid and discharged out of any moneys appropriated therefor. All sales of state lands for unpaid taxes or assessments for local improvements or purposes, and all sales of such lands by any municipal or village authority, whether the title thereto be derived from tax sale or otherwise, for unpaid taxes levied thereon, while such title vested in the state, are void. All assessments legally made on state lands, and all legal rents or charges thereon, shall be audited by the comptroller and paid out of the treasury.

**§ 22. Grants of lands in Onondaga salt springs reservation designated on certain map.** All grants of lands made by the people of this state of any lands in the Onondaga salt springs reservation prior to March twenty-eight, in the year eighteen hundred and forty-three, shall be deemed and considered as having been granted according to the designations upon the map of said reservation made by John Randel, junior, on file in the office of the state engineer and surveyor, and not as designated upon the map of said reservation made by said Randel, on file in the office of the secretary of state.

### ARTICLE 3

#### Unappropriated State Lands

- Section 30. Unappropriated state lands defined.
31. Surveys by state engineer.
  32. Maps.
  33. Notice and place of sale of unappropriated state lands.
  34. Payment by purchaser; certificates of purchase.
  35. Issue of patents.
  36. Collection, forfeiture and cancellation of purchase-money bonds.
  37. Resale of lands.
  38. Payment on resale.
  39. Removal of occupants of land resold.
  40. Application for grant under special law.
  41. Right of action by holder of certificate.

**§ 30. Unappropriated state lands defined.** The term, "unappropriated state lands," as used in this chapter, includes all state lands belonging to the common school fund; all escheated lands; all lands conveyed to the state for the benefit of the canal fund and not devoted in pursuance of law to any public use; all

lands purchased by or for the state on the foreclosure of any mortgage given on the loan of any United States deposit funds or on any loan of money for the state; all state lands lying within the limits of any city or village not devoted to any public use; and all other lands belonging to this state which are not directed by law to be kept for or applied to any specific purpose, except lands under water the disposition of which is governed by article six of this chapter and except lands the disposition of which is governed by the salt springs law.

**§ 31. Surveys by state engineer.** The commissioners may, whenever they deem it necessary, direct the state engineer to cause actual surveys to be made of any of the unappropriated state lands. Before making such a survey, the state engineer shall obtain from the commissioners a certificate directed to the comptroller, containing their estimate of the expenses thereof, which he shall deliver to the comptroller, and the sum at which such expenses are estimated therein shall be paid to the state engineer out of the treasury. The surveyors appointed by the state engineer to survey any unappropriated state lands for the purpose of a sale thereof, shall appraise the value of each lot, exclusive of the improvements thereupon exceeding the value of twenty-five dollars, and deliver such appraisement, with the returns of such surveys and maps of the lots surveyed, and a field book containing an account of the soil, timber and local advantages of each lot to the state engineer, who shall cause a copy to be filed in the secretary of state's office. Before making such survey and appraisement, each surveyor shall take and subscribe the constitutional oath of office, and file the same in the state engineer's office.

**§ 32. Maps.** The state engineer shall make or cause to be made a map of each tract so surveyed, distinguishing upon such maps the towns and county in which the lots are situated, and deposit the same in his office, and a copy thereof in the office of the secretary of state. Such maps and copies shall be open to the inspection of every person, during the office hours of business, until the lands described thereupon be sold. (*Thus amended by L. 1909, ch. 240, § 67-a, in effect April 22, 1909.*)

Amendment of 1909 struck out that part of the second sentence, following the words "shall be open to," which read as follows: "the state engineer to sell the unappropriated state lands, not otherwise directed to be disposed of, or the sale of which is not prohibited, at public auction in such parcels as they deem for the best interests of the state and for the promotion of the settlement thereof; but not more than twenty thousand acres shall be sold at any one auction, and each lot shall be separately exposed to".

**§ 33. Notice and place of sale of unappropriated state lands.** The commissioners may, from time to time, direct the state engineer to sell the unappropriated state lands, not other-



wise directed to be disposed of, or the sale of which is not prohibited, at public auction in such parcels as they deem for the best interests of the state and for the promotion of the settlement thereof; but not more than twenty thousand acres shall be sold at any one auction, and each lot shall be separately exposed to sale. Previous to every sale, they shall furnish the state engineer a statement of the lowest sum at which each lot may be sold, and shall designate at least one newspaper in the county where the lands to be sold are situated, in which the state engineer shall cause notice of the time, place and conditions of sale to be published, at least once a week for at least eight weeks, successively, before the sale. All such sales shall be held in the city of Albany, unless otherwise directed by the commissioners of the land office.

**§ 34. Payment by purchaser; certificates of purchase.** At the time of directing each sale, the commissioners shall prescribe the proportion of purchase-money to be paid at the time of sale, taking into consideration the value and situation of the lands and timber thereupon. Such proportion of the purchase-money shall be at least twenty-five per centum. The purchaser of each lot or tract sold, shall pay to the state engineer within ten days after the sale, the first payment required thereon, and execute a bond to the people of the state conditioned for the payment of the residue of the purchase-money, in six equal annual instalments with interest. In no case shall a bond be taken or credit given for less than fifty dollars. If a purchaser refuse or neglect to make such payment or deliver such bond, he shall, for each such refusal or neglect, forfeit to the people of the state, the sum of fifty dollars. The state engineer, on the receipt of such payment and bond, shall deliver the bond to the comptroller and deliver to the purchaser a certificate, containing the name of the purchaser, a description of the land purchased, the sum paid and the sum remaining unpaid thereon. Such certificate shall not confer on the purchaser any right to cut down or destroy any kind of wood or timber standing or growing upon such land, unless such right be expressly granted therein, or unless he be entitled by virtue of the certificate to the immediate possession of such land, in which case he may, unless the certificate otherwise provide, use and apply any wood or timber upon the land, for the purposes only of erecting fences or buildings thereupon, necessary fire-wood for his family, and the actual and fair improvement of such land for the purposes of cultivation.

**§ 35. Issue of patents.** On the production to the commissioners by the purchaser, his representatives or assigns, of the state engineer's certificate with the treasurer's receipt for the

whole of the purchase-money, the comptroller shall cancel the purchaser's bond on such sale and the commissioners shall deliver letters patent for the lands sold. If such certificate be lost or wrongfully withheld by any person from the owner thereof, the commissioners may receive evidence of such loss or wrongful detention, and issue a patent to the person who, on satisfactory proof, appears to them to be entitled thereto. If the purchaser die before a grant is issued, the commissioners may hear and determine the claims of all persons to letters patent. Whenever any person shall pay in full for any part of a lot sold by the state engineer, and such payment is certified by the comptroller according to law, the comptroller shall indorse the portion of principal so paid upon the obligation executed by the purchaser for the whole lot, and letters patent for the part so paid in full may be issued.

**§ 36. Collection, forfeiture and cancellation of purchase-money bonds.** The commissioners of the land office may direct the comptroller to sue upon any bond received by the state engineer on the sale of unappropriated state lands, if any payment stipulated in such bond shall remain due one year, or they may direct the state engineer to resell the land for the payment of which such bond was given, and in case of such sale, all previous payments made on account of such land shall be forfeited to the people of the state, and the bonds may be delivered up and canceled on the surrender of the certificates of sale.

**§ 37. Resale of lands.** The state engineer, whenever he resells any such lot, shall include in the amount for which such lot is offered for sale, the sum unpaid at the time of such sale for principal and interest on the purchase-moneys thereof, the amount due on the books in the comptroller's office for taxes and the interest and charges thereon, and the costs of such sale. If the total amount of such charges be not bid therefor, he shall purchase the same for the state at such amount. If on any such sale, the state engineer becomes the purchaser in behalf of the state, the commissioners of the land office shall direct, whether the land purchased be offered for sale by him at the price for which it was purchased, or a new appraisal made thereof under his direction. He may sell such lots to any person applying to purchase the same, for the amount at which the same was purchased for the state, on the like terms and conditions as he is authorized to sell the unappropriated state lands. If the commissioners of the land office direct a new appraisal of such lands, the state engineer may sell the same as prescribed in this section for the prices at which the lots are respectively appraised.

§ 38. **Payment on resale.** The purchaser shall complete the sale, immediately, by paying into the treasury the amount due on the land and receiving a patent, or by executing a proper bond and receiving a new certificate of the sale.

§ 39. **Removal of occupants of land resold.** When a resale of land is directed, the commissioners of the land office shall cause notice to be given to every occupant of such land to remove therefrom, and if he does not comply with such notice, they shall direct the district attorney of the county in which such lands may be situated to commence proceedings for his removal before the county judge of such county. On proof, by the production of a certificate from the clerk of the commissioners of the land office, that a resale of such land has been duly ordered for default of payment, such judge shall issue his warrant to the sheriff of the county, commanding him, within ten days after the receipt thereof, to remove such occupant from such lands; and the sheriff shall remove such person within such time, and, for that purpose, shall possess the same powers as in the execution of criminal process. The sheriff shall retain such warrant in his hands, and if any person so removed shall return to occupy such lands without the consent of the state engineer, he shall be forthwith removed by the sheriff pursuant to such warrant. The sheriff, for executing a warrant under this section, shall be allowed such compensation, to be paid out of the treasury, as the comptroller shall certify to be reasonable.

§ 40. **Application for grant under special law.** The commissioners of the land office shall not grant any of the unappropriated state lands to any person applying therefor by virtue of a special law, unless such application be made within one year after the passage of such law, unless otherwise provided therein, but such land shall be sold in the manner directed for the sale of unappropriated state lands.

§ 41. **Right of action by holder of certificate.** Any person having the state engineer's certificate of sale may, on obtaining the consent of the commissioners of the land office, and on such terms as they prescribe, bring and maintain an action for any injury done to such lands after the date of such certificate. The assignee of such certificate may have the like remedy for any injury done after such assignment.

## ARTICLE 4

### Abandoned Canal Lands

Section 50. Sale of abandoned canal lands.

51. Release of land acquired without consideration.

**§ 50. Sale of abandoned canal lands.** The commissioners of the land office may sell and convey the right, title and interest of the state in and to any real property, acquired for canal purposes, which the canal board, by resolution, determine to have been abandoned for such purposes, including any real property, which, at the time it was taken for canal purposes, was owned by the state, and was thereafter conveyed by the state with adjoining lands without express reservation of the part covered by the canal, other than abandoned canals, sold and conveyed by the state prior to April twenty-seventh, eighteen hundred and sixty-nine, and other than dry docks within the canal blue lines in the city of Oswego, built by permission of the state. If such property is used at the time of such abandonment as a hydraulic canal, such conveyance shall not prevent the future use thereof for that purpose, but shall expressly reserve the right to continue the same. The proceeds of such sales shall be credited to the fund appropriated for the construction, improvement and repair of the canals.

**§ 51. Release of land acquired without consideration.** If the state acquired title to any such real property, by grant or otherwise, from the owner, without the payment of any consideration therefor, the commissioners may release to the person from whom the same was acquired, or his heirs or assigns, all the right, title and interest of the state in and to such real property, to be held subject to such rules, regulations and requirements as the commissioners deem for the best interest of the state.

## ARTICLE 5

### Escheated Lands

Section 60. Persons entitled to petition for release.

61. Proceedings on receipt of petition.

62. Conveyance to petitioner.

63. Effect of deed on rights of others.

64. Protest; notice of hearing petition.

65. Disposition of moneys received; annual report.

66. Lands held under written contract.

67. Agents.

68. Escheated lands subject to trusts and incumbrances.

69. Certain patents ratified and confirmed.

**§ 60. Persons entitled to petition for release.** A petition for the release to the petitioner of any interest in real property, escheated to the state by reason of the failure of heirs, or the incapacity for any reason except infancy or mental incompetency, of any of the petitioners' alleged predecessors in interest

to take such property, by devise or otherwise, or to convey the same, or by reason of the alienage of any person, who but for such alienage would have succeeded to such interest, may be presented to the commissioners of the land office within forty years after such escheat. Such petition may be presented:

1. By any person who would have succeeded to such interest but for his own alienage or the alienage of another person, or
2. By the surviving husband, widow, stepfather, stepmother or adopted child of the person whose interest has so escheated, or
3. By an heir, devisee, assignee, grantee or executor of any person, who but for his death, assignment or grant could present such petition, or the purchaser at a judicial sale or sheriff's sale on execution or the alleged grantee of any person or of any association or body, whether incorporated or not, who or which would have succeeded by devise or otherwise to the title of such person but for his alienage or a legal incapacity to take or convey the property so escheated. (*Subd. 3 thus amended by L. 1909, ch. 240, § 68, in effect April 22, 1909, and L. 1909, ch. 509, in effect May 27, 1909.*)

**Amendments of 1909, Ch. 240, corrected an error by striking out the words "to any such interest but for his alienage or the" and inserting the words "by devise or otherwise to the title of such person" following the words "would have succeeded" near the end of the subdivision. Ch. 509 inserted the words "or the purchaser at a judicial sale or sheriff's sale on execution" following the words "could present such petition" near the beginning of the subdivision, and restored the words "his alienage or" preceding the words "a legal incapacity" near the end of the subdivision.**

Such petition shall be verified by each petitioner in the same manner as a pleading in a court of record may be verified, and shall allege:

1. The name and residence of each person owning any interest in such real property immediately prior to the escheat;
2. The name and residence of each petitioner and the circumstances which entitle him to present such petition;
3. The name and place of residence of every person who would have succeeded to any such interest but for his alienage or the alienage of another or any other rule of legal incapacity hereinabove mentioned affecting an attempted transfer of such interest to such person or to or by any of his alleged predecessors in interest;
4. The description and value, at the date of the verification of the petition, of such real property sought to be released;
5. The description and value, at the date of the verification of the petition, of all the property of every such owner, which shall have escheated to the people of the state by reason of failure of heirs or alienage and which shall not then have been released or conveyed by the state;
6. The name and residence of each person having or claiming an interest in such real property at the date of the verification of the petition and the nature and value of such interest;

7. Any special facts or circumstances by reason of which it is claimed that such interest should be released to the petitioner.

The petition may be filed within sixty days after its verification with the secretary of state, who shall present it to the commissioners of the land office at their next meeting thereafter, and who may call a meeting of the commissioners to consider the same. (*Subd. 7 thus amended by L. 1909, ch. 240, § 69, in effect April 22, 1909.*)

**Amendment of 1909** corrected error by substituting the words "claimed that such interest should be released to the petitioner" for the words "alienag of another or any other rule of legal incapacity herein" at the end of the subdivision.

**§ 61. Proceedings on receipt of petition.** The commissioners of the land office shall determine the truth of the allegations of the petition; the value of the real property sought to be released; and the value of all the property of every such owner which shall have escheated to the state, and shall not have been conveyed or released by the state, and for that purpose the commissioners may take testimony and proof, either orally or by affidavits. They may, as a condition of hearing the matter, require the petitioners to produce witnesses or advance the expense of producing them.

**§ 62. Conveyance to petitioner.** The commissioners may in their discretion, if they deem it just to all persons interested, in the name of the state, a conveyance on such terms and conditions as the commissioners deem just, releasing to such petitioners the interest of the state so acquired in such real property so sought to be released. A conveyance so made to any such petitioner who is a parent, child, surviving husband or widow of any such owner of any interest therein immediately prior to the escheat, or the heirs-at-law of any such surviving husband or widow, or the alleged grantee of any person or of any association or body, whether incorporated or not, who or which would have succeeded by devise or otherwise to the title of such person but for a legal incapacity to take or convey the property so escheated shall be without consideration, if the value, at the date of the petition, as determined by the commissioners, of all the property of any such owner escheated to the state and not conveyed or released by the state, shall not exceed one hundred thousand dollars, and of the property sought to be released shall not exceed ten thousand dollars. The conveyance shall contain a brief recital of the determinations required to be made by the commissioners on the hearing of the petition, and of all the terms and conditions on which the conveyance is made.

**§ 63. Effect of deed on rights of others.** No such conveyance shall impair or affect any right, title, interest or estate in or to the lands thereby released, of any heir-at-law, devisee, grantee,

mortgagee or creditor of any person having an interest in the real property released immediately prior to the escheat thereof, or of any person having a lien or incumbrance thereon, through, under or by any person having any interest therein immediately prior to the escheat.

**§ 64. Protest; notice of hearing petition.** Any person may file, at any time, with the secretary of state, a protest, stating his name, residence and post-office address, against the conveyance or release by the state of any interest of the people of the state, acquired by escheat, in any real property described in such protest. The secretary of state shall present such protest to the commissioners of the land office at their next meeting thereafter, and the commissioners shall, if practicable, cause a notice of their hearing of any petition for the conveyance or release of any such real property, to be given to each person filing such protest, in such manner as will enable such person to appear before them on such hearing. They may, in their discretion, cause like notice to be given to any other person, of the hearing of any petition for the release by the state of any interest of the people of the state in any real property acquired by escheat, or may cause notice of such petition to be given generally by publication in a newspaper published in the county in which such real property is situated.

**§ 65. Disposition of moneys received; annual report.** All moneys received by the commissioners from any such petitioner on account of any such conveyance shall be paid by them forthwith to the state treasurer. The commissioners shall, annually, in the month of January, report to the legislature their proceedings on each petition presented under this article during the previous year, stating briefly all the facts determined by them on the hearing of such petition, the terms and conditions of each conveyance so made by them, the name of each grantee therein, and all moneys received by them in pursuance thereof, and their reason for refusal of any such petition presented to them, and whether any petitioner declined to accept any such conveyance on the terms and conditions fixed by the commissioners, and if the legislature be in session at the time of their refusal of any such petition, or of any such declination to accept such conveyance, the commissioners shall forthwith report to the legislature such petition and a like statement of their proceedings thereon.

**§ 66. Lands held under written contract.** Where lands have been escheated to the state, and the person last seized was a citizen or capable of taking and holding real property, the commissioners of the land office shall fulfil any contract made by such person or by any person from whom his title is derived, in respect to the sale of such lands, so far only as to convey the right and title of the state, pursuant to such contract, without any covenants of warranty or otherwise, and shall allow all payments which

may have been made on such contracts. If any part of such escheated land has been occupied under a verbal agreement for the purchase thereof, and the occupants have made valuable improvements thereon, such agreement shall be as valid and effectual as if it were in writing.

**§ 67. Agents.** The commissioners of the land office may employ an agent to explore lands supposed to be escheated and collect evidence in relation to such escheat. The expenses incurred shall be paid out of the avails of escheated lands, on being audited by the commissioners, but such expenses shall not exceed the sum of five hundred dollars, in any one year.

**§ 68. Escheated lands subject to trusts and incumbrances.** Lands escheated to the state for defect of heirs shall be held subject to the same trusts and incumbrances to which they would have been subject if they had descended.

**§ 69. Certain patents ratified and confirmed.** Patents of real property escheated to the state, granted before the sixteenth day of May, eighteen hundred and ninety-two, pursuant to resolutions of the commissioners of the land office, adopted under or in pursuance of chapter two hundred and seventy-nine of the laws of eighteen hundred and ninety, have been ratified and confirmed unto the patentees therein, their heirs and assigns.

## ARTICLE 6

### Grants of Lands under Water

Section 75. Grants of land under water.

76. Notice of application therefor.

**§ 75. Grants of land under water.** This section authorizes grants of land under water:

1. Of navigable rivers and lakes.
2. Of the Hudson river adjacent to the state of New Jersey.
3. Adjacent to and surrounding Great Barn island in the city and county of New York, and between high and low water mark on such island, but not so as to affect the navigation of the waters surrounding such island.
4. Adjacent to and surrounding Staten Island, but not so as to extend more than five hundred feet into the water from low-water mark on said island, except where the legally established pier and bulkhead lines extend more than five hundred feet beyond low-water mark, in which case grants may be made to such lines.
5. Adjacent to and surrounding Long Island, and all that part of the former or present county of Westchester lying on the East river or Long Island sound, but not beyond any permanent exterior water line established by law. The commissioners of the land office may grant in perpetuity or otherwise, to the owners of



the lands adjacent to the lands under water specified in this section, to promote the commerce of this state or for the purpose of beneficial enjoyment thereof by such owners, or for agricultural purposes, so much of said lands under water as they deem necessary for that purpose. No such grant shall be made to any person other than the proprietor of the adjacent lands, and any such grant made to any other person shall be void. No such grant shall be made of any lands belonging to the city of New York, or so as to interfere with the rights of that city or of the Hudson River railroad company, or of its successor the New York Central and Hudson River Railroad Company. In addition to the foregoing, the commissioners of the land office may authorize the use of lands of the state under water, for the purpose of improvement of navigation when the same is carried on by the federal or state government; but private rights or rights of property of individuals, if any, of any nature or description, shall not be taken away nor impaired nor impeded without due process of law.

**§ 76. Notice of application therefor.** Every applicant for a grant of land under water shall, previous to his application, cause notice thereof to be published at least once a week for six weeks, successively, in a newspaper printed in the county in which the land so intended to be applied for is situated; and a copy of such notice to be posted for the same period upon the door of the court house of such county, and if there be no court house in the county, at such place as the commissioners direct.

## ARTICLE 7

### Mines

Section 80. State mines.

81. Working of mines.

82. Private property in mines.

83. Notice of discovery; bounty to discoverer.

84. Permission for entry upon lands to work mines.

85. Entry by corporation to work mines.

**§ 80. State mines.** The following mines are the property of the people of this state in their right of sovereignty:

1. All mines of gold and silver discovered, or hereafter to be discovered, within this state.

2. All mines of other metals, and of talc, mica or graphite, discovered, or hereafter to be discovered, upon any lands owned by persons not being citizens of the United States.

3. All mines of other metals, and of talc, mica or graphite, discovered, or hereafter to be discovered, upon lands owned by a citizen of the United States, the ore of which, on an average, shall contain less than two equal third parts in value of copper, tin, iron and lead, or any of those metals.

4. All mines and all minerals and fossils discovered, or hereafter to be discovered, upon any lands belonging to the people of this state.

**§ 81. Working of mines.** Any citizen of this state discovering a valuable mine or mineral upon lands belonging to the state and filing the notice of discovery required by this article, may work such mine; and he and his heirs or assigns shall have the sole benefit of all products therefrom, on the payment into the state treasury of a royalty of two per centum of the market value of all such products. Such valuation shall be made when such products shall first be in a marketable form. A statement of the amounts sold or removed from the premises covered by such notice of claim, and of the trees cut or destroyed upon such lands, shall be made semi-annually under oath to the secretary of state, and payments of such royalty shall be made semi-annually to the state treasurer, under oath as to the amount thereof, on the basis of such semi-annual statement to the secretary of state. Any wilful falsehood in the contents of such statement to the secretary of state or state treasurer in regard to such royalty, shall work a forfeiture to the state of the value of the whole amount mined during the period covered by such statements.

**§ 82. Private property in mines.** All mines of whatever description, other than mines of gold and silver, discovered, or hereafter to be discovered, upon any lands owned by a citizen of any of the United States, the ore of which, on an average, contains two equal third parts or more in value of copper, tin, iron and lead, or any of those metals, shall belong to the owner of such land.

**§ 83. Notice of discovery; bounty to discoverer.** No person discovering a mine of gold or silver within this state shall work the same until he give written notice thereof to the secretary of state, which shall be registered in a book to be kept by such secretary, describing particularly the nature and situation of the mine. Such person and his executors, administrators and assigns, shall be exempted from paying to the people of the state any part of the ore, produce or profit of such mine for the term of twenty-one years, to be computed from the time of giving notice of such discovery; and after the expiration of such term, the discoverer, his heirs or assigns, shall have the sole benefit of all products therefrom on the payment into the state treasury of a royalty of one per centum of the market value of all such products. A statement of the amounts sold or removed from the premises covered by such notice of claim, together with the market values thereof, shall be made semi-annually, under oath, to the secretary of state, and payments of such royalty shall be made semi-annually to the state treasurer, under oath as to the amount thereof, on the basis of such semi-annual statement to the secretary of state. Any wilful false-

hood in the contents of such statement to the secretary of state or state treasurer in regard to such royalty, shall work a forfeiture to the state of the value of the whole amount mined during the period covered by such statements. From time to time the legislature may provide for a different rate of compensation to be paid to the state.

**§ 84. Permission for entry upon lands to work mines.** Nothing contained in this article shall affect any grant heretofore made by the legislature to persons having discovered mines; nor be construed to give any person a right to enter upon or break up the lands of any other person, or of the state, or to work any mine in such lands, unless the written consent of the owner thereof, or of the commissioners of the land office, when the lands belong to the state, shall be previously obtained. Permission to erect buildings for working mines upon state lands within the forest preserve may be given by the forest commission, and elsewhere, by the commissioners of the land office, when such lands are entirely denuded of timber or when such commission or commissioners are satisfied that the erection or occupation of such buildings will not be detrimental to the interests of the state. Nothing in this article shall authorize any person working a mine upon state lands to cut or destroy any timber whatever except such trees as it may be actually necessary to remove in order to uncover or make a road to such mine. For each tree measuring four inches or more in diameter at a height of one foot from the ground, which shall be so cut, the party operating the mine shall pay into the state treasury the sum of one dollar.

**§ 85. Entry by corporation to work mines.** Corporations formed for the purpose of working and having lawful authority to work mines found within this state may acquire the right and easement to enter upon and break up lands necessary for the operation of such mines, and if the written consent of the person in or upon whose lands such mine or mines are found shall be refused or can not be obtained by agreement, or by reason of the infancy or absence of such person from the state, or other legal disability of the owners of such lands, every such corporation may acquire such right and easement by condemnation, which right and easement when so acquired shall be deemed to have been so granted for a public use and for the public purpose of obtaining minerals reserved to the state. Before instituting any proceeding for such condemnation the corporation shall file with the commissioners of the land office, a full description of the location of such lands and obtain a grant of the right to acquire such right and easement from such commissioners who are authorized to make the same and fix the terms thereof.

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**ARTICLE 8**  
**Mineral Springs**

Section 90. Accelerating or impeding flow of mineral waters.

91. Action to restrain.

92. Limitation of article.

**§ 90. Accelerating or impeding flow of mineral waters.** Pumping, or by any artificial contrivance whatsoever in any manner accelerating the natural flow, or producing an unnatural flow of that class of mineral waters holding in solution natural mineral salts and an excess of carbonic acid gas from any well made by boring or drilling into the rock, or pumping, or by any artificial contrivance whatsoever in any manner accelerating the natural flow or producing an unnatural flow, of natural carbonic acid gas issuing from or contained in any well made by boring or drilling into the rock, is hereby declared to be unlawful. Pumping, or by any artificial contrivance whatsoever in any manner accelerating the natural flow, or producing an unnatural flow, of that class of mineral waters holding in solution natural mineral salts and an excess of carbonic acid gas from any well made by boring or drilling into the rock, or pumping, or by any artificial contrivance whatsoever in any manner accelerating the natural flow, or producing an unnatural flow of, natural carbonic acid gas issuing from or contained in any well made by boring or drilling into the rock, by reason whereof the natural flow from any mineral spring or any mineral well belonging to any other person or corporation, is impeded, retarded, diminished, diverted or endangered, or the quality of its waters is impaired, or the quantity of its carbonic acid gas or mineral ingredients diminished, is hereby declared to be unlawful. Pumping, or otherwise drawing by artificial appliance from any well made by boring or drilling into the rock, that class of mineral waters holding in solution natural mineral salts and an excess of carbonic acid gas, or pumping, or by any artificial contrivance whatsoever in any manner producing an unnatural flow of, carbonic acid gas issuing from or contained in any well made by boring or drilling into the rock, for the purpose of extracting, collecting, compressing, liquefying or vending such gas as a commodity otherwise than in connection with the mineral water and the other mineral ingredients with which it was associated, is hereby declared to be unlawful. The doing of any act or thing whatsoever whereby the natural flow from any spring or well of that class of mineral waters holding in solution natural mineral salts and an excess of carbonic acid gas, is impeded, retarded, diminished, diverted or endangered, or the quality of its waters is impaired, or the quantity of its carbonic acid gas or mineral ingredients diminished, is hereby declared to be unlawful.

**§ 91. Action to restrain.** Any citizen of the state may maintain an action to restrain any person or corporation from committing any of the unlawful acts specified in section ninety of this chapter, in any city or town in which said citizen is assessed for and is liable to pay, or within one year before the commencement of the action has paid, a tax.

The attorney-general may at any time, in the exercise of his discretion, bring and maintain an action in the name of the people of the state of New York, to restrain any person or corporation from any of the unlawful acts specified in section ninety of this chapter. It shall be the duty of the attorney-general to institute and prosecute such an action, upon the written request of ten citizens of this state who are assessed for taxes therein and whose aggregate assessments amount to not less than ten thousand dollars, and who shall state, in writing, facts and circumstances showing any such unlawful act or acts and give an undertaking with sureties to be approved by a justice of the supreme court to indemnify the people against the costs of such action. The provisions of section eight hundred and seventy of the code of civil procedure shall apply to any action brought under this article and no person shall be excused from answering on the ground that his examination would tend to convict him of crime, but such answers shall not be used against him in any criminal prosecution for violating the provisions of this article.

**§ 92. Limitation of article.** Nothing in this article contained shall be construed to affect the Onondaga salt springs reservation, located in Onondaga county, or the springs of any county adjacent thereto.

## ARTICLE 9

### State Reservation at Niagara

- Section 100. Commissioners.  
 101. Officers; treasurer's undertaking.  
 102. Powers and duties.  
 103. Purposes of the state reservation.  
 104. Removal of structures.  
 105. Gifts of property for purposes of the reservation.  
 106. Annual report; quarterly accounts.  
 107. Payment of moneys appropriated.  
 108. Certain lands included in reservation.

**§ 100. Commissioners.** There shall continue to be a board known as the commissioners of the state reservation at Niagara, consisting of five persons, residents of the state, appointed by the governor, by and with the advice and consent of the senate,

and holding office for the term of five years. No member of such board shall receive any compensation for his services as commissioner, but shall be entitled to receive his actual disbursements for his expenses in performing the duties of his office. A vacancy in the office of a commissioner shall be filled by the governor and the person so appointed shall hold his office for the term of five years.

**§ 101. Officers; treasurer's undertaking.** The commissioners shall select from among their number a president, and shall appoint some person to act as secretary and treasurer. The treasurer shall give an official undertaking in such sum as the commission shall determine.

**§ 102. Powers and duties.** Such commissioners shall:

1. Have the control and management of the state reservation at Niagara.

2. Lay out, manage and maintain such reservation and make and enforce ordinances, by-laws, rules and regulations necessary to effect the purpose thereof, and for the orderly transaction of business, not inconsistent with law, and shall, within ten days after the adoption of such ordinances, by-laws, rules and regulations, publish them at least twice in some newspaper published in the city of Niagara Falls. Any person offending against any of said ordinances, by-laws, rules and regulations shall be deemed guilty of a misdemeanor and, on conviction, may be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding thirty days, or by both such fine and imprisonment.

3. Fix the price to be charged by drivers of public conveyances for carrying persons for hire within the limits of such reservation.

4. Appoint a superintendent and employ such other persons as may be needed, one or more of whom, to be designated by the commissioners, shall have the power and may perform the duties of a police constable in criminal cases.

5. Fix the compensation of the persons appointed or employed by them.

6. Pay into the treasury of the state on the first day of each month all receipts and earnings of whatever nature other than receipts from the state treasurer. No debt or obligation shall be created by such commissioners exceeding the amount of moneys at their disposal at the time nor shall they or any of them or any other person have power to create any debt, obligation, claim or liability for or on account of such commissioners except by their express authority conferred at a meeting of the commission.

7. Have power and authority to grant to the city of Niagara Falls a license to lay, construct, and maintain an overflow sewer

or drain in, through, under and along the lands of the state reservation at Niagara upon such conditions as such commissioners may prescribe.

**§ 103. Purposes of the state reservation.** The state reservation at Niagara shall forever be reserved by the state for the purpose of restoring the scenery of Niagara Falls and preserving it in its natural condition, and kept open and free of access to all mankind without fee, charge or expense to any person for entering upon or passing to or over any part thereof.

**§ 104. Removal of structures.** Such board shall sell and cause to be removed from such reservation all structures, machinery and materials thereupon belonging to the state, not required to afford free and convenient access to such reservation, nor for restoring the scenery of the Niagara Falls to and preserving it in its natural condition.

**§ 105. Gifts of property for purposes of the reservation.** Real and personal property may be granted, conveyed, bequeathed or devised to and taken by the state in aid of the purposes of such reservation, or to increase the same, and on such trusts or conditions as may be prescribed by the grantors or devisors thereof, provided the same be accepted or agreed to in writing by such commissioners. All such property shall be managed and controlled by the commissioners, and the rents, issues and profits thereof shall be turned into the state treasury, except where such rents, issues and profits were specifically devised or bequeathed to be used for a specific and definite purpose.

**§ 106. Annual report; quarterly accounts.** The commissioners shall make an annual report of their proceedings to the legislature in the month of January, with a detailed statement of all their receipts and expenditures for the preceding fiscal year, and an estimate of the work necessary to be done, and of the expenses of maintaining the reservation for the ensuing fiscal year, with such recommendations as they shall see fit. They shall quarterly, on the first day of January, April, July and October of each year, send to the comptroller a detailed and itemized account of all receipts and expenditures, with subvouchers for the items thereof for the preceding quarter, and such accounts shall be verified by the commissioners or their treasurer.

**§ 107. Payment of moneys appropriated.** Moneys appropriated for caring for and maintaining such reservation, and carrying out the provisions of this article, shall be paid to the order of the treasurer of the commission by the state treasurer, upon the warrant of the comptroller. No warrant shall be issued

until the amounts claimed have been audited and allowed by the comptroller, who is hereby authorized to determine the same. except that on the requisition of the treasurer of such commission the comptroller may advance out of the sum appropriated whatever moneys he deems necessary for the proper carrying out of the provisions of this article.

**§ 108. Certain lands included in reservation.** The lands of the state hereinafter described, and which lands were deeded to the state of New York by the Niagara Falls hydraulic power and manufacturing company, as appears from a deed recorded in the Niagara county clerk's office August sixteenth, eighteen hundred and eighty-six, liber one hundred and eighty-one, page three hundred and eighty-six, are hereby made a part of the state reservation at Niagara, and shall be subject to the control and management of the commissioners of the state reservation at Niagara, the same as all other lands embraced within said state reservation. The said lands are described as follows: Beginning at the northeast corner of the state reservation at Niagara as located and established December eighth, eighteen hundred and eighty-three, by the commissioners appointed for that purpose, in the south line of Buffalo avenue, formerly Buffalo street, from thence running east along the south line of the said Buffalo avenue twenty-five feet to the lands of the Niagara Falls hydraulic power and manufacturing company; from thence running south, nineteen degrees, forty-five minutes, thirty-eight seconds east, along the lands of the said company, one hundred and forty-four feet to a stone monument; from thence running south thirty degrees, thirteen minutes, thirty-eight seconds east, still along the lands of the said company, two hundred and eighty-four feet; from thence running south two degrees east, still along the lands of said company and along the westerly line of the lands of said company produced southerly to the boundary line between the United States of America and the Dominion of Canada; from thence westerly along the said boundary line to the southeast corner of the state reservation at Niagara as located and established December eighth, eighteen hundred and eighty-three, by the commissioners as aforesaid; from thence running northerly along the easterly line of the state reservation established as aforesaid, to the place of beginning.

## ARTICLE #9

### Construction; Laws Repealed; When to Take Effect

Section 110. Construction.

111. Laws repealed.

112. When to take effect.

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\*So in original.



**§ 110. Construction.** This chapter shall not limit or modify the provisions of the railroad law relating to the grant or acquisition, for railroad purposes, of any lands belonging to the people of the state.

**§ 111. Laws repealed.** Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

**§ 112. When to take effect.** This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

Revised Statutes.... Part 1, chapter 9, title 5, ..... All  
 Revised Statutes.... Part 1, chapter 9, title 11, ..... All  
 Revised Statutes.... Part 1, chapter 9, title 12, sections 6, 7  
 Revised Statutes.... Part 2, chapter 1, title 1, section 2

Laws of	Chapter	Section
1779.....	25.....	1, 2, 10-25 (3d Sess.)
1780.....	51.....	All (3d Sess.)
1780.....	52.....	2, 3 (3d Sess.)
1780.....	11.....	8 (4th Sess.)
1780.....	13.....	All (4th Sess.)
1781.....	51.....	1-7, 13
1781.....	4.....	1
1781.....	15.....	2
1782.....	45.....	1-4 (5th Sess.)
1782.....	11.....	1-3 (6th Sess.)
1783.....	21.....	All
1784.....	60.....	All
1784.....	63.....	1-3, 5, 6, 8-17
1784.....	64.....	1-30, 37, 44, 46-50
1785.....	23.....	2
1785.....	33.....	All
1785.....	49.....	All
1785.....	66.....	All
1785.....	80.....	15, 17
1786.....	23.....	All
1786.....	58.....	1-14, 21, 27-30
1786.....	67.....	1-24, 29-31, 34-36
1787.....	73.....	1, 3
1787.....	76.....	All
1787.....	102.....	6
1787.....	103.....	2
1788.....	89.....	1-5
1788.....	90.....	All

Laws of	Chapter	Section
1789.....	18.....	All
1789.....	32.....	1-14, 18, 19
1789.....	39.....	All
1789.....	41.....	1-15
1790.....	16.....	All
1790.....	53.....	5 —
1790.....	59.....	1-9, 11, 12
1791.....	42.....	1-7, 9, 11, 12
1791.....	51.....	1-3
1792.....	35.....	5-7
1792.....	68.....	1
1793.....	46.....	All
1794.....	54.....	All
1796.....	25.....	All
1796.....	69.....	4-11, 13
1797.....	52.....	All
1798.....	33.....	All
1798.....	73.....	All
1798.....	96.....	All
1798.....	97.....	All
1798.....	4.....	5 (22d Sess.)
1799.....	27.....	All
1799.....	63.....	All
1799.....	81.....	All
1800.....	16.....	All
1800.....	102.....	All
1800.....	123.....	22
1801.....	2.....	All
1801.....	69.....	All
1801.....	72.....	5
1801.....	187.....	All
1802.....	36.....	All
1802.....	82.....	All
1802.....	83.....	All
1802.....	91.....	All
1802.....	112.....	1-5, 13
1802.....	114.....	All
1803.....	86.....	1
1803.....	88.....	9, 10
1803.....	96.....	All
1803.....	106.....	1-10, 12
1804.....	111.....	1-3, 5, 9-11, 13, 22
1805.....	96.....	1-4
1805.....	120.....	All

Laws of	Chapter	Section
1806.....	22.....	All
1806.....	171.....	1, 4
1806.....	185.....	All
1807.....	176.....	All
1808.....	132.....	All
1808.....	215.....	1
1809.....	38.....	1, 2
1809.....	95.....	All
1809.....	107.....	8
1809.....	164.....	26
1809.....	185.....	All
1810.....	117.....	1-3
1810.....	141.....	2-4
1810.....	154.....	All
1811.....	37.....	All
1811.....	48.....	1, 5, 7, 9, 12, 13
1811.....	246.....	25
1812.....	7.....	All
1812.....	239.....	20
1813.....	136.....	1, 2
1813.....	203.....	27
R. L. 1813....	19.....	2-6
R. L. 1813....	55.....	1, 9
R. L. 1813....	74.....	1-7, 9-47 -
R. L. 1813....	80.....	5, 6
R. L. 1813....	119.....	All
1814.....	17.....	1-3
1814.....	5.....	All (38th Sess.)
1814.....	11.....	1-3, 5 (38th Sess.)
1815.....	199.....	1-3, 5
1815.....	256.....	All
1816.....	86.....	All
1816.....	175.....	1
1816.....	236.....	19
1817.....	110.....	4
1817.....	160.....	All
1817.....	161.....	All
1817.....	229.....	All
1818.....	281.....	All
1819.....	39.....	All
1819.....	222.....	All
1819.....	223.....	All
1820.....	245.....	1-4, 9, 10
1821.....	197.....	All

Laws of	Chapter	Section
1821.....	241.....	All
1822.....	127.....	1
1822.....	130.....	1
1824.....	30.....	2
1824.....	38.....	All
1824.....	225.....	All
1825.....	182.....	All
1825.....	251.....	All
1826.....	91.....	All
1826.....	187.....	All
1826.....	282.....	1-5
1826.....	304.....	4
1826.....	320.....	All
1826.....	321.....	4
1827.....	110.....	1
1827.....	230.....	4
1828.....	227.....	All
1828.....	319.....	3-5
1828.....	20.....	15, ¶ 6 (2d Meet.)
1828.....	21.....	1, ¶¶ 35, 38, 81, 99, 166, 179, 200, 229, 274, 331, 402, 437, 466, 475, 514, 546 (2d Meet.)
1829.....	259.....	All
1829.....	261.....	All
1830.....	268.....	1-3
1830.....	322.....	All
1831.....	61.....	All
1831.....	116.....	All
1832.....	298.....	All
1833.....	108.....	All
1833.....	300.....	All
1834.....	37.....	All
1835.....	232.....	All
1835.....	237.....	All
1835.....	288.....	All
1836.....	234.....	All
1836.....	457.....	All
1839.....	134.....	All
1840.....	245.....	1
1841.....	70.....	All
1841.....	92.....	All
1843.....	67.....	All
1850.....	283.....	All
1857.....	267.....	All
1866.....	481.....	All

Laws of	Chapter	Section
1867.....	943.....	All
1869.....	196.....	All
1869.....	361.....	All
1875.....	572.....	4
1876.....	297.....	All
1877.....	359.....	All
1880.....	551.....	3, last sentence
1881.....	605.....	All
1881.....	625.....	All
1882.....	192.....	All
1883.....	13.....	All
1883.....	336.....	All
1883.....	470.....	All
1884.....	42.....	All
1884.....	109.....	All
1885.....	182.....	3
1885.....	286.....	All
1886.....	435.....	All
1887.....	656.....	All
1889.....	256.....	All
1890.....	279.....	All
1890.....	411.....	All
1892.....	625.....	All
1893.....	191.....	All
1894.....	317.....	All
1894.....	745.....	All
1895.....	208.....	All
1896.....	201.....	All
1896.....	517.....	All
1900.....	661.....	1
1901.....	416.....	All
1902.....	503.....	All
1905.....	360.....	All
1905.....	451.....	All
1905.....	508.....	All
1907.....	613.....	All
1908.....	243.....	All
1908.....	429.....	All

# PUBLIC OFFICERS LAW

## Laws 1909, Chap. 51.

AN ACT in relation to public officers, constituting chapter forty-seven of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

## CHAPTER 47 OF THE CONSOLIDATED LAWS

### PUBLIC OFFICERS LAW

- Article 1. Short title; definitions (§§ 1, 2).
2. Appointment and qualification of public officers (§§ 3-15).
  3. Creation and filling of vacancies (§§ 30-42).
  4. Powers and duties of public officers (§§ 60-70).
  5. Delivery of public books (§ 80).
  6. Construction; laws repealed; when to take effect (§§ 90-92).

## ARTICLE 1

### Short Title; Definitions

- Section 1. Short title.
2. Definitions.

§ 1. **Short title.** This chapter shall be known as the "Public Officers Law."

§ 2. **Definitions.** The term "state officer" includes every officer for whom all the electors of the state are entitled to vote, members of the legislature, justices of the supreme court, regents of the university, and every officer, appointed by one or more state officers, or by the legislature, and authorized to exercise his official functions throughout the entire state, or without limitation to any political subdivision of the state, except United States senators, members of congress, and electors for president and vice-

president of the United States. The term "local officer" includes every other officer who is elected by the electors of a portion only of the state, every officer of a political subdivision or municipal corporation of the state, and every officer limited in the execution of his official functions to a portion only of the state. The office of a state officer is a state office. The office of a local officer is a local office.

## ARTICLE 2

### Appointment and Qualification of Public Officers

- Section
3. Qualifications for holding office.
  4. Commencement of term of office.
  5. Holding over after expiration of term.
  6. Mode of choosing state officers if not otherwise provided.
  7. Appointment by the governor and senate.
  8. Commissions of officers.
  9. Deputies, their appointment, number and duties.
  10. Official oaths.
  11. Official undertakings.
  12. Force and effect of official undertaking.
  13. Notice of neglect to file oath or undertaking.
  14. Effect of consolidation on terms of office.
  15. Validation of official acts performed before filing official oath or undertaking.

**§ 3. Qualifications for holding office.** No person shall be capable of holding a civil office who shall not, at the time he shall be chosen thereto, be of full age, a citizen of the United States, a resident of the state, and if it be a local office, a resident of the political subdivision or municipal corporation of the state for which he shall be chosen, or within which the electors electing him reside, or within which his official functions are required to be exercised.

**§ 4. Commencement of term of office.** The term of office of an elective officer, unless elected to fill a vacancy then existing, shall commence on the first day of January next after his election, if the commencement thereof be not otherwise fixed by law.

**§ 5. Holding over after expiration of term.** Every officer except a judicial officer, a notary public, a commissioner of deeds and an officer whose term is fixed by the constitution, having duly entered on the duties of his office, shall, unless the office

shall terminate or be abolished, hold over and continue to discharge the duties of his office, after the expiration of the term for which he shall have been chosen, until his successor shall be chosen and qualified; but after the expiration of such term, the office shall be deemed vacant for the purpose of choosing his successor. An officer so holding over for one or more entire terms, shall, for the purpose of choosing his successor, be regarded as having been newly chosen for such terms. An appointment for a term shortened by reason of a predecessor holding over, shall be for the residue of the term only.

**§ 6. Mode of choosing state officers if not otherwise provided.** If the law shall not otherwise provide the mode of choosing a state officer, he shall be appointed by the governor by and with the advice and consent of the senate.

**§ 7. Appointment by the governor and senate.** An appointment to an office by the governor by and with the advice and consent of the senate, shall be made by communicating to the senate, while in session, a written nomination of a person for the office, designating the residence of the nominee, and if nominated to be an officer of a political subdivision of the state, designating also such subdivision, and if nominating two or more persons to the same office for different terms, designating the term for which each is nominated. If such nomination be of a successor to a predecessor in the same office, it may be made and acted upon by the senate after the expiration of the term or occurrence of a vacancy in the office of such predecessor, or at any time during the legislative session of the calendar year in which the term of office of such predecessor shall expire or in which the office shall become vacant. If the appointment be made before the expiration of the term of such predecessor, the term of office of the appointee shall commence upon the expiration of the term of such predecessor, or if made to fill a vacancy, upon the occurrence of such vacancy, or immediately if a vacancy already exist. If the senate shall reject such nomination, the clerk of the senate shall forthwith communicate, by writing, signed by the president and clerk of the senate, to the governor the fact of such rejection. If the senate shall confirm such nomination the appointment shall be deemed complete, and thereupon duplicate certificates of the confirmation shall be made and signed by the president and clerk of the senate, who shall cause one to be delivered to the governor and the other to the secretary of state, who shall record the same in his office in a book kept for that purpose.



**§ 8. Commissions of officers.** The commission of every officer appointed by the governor, or by the governor by and with the consent of the senate, shall be signed by the governor and attested under the seal of this state, by the secretary of state, who shall make and record in his office a copy of such commission, and deliver the original to the officer appointed, by a messenger, if the governor shall so direct, and otherwise, by mail, or as the secretary of state shall deem proper. Commissions of notaries public may be signed by the secretary to the governor, and shall be sent to the county clerk of the county in which such notaries public respectively reside. Every other appointment of an officer, made by one or more state officers, shall be in writing, and signed by the officer or officers, or by a majority of the officers, or by the presiding officer of the board or body making the appointment. Every such written appointment shall be deemed the commission of the officer appointed, and if of a state officer, a duplicate or a certified copy thereof shall be recorded in the office of the secretary of state; if of a local officer it shall be sent to the clerk of the county in which the officer appointed shall then reside, who shall file the same in his office, and notify the officer appointed of his appointment.

**§ 9. Deputies, their appointment, number and duties.** Every deputy, assistant, or other subordinate officer, whose appointment or election is not otherwise provided for, shall be appointed by his principal officer, board or other body, and the number thereof, if not otherwise prescribed by law, shall be limited in the discretion of the appointing power. If there is but one deputy, he shall, unless otherwise prescribed by law, possess the powers and perform the duties of his principal during the absence or inability to act of his principal, or during a vacancy in his principal's office. If there be two or more deputies of the same officer, such officer may designate, in writing, the order in which the deputies shall act, in case of his absence from the office or his inability to act, or in case of a vacancy in the office, and if he shall fail to make such designation, the deputy longest in office present shall so act. If two or more deputies present shall have held the office for the same period, the senior deputy in age shall so act. Such written designation by a state officer shall be filed in the office of the secretary of state; and by any other officer, in the office of the clerk of the county in which the principal has his office. If a vacancy in a public office shall be caused by the death of the incumbent, the deputies shall, unless otherwise provided by law, continue to hold office until the vacancy shall have been filled in accordance with law.

**§ 10. Official oaths.** Every officer shall take and file the oath of office required by law before he shall be entitled to enter upon the discharge of any of his official duties. An oath of office may be administered by any officer authorized to take, within the state, the acknowledgment of the execution of a deed of real property, or by an officer in whose office the oath is required to be filed, or may be administered to any member of a body of officers, by a presiding officer or clerk, thereof, who shall have taken an oath of office. The oath of office of a notary public or commissioner of deeds shall be filed in the office of the clerk of the county in which he shall reside. The oath of office of every state officer shall be filed in the office of the secretary of state; of every officer of a municipal corporation, with the clerk thereof; and of every other officer, in the office of the clerk of the county in which he shall reside, if no place be otherwise provided by law for the filing thereof.

**§ 11. Official undertakings.** Every official undertaking, when required by or in pursuance of law to be hereafter executed or filed by any officer, shall be to the effect that he will faithfully discharge the duties of his office and promptly account for and pay over all moneys or property received by him as such officer, in accordance with law, or in default thereof, that the parties executing such undertaking will pay all damages, costs and expenses resulting from such default, not exceeding a sum, if any, specified in such undertaking. The undertaking of a state officer shall be approved by the comptroller both as to its form and as to the sufficiency of the sureties, and be filed in the comptroller's office. The undertaking of a municipal officer shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the chief executive officer or by the governing body of the municipality and be filed with the clerk thereof. The approval by such governing body may be by resolution, a certified copy of which shall be attached to the undertaking. The sum specified in an official undertaking shall be the sum for which such undertaking shall be required by or in pursuance of law to be given. If no sum, or a different sum from that required by or in pursuance of law, be specified in the undertaking, it shall be deemed to be an undertaking for the amount so required. If no sum be required by or in pursuance of law to be so specified, and a sum be specified in the undertaking, the sum so specified shall not limit the liability of the sureties therein. Every official undertaking shall be executed and duly acknowledged by at least two sureties, each of whom shall add thereto his affidavit that he is a freeholder or householder within the state, stating his occu-

pation and residence and the street number of his residence and place of business if in a city, and a sum which he is worth over and above his just debts and liabilities and property exempt from execution. The aggregate of the sums so stated in such affidavits must be at least double the amount specified in the undertaking. The failure to execute an official undertaking in the form or by the number of sureties required by or in pursuance of law, or of a surety thereto to make an affidavit required by or in pursuance of law, or in the form so required, or the omission from such an undertaking of the approval required by or in pursuance of law, shall not affect the liability of the sureties therein.

**§ 12. Force and effect of official undertaking.** An officer of whom an official undertaking is required, shall not receive any money or property as such officer, or do any act affecting the disposition of any money or property which such officer is entitled to receive or have the custody of, before he shall have filed such undertaking; and any person having the custody or control of any such money or property shall not deliver the same to any officer of whom an undertaking is required until such undertaking shall have been given. If a public officer required to give an official undertaking, enters upon the discharge of any of his official duties before giving such undertaking, the sureties upon his undertaking subsequently given for or during his official term shall be liable for all his acts and defaults done or suffered and for all moneys and property received during such term prior to the execution of such undertaking, or if a new undertaking is given, from the time notice to give such new undertaking is served upon him. Every official undertaking shall be obligatory and in force so long as the officer shall continue to act as such and until his successor shall be appointed and duly qualified, and until the conditions of the undertaking shall have been fully performed. When an official undertaking is renewed pursuant to law the sureties upon the former undertaking shall not be liable for any official act done or moneys received after the due execution, approval and filing of the new undertaking.

**§ 13. Notice of neglect to file oath or undertaking.** The officer or body making the appointment or certificate of election of a public officer shall, if the officer be required to give an official undertaking to be filed in an office other than that in which the written appointment or certificate of election is to be filed, forthwith give written notice of such appointment or election to the officer in whose office the undertaking is to be filed. If any officer shall neglect, within the time required by law, to

take and file an official oath, or execute and file an official undertaking, the officer, with whom or in whose office such oath or undertaking is required to be filed, shall forthwith give notice of such neglect, if of an appointive officer, to the authority appointing such officer; if of an elective officer, to the officer, board or body authorized to fill a vacancy in such office, if any, or if none and a vacancy in the office may be filled by a special election, to the officer, board or body authorized to call or give notice of a special election to fill such vacancy; except that the notice of failure of a justice of the peace to file his official oath, shall be given to the town clerk of the town for which the justice was elected.

**§ 14. Effect of consolidation on terms of office.**

If an office be continued by the consolidated laws constituting the consolidation of which this chapter is a part, the person lawfully holding such office at the time of the taking effect of such consolidated laws shall, subject to the provisions of such consolidated laws, continue therein for the term for which he was chosen, or if holding over after the expiration of his term, until his successor shall be chosen and shall have qualified.

**§ 15. Validation of official acts performed before filing official oath or undertaking.** If a public officer, duly chosen, has heretofore entered, or shall hereafter enter on the performance of the duties of his office, without taking or filing an official oath, or executing or filing an official undertaking, as required by the constitution, or by any general or special law, his acts as such officer, so performed, shall be as valid and of as full force and effect as if such oath had been duly taken and filed, and as if such undertaking had been duly executed and filed, notwithstanding the provisions of any general or special law declaring any such office vacant, or authorizing it to be declared vacant, or to be filled as in case of vacancy, or imposing any other forfeiture or penalty for omission to take or file any such oath, or to execute or file any such undertaking; but this section shall not otherwise affect any provision of any general or special law, declaring any such office vacant, or authorizing it to be declared vacant, or to be filled as in case of vacancy, or imposing any other forfeiture or penalty, by reason of the failure to take or file any such oath or to execute or file any such undertaking; and this section shall not relieve any such officer from the criminal liability imposed by section eighteen hundred twenty of the penal law, for entering on the discharge of his official duties without taking or filing such oath or executing or filing such undertaking.

**ARTICLE 3****Creation and Filling of Vacancies**

- Section 30. Creation of vacancies.
31. Resignations.
  32. Removals by senate.
  33. Removals by governor.
  34. Evidence in proceedings for removal by governor.
  35. Removals from office.
  36. Removal of town or village officer by court.
  37. Notice of existence of vacancy.
  38. Terms of officers chosen to fill vacancies.
  39. Filling vacancies in office of officer appointed by governor and senate.
  40. Vacancy occurring in office of legislative appointee, during legislative recess.
  41. Vacancies filled by legislature.
  42. Filling other vacancies.

**§ 30. Creation of vacancies.** Every office shall be vacant upon the happening of either of the following events before the expiration of the term thereof:

1. The death of the incumbent;
2. His resignation;
3. His removal from office;
4. His ceasing to be an inhabitant of the state, or if he be a local officer, of the political subdivision, or municipal corporation of which he is required to be a resident when chosen;
5. His conviction of a felony, or a crime involving a violation of his oath of office;
6. The judgment of a court, declaring void his election or appointment, or that his office is forfeited or vacant;
7. His refusal or neglect to file his official oath or undertaking, if one is required, before or within fifteen days after the commencement of the term of office for which he is chosen, if an elective office, or if an appointive office, within fifteen days after notice of his appointment, or within fifteen days after the commencement of such term; or to file a renewal undertaking within the time required by law, or if no time be so specified, within fifteen days after notice to him in pursuance of law, that such renewal undertaking is required. When a new office or an additional incumbent of an existing office shall be created, such office shall for the purposes of an appointment or election, be vacant

from the date of its creation, until it shall be filled by election or appointment.

**§ 31. Resignations.** Public officers may resign their offices as follows:

1. The governor, lieutenant-governor, secretary of state, comptroller, attorney-general, state engineer and surveyor, to the legislature;

2. All officers appointed by the governor alone, or by him with the consent of the senate, to the governor;

3. Senators and members of assembly, to the presiding officers of their respective houses;

4. Sheriffs, coroners, county clerks, district attorneys and registers of counties, to the governor;

5. Every other county officer, to the county clerk;

6. Every town officer, to the town clerk;

7. The officer of any other municipal corporation, to the clerk of the corporation;

8. Every other appointive officer, where not otherwise provided by law, to the body, board or officer that appointed him, and every other elective officer, where not otherwise provided by law, to the secretary of state.

Every resignation shall be in writing addressed to the officer or body to whom it is made. If addressed to an officer, it shall take effect upon delivery to him at his place of business or when it shall be filed in his office.

If addressed to the legislature or to the presiding officer of either house thereof it shall be delivered to and filed with the secretary of state, and shall take effect when so delivered, and he shall forthwith communicate the fact of such resignation to the legislature or to such house, if in session, or if not, at its first meeting thereafter.

If addressed to any other body it shall be delivered to the presiding officer or clerk of such body, if there be one, and if not, to any member thereof, and shall take effect upon such delivery, and shall be filed with the clerk, or if there be no clerk, with the other records of such body. A delivery at the office or place of residence or business of the person to whom any such resignation may be delivered shall be a sufficient delivery thereof.

**§ 32. Removals by senate.** The governor before making a recommendation to the senate for the removal of any officer may in his discretion take proofs, for the purpose of determining whether such recommendation shall be made.

The secretary of state, comptroller, treasurer, attorney-general, or the state engineer and surveyor, may be removed by the senate,

on the recommendation of the governor, for misconduct or malversation in office, if two-thirds of all the members elected to the senate shall concur therein. No such removal shall be made unless the person who is sought to be removed, shall have been served with a copy of the charges against him and have an opportunity of being heard. On the question of removal, the yeas and nays shall be entered on the journal. The governor may convene the senate in extra session for the investigation of such charges. The senate shall have power to make such rules as it may see fit for the practice before it. At the time appointed for the investigation, the senate shall proceed to hear and try the charges against such officer, and may take proofs in relation thereto.

The governor may direct the attorney-general, or may appoint any suitable person to conduct the trial of such charges before the senate.

An officer appointed by the governor by and with the advice and consent of the senate, may be removed by the senate upon the recommendation of the governor.

If the senate shall reject a recommendation of removal the clerk of the senate shall, by a writing signed by him and by the president and clerk of the senate, communicate the fact of such rejection to the governor. If the senate shall concur in such a recommendation the removal shall take effect upon the passage of the resolution of concurrence, and duplicate copies of such resolution, certified by the clerk and president of the senate, shall be executed and delivered by the clerk to the secretary of state.

**§ 33. Removals by governor.** An officer appointed by the governor for a full term or to fill a vacancy, any county treasurer, any county superintendent of the poor, any register of a county, any coroner or any notary public, may be removed by the governor within the term for which such officer shall have been chosen, after giving to such officer a copy of the charges against him and an opportunity to be heard in his defense.

**§ 34. Evidence in proceedings for removal by governor.** The governor may take the evidence in any proceeding for the removal by him of a public officer or may direct that the evidence be taken before a justice of the supreme court of the district, or the county judge of the county in which the officer proceeded against shall reside, or before a commissioner appointed by the governor for that purpose by an appointment in writing, filed in the office of the secretary of state. The governor may direct such judge or commissioner to report to him the evidence taken in such proceeding, or the evidence and the findings by the judge or

commissioner of the material facts deemed by such judge or commissioner to be established. The commissioner or judge directed to take such evidence may require witnesses to attend before him, and shall issue subpoenas for such witnesses as may be requested by the officer proceeded against.

The governor may direct the attorney-general, or the district attorney of the county in which the officer proceeded against shall reside to conduct the examination into the truth of the charges alleged as ground for such removal. If the examination shall be before a commissioner or judge, it shall be held at such place in the county in which the officer proceeded against shall reside as the commissioner or judge shall appoint, and at least eight days after written notice of the time and place of such examination shall have been given to the officer proceeded against.

All sheriffs, coroners, constables and marshals to whom process shall be directed and delivered under this section shall execute the same without unnecessary delay.

**§ 35. Removals from office.** Every removal of an officer by one or more state officers, shall be in written duplicate orders, signed by the officer, or by all or a majority of the officers, making the removal, or if made by a body or board of state officers may be evidenced by duplicate certified copies of the resolution or order of removal, signed either by all or by a majority of the officers making the removal, or by the president and clerk of such body or board. Both such duplicate orders or certified copies shall be delivered to the secretary of state, who shall record in his office one of such duplicates, and shall, if the officer removed is a state officer, deliver the other to such officer by messenger, if required by the governor, and otherwise by mail or as the secretary of state shall deem advisable, and shall, if directed by the governor, cause a copy thereof to be published in the state paper. If the officer removed be a local officer, he shall send the other of such duplicates to the county clerk of the county in which the officer removed shall have resided at the time he was chosen to the office, and such clerk shall file the same in his office, and forthwith notify the officer removed of his removal.

**§ 36. Removal of town or village officer by court.** Any town or village officer, except a justice of the peace, may be removed from office by the supreme court for any misconduct, maladministration, malfeasance or malversation in office. An application for such removal may be made by any citizen resident of such town or village and shall be made to the appellate division of the supreme court held within the judicial depart-



ment embracing such town or village. Such application shall be made upon notice to such town officer of not less than eight days, and a copy of the charges upon which the application will be made must be served with such notice.

**§ 37. Notice of existence of vacancy.** When a judgment shall be rendered by any court convicting an officer of a felony, or of a crime involving a violation of his oath of office, or declaring the election or appointment of any officer to be void, or that the office of any officer has been forfeited or become vacant, the clerk of such court shall give notice thereof to the governor, stating the cause of such conviction or judgment.

Whenever a public officer shall die before the expiration of his term of office, or shall cease to be a resident of the political subdivision of the state or a municipal corporation in which he is required to be a resident as a condition of continuing in the office, the county clerk of the county in which such officer shall have resided immediately prior to such death or removal, shall immediately give notice of such death or removal to the governor. If the governor is not authorized to fill any vacancy of which he shall have notice, he shall forthwith give notice of the existence of such vacancy to the officer or officers, or to the body or board of officers authorized to fill the vacancy, or if such vacancy may be filled by an election, to the officers authorized to give notice of such election.

**§ 38. Terms of officers chosen to fill vacancies.** If an appointment of a person to fill a vacancy in an appointive office be made by the officer, or by the officers, body or board of officers, authorized to make appointment to the office for the full term, the person so appointed to such vacancy shall hold office for the balance of the unexpired term. The term of office of an officer appointed to fill a vacancy in an elective office, shall be until the commencement of the political year next succeeding the first annual election after the happening of the vacancy, if the office be made elective by the constitution, or at which the vacancy can be filled by election, if the office be otherwise made elective.

**§ 39. Filling vacancies in office of officer appointed by governor and senate.** A vacancy which shall occur during the session of the senate, in the office of an officer appointed by the governor by and with the advice and consent of the senate, shall be filled in the same manner as an original appointment. Such a vacancy occurring or existing otherwise than

by expiration of term, while the senate is not in session, shall be filled by the governor for a term which shall expire at the end of twenty days from the commencement of the next meeting of the senate.

**§ 40. Vacancy occurring in office of legislative appointee, during legislative recess.** When a vacancy shall occur or exist, otherwise than by expiration of term, during the recess of the legislature, in the office of any officer appointed by the legislature, the governor shall appoint a person to fill the vacancy for a term which shall expire at the end of twenty days from the commencement of the next meeting of the legislature.

**§ 41. Vacancies filled by legislature.** When a vacancy occurs or exists, other than by removal, in the office of the secretary of state, comptroller, treasurer, attorney-general, or state engineer and surveyor, or a resignation of any such office to take effect at any future day shall have been made while the legislature is in session, the two houses thereof, by joint ballot, shall appoint a person to fill such actual or prospective vacancy.

**§ 42. Filling other vacancies.** If a vacancy shall occur, otherwise than by expiration of term, with no provision of law for filling the same, if the office be elective, the governor shall appoint a person to execute the duties thereof until the vacancy shall be filled by an election. But if the term of such officer shall expire with the calendar year in which the appointment shall be made, or if the office be appointive, the appointee shall hold for the residue of the term.

## ARTICLE 4

### Powers and Duties of Public Officers

- Section 60. Official seals of court of appeals and state officers.
61. Investigations by state officers.
  62. Business in public offices on public holidays.
  63. Leave of absence for veterans on Memorial day.
  64. Payment of expenses of public officers.
  65. Use of typewriters for recording public records.
  66. Persons having custody of papers in public offices  
to search files and make transcripts.
  67. Fees of public officers.
  68. Allowance of additional fees and expenses.
  69. Fee for administering certain official oaths prohibited.
  70. Accounting for fees.

**§ 60. Official seals of court of appeals and state officers.** The seal of the court of appeals and of each state officer authorized to use an official seal, shall be of metal with the device of the arms of the state surrounded with the inscription, State of New York, and the name of the court or official designation of the officer. The seal of such court, the privy seal of the governor, and the seal of the secretary of state, comptroller, treasurer, state engineer and surveyor, the adjutant-general, and of each of the other state officers at the capital, required to have an official seal, shall be two and one-quarter inches in diameter, and of each other state officer authorized to have an official seal, shall be one and three-quarters inches in diameter. Such seals heretofore provided by the secretary of state shall continue to be used by such courts and officers, and when defective from wear or otherwise, shall be delivered to the secretary of state who shall cause them to be repaired and returned, or to be defaced with a suitable mark, or deposited with the ancient seals in the state library, and new seals to be provided for use instead.

**§ 61. Investigations by state officers.** Every state officer, in any proceeding held before him, or in any investigation held by him for the purpose of making inquiry as to the official conduct of any subordinate officer or employee, shall have the power to issue subpoenas for and require the attendance of witnesses and the production of all books and papers relating to any matter under inquiry. All such subpoenas shall be issued under the hand and seal of the state officer holding such proceeding. If a person duly subpoenaed fails to obey such subpoena without reasonable cause, or shall, without such cause, refuse to be examined or to answer any legal or pertinent question or to produce any such book or paper called for, he may be punished as for a contempt. The testimony of witnesses in any such proceeding shall be under oath and the state officer instituting the proceeding shall have power to administer oaths. In case of state boards or commissions, any member of the same, or, when duly authorized by resolution, the secretary of such board or commission, shall have power to issue subpoenas and administer oaths for the purposes of this section.

**§ 62. Business in public offices on public holidays.** Holidays and half holidays shall be considered as Sunday for all purposes relating to the transaction of business in the public offices of the state, and of each county. On all other days and

half days, excepting Sundays, such offices shall be kept open for the transaction of business.

**§ 63. Leave of absence for veterans on Memorial day.** It shall be the duty of the head of every public department and of every court of the state of New York, of every superintendent or foreman on the public works of said state, of the county officers of the several counties of said state, and of the head of every department, bureau and office in the government of the various cities and villages in this state, to give leave of absence with pay for the twenty-four hours of the thirtieth day of May, or such other day as may, according to law, be observed as Memorial day, to every person in the service of the state, the county, the city or village, as the case may be, who served in the army or the navy of the United States in the war of the rebellion, or who served in the regular or volunteer army or the navy or the marine corps of the United States during the war with Spain or during the insurrection in the Philippine islands, and who was honorably discharged from such service. A refusal to give such leave of absence to one entitled thereto shall be neglect of duty.

**§ 64. Payment of expenses of public officers.** Every public officer who is not allowed any compensation for his services shall be paid his actual expenses necessarily incurred in the discharge of his official duties.

**§ 65. Use of typewriters for recording public records.** The public officers of the state or of any municipal corporation therein having charge of the recording of public records, papers, documents or matters required by law to be recorded in their respective offices, are hereby authorized and empowered to use typewriting machines for recording the same.

**§ 66. Persons having custody of papers in public offices to search files and make transcripts.** A person, having the custody of the records or other papers in a public office, within the state, must, upon request, and upon payment of, or offer to pay, the fees allowed by law, or, if no fees are expressly allowed by law, fees at the rate allowed to a county clerk for a similar service, diligently search the files, papers, records, and dockets in his office; and either make one or more transcripts therefrom, and certify to the correctness thereof, and to the search, or certify that a document or paper, of which the custody legally belongs to him, can not be found.

**§ 67. Fees of public officers.** 1. Each public officer upon whom a duty is expressly imposed by law, must execute the same without fee or reward, except where a fee or other compensation therefor is expressly allowed by law.

2. An officer or other person, to whom a fee or other compensation is allowed by law, for any service, shall not charge or receive a greater fee or reward, for that service, than is so allowed.

3. An officer, or other person, shall not demand or receive any fee or compensation, allowed to him by law for any service, unless the service was actually rendered by him; except that an officer may demand in advance his fee, where he is, by law, expressly directed or permitted to require payment thereof, before rendering the service.

An officer or other person, who violates either of the provisions contained in this section, is liable, in addition to the punishment prescribed by law for the criminal offense, to an action in behalf of the person aggrieved, in which the plaintiff is entitled to treble damages.

**§ 68. Allowance of additional fees and expenses.**

Where an officer or other person is required, in the course of a duty imposed upon him by law, to take an oath, to acknowledge an instrument, to cause an instrument to be filed or recorded, or to transmit a paper to another officer, he is entitled, in addition to the fees, or other compensation for the service, prescribed by law, to the fees necessarily paid by him, to the officer who administered the oath, or took the acknowledgment, or filed or recorded the instrument; and to the expense of transmitting the paper, including postage, where the transmission is lawfully made through the post-office.

**§ 69. Fee for administering certain official oaths prohibited.** An officer is not entitled to a fee, for administering the oath of office to a member of the legislature, to any military officer, to an inspector of election, clerk of the poll, or any town officer; or to more than ten cents, for administering an official oath to any other officer.

**§ 70. Accounting for fees.** Where a public officer is required, by law, to keep an account of, or to pay over, the fees or other moneys, received by him for official services, he must include therein all sums, received by him, to which he was entitled, by reason of any act, performed by him in his official capacity; whether the act did or did not pertain to his office, or to the business thereof.

**ARTICLE 5****Delivery of Public Books**

Section 80. Delivery of books and papers.

**§ 80. Delivery of books and papers.** A public officer may demand from any person in whose possession they may be, a delivery to such officer of the books and papers belonging or appertaining to such office. If such demand is refused, such officer may make complaint thereof to any justice of the supreme court of the district, or to the county judge of the county in which the person refusing resides. If such justice or judge be satisfied that such books or papers are withheld, he shall grant an order directing the person refusing to show cause before him at a time specified therein, why he should not deliver the same. At such time, or at any time to which the matter may be adjourned, on proof of the due service of the order, such justice or judge shall proceed to inquire into the circumstances. If the person charged with withholding such books or papers makes affidavit before such justice or judge that he has delivered to the officer all books and papers in his custody which, within his knowledge, or to his belief belong or appertain thereto, such proceedings before such justice or judge shall cease, and such person be discharged. If the person complained against shall not make such oath, and it appears that any such books or papers are withheld by him, such justice or judge shall commit him to the county jail until he delivers such books and papers, or is otherwise discharged according to law. On such commitment, such justice or judge, if required by the complainant, shall also issue his warrant directed to any sheriff or constable, commanding him to search, in the daytime, the places designated therein, for such books and papers, and to bring them before such justice or judge. If any such books and papers are brought before him by virtue of such warrant, he shall determine whether they appertain to such office, and if so shall cause them to be delivered to the complainant.

**ARTICLE 6****Construction; Laws Repealed; When to Take Effect**

Section 90. Application of chapter.

91. Laws repealed.

92. When to take effect.

**§ 90. Application of chapter.** This chapter applies to civil officers only.

**§ 91. Laws repealed.** Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

**§ 92. When to take effect.** This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

Revised Statutes.... Part 1, chapter 5, ..... All  
 Revised Statutes.... Part 3, chapter 2, title 4, sections 268-270

Laws of	Chapter	Section
1778.....	3.....	All (1st Sess.)
1778.....	7.....	All (1st Sess.)
1778.....	8.....	6
1778.....	12.....	5, 8
1778.....	31.....	All
1778.....	47.....	All
1778.....	3.....	All (2d Sess.)
1779.....	10.....	All (2d Sess.)
1779.....	7.....	All (3d Sess.)
1780.....	52.....	1
1780.....	62.....	All
1781.....	36.....	1
1783.....	51.....	All
1787.....	15.....	26
1788.....	28.....	All
1792.....	68.....	2
1791.....	4.....	All
1796.....	56.....	1, 2, 4, 5, 7
1798.....	36.....	2
1801.....	27.....	2-4
1801.....	33.....	1-3, 6
1801.....	61.....	14
1801.....	113.....	1-11, 14-17
1802.....	81.....	2
1803.....	1.....	1
1804.....	39.....	4, 5
1806.....	3.....	All
1809.....	141.....	1, 3
R. L. 1813....	13.....	All
R. L. 1813....	14.....	3-5

Laws of	Chapter	Section
1814.....	200.....	30
1817.....	226.....	All
1822.....	184.....	1, 2
1822.....	250.....	28, 29
1823.....	269.....	29-31
1824.....	328.....	All
1827.....	179.....	8, 9
1828.....	20.....	15, ¶ 5 (2d Meect.)
1828.....	21.....	1, ¶¶ 109, 238, 424, 551 (2d Meect.)
1829.....	52.....	3
1830.....	36.....	All
1830.....	58.....	All
1832.....	292.....	3
1837.....	436.....	All
1847.....	360.....	All
1848.....	4.....	All
1849.....	28.....	All
1849.....	46.....	All
1850.....	126.....	All
1851.....	29.....	All
1866.....	629.....	All
1867.....	335.....	All
1873.....	85.....	All
1875.....	397.....	All
1876.....	133.....	All
1880.....	4.....	All
1882.....	216.....	All
1883.....	285.....	All
1883.....	522.....	All
1887.....	372.....	All
1890.....	367.....	All
1892.....	677.....	24, last sentence
1892.....	681.....	All
1893.....	318.....	All
1894.....	166.....	All
1894.....	403.....	All
1895.....	220.....	All
1896.....	573.....	All
1897.....	614.....	1, part providing that public offices shall be kept open on all week days
1898.....	655.....	All
1899.....	41.....	All



Laws of	Chapter	Section
1899.....	238.....	All
1901.....	26.....	All
1902.....	39.....	1, part providing that public offices shall be kept open on all week days
1902.....	81.....	All
1902.....	91.....	All
1903.....	128.....	All
1907.....	545.....	All
Code Civil Procedure.....		961, part relating to persons having custody of papers in public offices, except surrogates, county clerks, registers and clerks of courts; 2471a; 3280, part last two sentences; 3281, 3282, 3286, 3289, 3291

# \*PUBLIC SERVICE COMMISSIONS LAW

L. 1907, Chap. 429.

AN ACT to establish the public service commissions and prescribing their powers and duties, and to provide for the regulation and control of certain public service corporations and making an appropriation therefor.

(In effect July 1, 1907.)

- Article 1. Public service commissions; general provisions (§§ 1-23).
2. Provisions relating to railroads, street railroads and common carriers (§§ 25-40).
  3. Provisions relating to the powers of the commissions in respect to railroads, street railroads and common carriers (§§ 45-60).
  4. Provisions relating to gas and electric corporations; regulation of price of gas and electricity (§§ 65-77).
  5. Commissions and offices abolished; saving clause; repeal (§§ 80-89).

## ARTICLE 1

### Public Service Commissions; General Provisions

- Section
1. Short title.
  2. Definitions.
  3. Public service districts.
  4. Commissions established; appointment; removal; terms of office.
  5. Jurisdiction of commissions.
  6. Counsel to the commissions.
  7. Secretary to the commissions.
  8. Additional officers and employees.
  9. Oath of office; eligibility of commissioners and officers.

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\* A proposed Public Service Commissions Law was reported to the Legislature and passed, but was not signed by the Governor.

- Section 10. Offices of commissions; meetings; official seal; stationery.
11. Quorum; powers of a commissioner.
  12. Counsel to the commissions; duties.
  13. Salaries and expenses.
  14. Payment of salaries and expenses.
  15. Certain acts prohibited.
  16. Annual report of commissions.
  17. Certified copies of papers filed to be evidence.
  18. Fees to be charged and collected by the commissions
  19. Attendance of witnesses and their fees.
  20. Practice before the commissions; immunity of witnesses.
  21. Court proceedings; preference.
  22. Rehearing before commission.
  23. Service and effect of orders.

**§ 1. Short title.** This chapter shall be known as the public service commissions law, and shall apply to the public services herein described, and to the commissions hereby created.

**§ 2. Definitions.** The term "commission," when used in this act, means either public service commission, hereby created, which by the terms of this act is vested with the power or duty in question.

The term "commissioner," when used in this act, means one of the members of such commission.

The term "corporation," when used in this act, includes a corporation, company, association and joint-stock association.

The word "person," when used in this act, includes an individual and a firm or copartnership.

The term "street railroad," when used in this act, includes every railroad by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for compensation, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place in any city, village or town, and including all switches, spurs, tracks, right of trackage, subways, tunnels, stations, terminals and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such street railroad; but the said term "street railroad," when used in this act, shall not include a railroad constituting or used as part of a trunk line railroad system.

The term "railroad," when used in this act, includes every railroad, other than a street railroad, by whatsoever power operated

for public use in the conveyance of persons or property for compensation, with all bridges, ferries, tunnels, switches, spurs, tracks, stations and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such railroad.

The term "street railroad corporation," when used in this act, includes every corporation, company, association, joint-stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, managing or controlling any street railroad or any cars or other equipment used thereon or in connection therewith.

The term "railroad corporation," when used in this act, includes every corporation, company, association, joint-stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, managing or controlling any railroad or any cars or other equipment used thereon or in connection therewith.

The term "common carrier," when used in this act, includes all railroad corporations, street railroad corporations, express companies, car companies, sleeping-car companies, freight companies, freight-line companies and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state.

The term "gas corporation," when used in this act, includes every corporation, company, association, joint-stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, managing or controlling any plant or property for manufacturing and distributing and selling for distribution or distributing illuminating gas (natural or manufactured) for light, heat or power.

The term "electrical corporation," when used in this act, includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad corporation generating electricity for its own use exclusively), owning, operating, managing or controlling any plant or property for generating and distributing, or generating and selling for distribution, or distributing electricity for light, heat or power or for the transmission of electric current for such purposes.

The term "transportation of property or freight," when used in this act, includes any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage and handling of the property or freight transported.

The term "municipality," when used in this act, includes a city,

village, town or lighting district, organized as provided by a general or special act.

**§ 3. Public service districts.** There are hereby created two public service districts, to be known as the first district and the second district. The first district shall include the counties of New York, Kings, Queens and Richmond. The second district shall include all other counties of the state.

**§ 4. Commissions established; appointment; removal; terms of office.** There shall be a public service commission for each district, and each commission shall possess the powers and duties hereinafter specified, and also all powers necessary or proper to enable it to carry out the purposes of this act. The commission of the first district shall consist of five members and the commission of the second district shall consist of five members, to be appointed by the governor, by and with the advice and consent of the senate, one of whom designated by the governor shall, during his term of office, be the chairman of the commission of which he is a member. Each commissioner shall be a resident of the district for which he is appointed.

The governor may remove any commissioner for inefficiency, neglect of duty or misconduct in office, giving to him a copy of the charges against him, and an opportunity of being publicly heard in person or by counsel in his own defense, upon not less than ten days notice. If such commissioner shall be removed the governor shall file in the office of the secretary of state a complete statement of all charges made against such commissioner, and his findings thereon, together with a complete record of the proceedings.

Of the members of the commission in each district first appointed hereunder, one shall hold office until February first, nineteen hundred and nine, one until February first, nineteen hundred and ten, one until February first, nineteen hundred and eleven, one until February first, nineteen hundred and twelve, and one until February first, nineteen hundred and thirteen; the term of office of each commissioner so appointed shall begin on the first day of July, nineteen hundred and seven. Upon the expiration of each of such terms, the term of office of each commissioner thereafter appointed shall be five years from the first of February. Vacancies shall be filled by appointment for the unexpired term.

**§ 5. Jurisdiction of commissions.** The jurisdiction, supervision, powers and duties of the public service commission in the first district shall extend under this act:

1. To railroads and street railroads lying exclusively within that district, and to the persons or corporations owning, leasing, operating or controlling the same.

2. To street railroads any portion of whose lines lies within that district, to all transportation of persons or property thereon within that district or from a point within either district to a point within the other district, and to the persons or corporations owning, operating, controlling or leasing the said street railroads; provided, however, that the commission for the second district shall have jurisdiction over such portion of the lines of said street railroads as lies within the second district, and over the persons or corporations owning, operating, controlling or leasing the same, so far as concerns the construction, maintenance, equipment, terminal facilities and local transportation facilities of said street railroads within the second district.

3. To such portion of the lines of any other railroad as lies within that district, and to the person or corporation owning, leasing, operating or controlling the same, so far as concerns the construction, maintenance, equipment, terminal facilities and local transportation facilities, and local transportation of persons or property within that district.

4. To any common carrier operating or doing business exclusively within that district.

5. To the manufacture, sale or distribution of gas and electricity for light, heat and power in said district, and to the persons or corporations owning, leasing, operating or controlling the same.

6. And in addition thereto, the commission in the first district shall have and exercise all powers heretofore conferred upon the board of rapid transit railroad commissioners under chapter four of the laws of eighteen hundred and ninety-one, entitled "An act to provide for rapid transit railways in cities of over one million inhabitants," and the acts amendatory thereto.

All jurisdiction, supervision, powers and duties under this act not specifically granted to the public service commission of the first district shall be vested in, and be exercised by, the public service commission of the second district, including the regulation and control of all transportation of persons or property, and the instrumentalities connected with such transportation, on any railroad other than a street railroad from a point within either district to a point within the other district.

**§ 6. Counsel to the commissions.** Each commission shall appoint as counsel to the commission an attorney and counselor-at-law of the state of New York, who shall hold office during

the pleasure of the commission. Each counsel to the commission shall, subject to the approval of the commission, have the power to appoint, and at pleasure remove, attorneys and counselors-at-law, to assist him in the performance of his duties, and also to employ and remove stenographers and process-servers.

**§ 7. Secretary to the commissions.** Each commission shall have a secretary to be appointed by it and to hold office during its pleasure. It shall be the duty of the secretary to keep a full and true record of all proceedings of the commission, of all books, maps, documents and papers ordered filed by the commission and of all orders made by a commissioner and of all orders made by the commission or approved and confirmed by it and ordered filed, and he shall be responsible to the commission for the safe custody and preservation of all such documents at its office. Under the direction of the commission the secretary shall have general charge of its office, superintend its clerical business and perform such other duties as the commission may prescribe. He shall have power and authority to administer oaths in all parts of the state, so far as the exercise of such power is properly incidental to the performance of his duty or that of the commission. The secretary shall designate, from time to time, one of the clerks appointed by the commission to perform the duties of secretary during his absence and, during such time, the clerk so designated shall at the office possess the powers of the secretary of the commission.

**§ 8. Additional officers and employees.** Each commission shall have power to employ, during its pleasure, such officers, clerks, inspectors, experts and employees as it may deem to be necessary to carry out the provisions of this act, or to perform the duties and exercise the powers conferred by law upon the commission.

**§ 9. Oath of office; eligibility of commissioners and officers.** Each commissioner and each person appointed to office by a commission or by counsel to a commission shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office. No person shall be eligible for appointment or shall hold the office of commissioner or be appointed by a commission or by counsel to a commission to, or hold, any office or position under a commission, who holds any official relation to any common carrier, railroad corporation, street railroad corporation, gas corporation or electrical corporation subject to the provisions of this act, or who owns stocks or bonds therein.

**§ 10. Offices of commissions; meetings; official seal; stationery, etc.** 1. The principal office of the commission of the first district shall be in the borough of Manhattan, city of New York; and the office of the second district shall be in the city of Albany, in rooms designated by the trustees of public buildings. Each commission shall hold stated meetings at least once a month during the year at its office. Each shall have an official seal to be furnished and prepared by the secretary of state as provided by law. The offices shall be supplied with all necessary books, maps, charts, stationery, office furniture, telephone and telegraph connections and all other necessary appliances, to be paid for in the same manner as other expenses authorized by this act.

2. The offices of each commission shall be open for business between the hours of eight o'clock in the morning and eleven o'clock at night every day in the year, and one or more responsible persons, to be designated by the commission or by the secretary under the direction of the commission, shall be on duty at all times in immediate charge thereof.

**§ 11. Quorum; powers of a commissioner.** A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power of the commission, and may hold meetings of the commission at any time or place within the state. Any investigation, inquiry or hearing which either commission has power to undertake or to hold may be undertaken or held by or before any commissioner. All investigations, inquiries, hearings and decisions of a commissioner shall be and be deemed to be the investigations, inquiries, hearings and decisions of the commission and every order made by a commissioner, when approved and confirmed by the commission and ordered filed in its office, shall be and be deemed to be the order of the commission.

**§ 12. Counsel to the commissions; duties.** It shall be the duty of counsel to a commission to represent and appear for the people of the state of New York and the commission in all actions and proceedings involving any question under this act, or under or in reference to any act or order of the commission, and, if directed to do so by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence and prosecute all actions and proceedings directed or authorized by the commission, and to expedite in every way possible final determination of all such actions and proceedings; to advise the commission and each commissioner when so requested in regard to all matters in connection with the powers and



duties of the commission and of the members thereof, and generally to perform all duties and services as attorney and counsel to the commission which the commission may reasonably require of him.

**§ 13. Salaries and expenses.** The annual salary of each commissioner shall be fifteen thousand dollars (\$15,000). The annual salary of counsel to a commission shall be ten thousand dollars (\$10,000). The annual salary of a secretary to a commission shall be six thousand dollars (\$6,000). All officers, clerks, inspectors, experts and employees of a commission, and all persons appointed by the counsel to a commission, shall receive the compensation fixed by the commission.

The commissioners, counsel to the commission and the secretary, and their officers, clerks, inspectors, experts and other employees, shall have reimbursed to them all actual and necessary traveling and other expenses and disbursements incurred or made by them in the discharge of their official duties.

**§ 14. Payment of salaries and expenses.** 1. The salaries of the commissioners, the counsel to the commission, and the secretary to the commission in the first district shall be audited and allowed by the state comptroller, and paid monthly by the state treasurer upon the order of the comptroller out of the funds provided therefor. All other salaries and expenses of the commission of the first district shall be audited and paid as follows: The board of estimate and apportionment of the city of New York, or other board or public body on which is imposed the duty and in which is vested the power of making appropriations of public moneys for the purposes of the city government shall, from time to time, on requisition duly made by the public service commission of the first district, appropriate such sum or sums of money as may be requisite and necessary to enable it to do and perform, or cause to be done and performed, the duties in this or in any other act prescribed, and to provide for the expenses and the compensation of the employees of such commission, and such appropriation shall be made forthwith upon presentation of a requisition from the said commission, which shall state the purposes for which such moneys are required by it. In case the said board of estimate and apportionment, or such other board or public body, fail to appropriate such amount as the said commission deems requisite and necessary, the said commission may apply to the appellate division of the supreme court in the first department, on notice to the board of estimate and apportionment or such other board or public body aforesaid, to determine what amount shall be appropriated for the purposes so required and the de-

cision of said appellate division shall be final and conclusive; and the city shall not be liable for any indebtedness incurred by the said commission in excess of such appropriation or appropriations. It shall be the duty of the auditor and comptroller of said city, after such appropriation shall have been duly made, to audit and pay the proper expenses and compensation of the employees of said commission other than its counsel and secretary, upon vouchers therefor, to be furnished by the said commission, which payments shall be made in like manner as payments are now made by the auditor, comptroller or other public officers of claims against and demands upon such city; and for the purpose of providing funds with which to pay the said sums, the comptroller or other chief financial officer of said city, is hereby authorized and directed to issue and sell revenue bonds of such city in anticipation of receipt of taxes and out of the proceeds of such bonds to make the payments in this section required to be made. The amount necessary to pay the principal and interest of such bonds shall be included in the estimates of moneys necessary to be raised by taxation to carry on the business of said city, and shall be made a part of the tax levy for the year next following the year in which such appropriations are made. The commission may provide that all or any portion of the expenses so incurred and paid by said city as in this section provided, and for which said city shall be liable, shall be repaid, with interest, by the bidder or bidders at the public sale of the rights, privileges and franchises, as provided in chapter four of the laws of eighteen hundred and ninety-one, entitled "An act to provide for rapid transit railways in cities of over one million inhabitants," and the acts amendatory thereto. The said comptroller shall pay the proper salaries and the expenses of the said commission upon its requisition, for the remainder of the fiscal year after this act shall take effect, from any funds that may have been heretofore appropriated for the board of rapid transit railroad commissioners, which appropriation is hereby transferred to the credit of the public service commission of the first district. In case the said appropriation shall not be sufficient to meet such salaries and expenses, the comptroller of said city is hereby authorized and directed to issue and sell revenue bonds of said city, in anticipation of receipt of taxes, as hereinbefore provided.

2. All salaries and expenses of the commission in the second district shall be audited and allowed by the state comptroller and paid monthly by the state treasurer upon the order of the comptroller, out of the funds provided therefor.

**§ 15. Certain acts prohibited.** Every commissioner, counsel to a commission, the secretary of a commission, and every person employed or appointed to office, either by a commission or by the counsel to a commission, is hereby forbidden and prohibited to solicit, suggest, request or recommend, directly or indirectly, to any common carrier, railroad corporation or street railroad corporation, or to any officer, attorney, agent or employee thereof, the appointment of any person to any office, place, position or employment. And every common carrier, railroad corporation, street railroad corporation, gas corporation and electrical corporation and every officer, attorney, agent and employee thereof, is hereby forbidden and prohibited to offer to any commissioner, to counsel to a commission, to the secretary thereof, or to any person employed by a commission or by the counsel to a commission, any office, place, appointment or position, or to offer or give to any commissioner, to counsel to a commission, to the secretary thereof, or to any officer employed or appointed to office by the commission or by the counsel to the commission, any free pass or transportation or any reduction in fare to which the public generally are not entitled or free carriage for freight or property or any present, gift or gratuity of any kind. If any commissioner, counsel to a commission, the secretary thereof or any person employed or appointed to office by a commission or by counsel to a commission, shall violate any provision of this section he shall be removed from the office held by him. Every commissioner, counsel to the commission, the secretary thereof and every person employed or appointed to office by the commission or by counsel to the commission, shall be and be deemed to be a public officer.

**§ 16. Annual report of commissions.** All proceedings of each commission and all documents and records in its possession shall be public records, and each commission shall make an annual report to the legislature on or before the second Monday of January in each year, which shall contain copies of all orders issued by it, and any information in the possession of the commission which it shall deem of value to the legislature and the people of the state. Five hundred copies of each report, together with abstracts of the reports to such commission of common carriers, railroad corporations and street railroad corporations, and gas and electrical corporations, in addition to the regular number prescribed by law, shall be printed as a public document of the state, bound in cloth, for the use of the commissioners and to be distributed by them in their discretion to railroad, street railroad, gas and electrical corporations and other persons interested therein.

**§ 17. Certified copies of papers filed to be evidence.**

Copies of all official documents and orders filed or deposited according to law in the office of either commission, certified by a commissioner or by the secretary of the commission to be true copies of the originals, under the official seal of the commission, shall be evidence in like manner as the originals.

**§ 18. Fees to be charged and collected by the commissions.** Each commission shall charge and collect the following fees: For copies of papers and records not required to be certified or otherwise authenticated by the commission, ten cents for each folio; for certified copies of official documents and orders filed in its office, fifteen cents for each folio, and one dollar for every certificate under seal affixed thereto; for certifying a copy of any report made by a corporation to the commission, two dollars; for each certified copy of the annual report of the commission, one dollar and fifty cents; for certified copies of evidence and proceedings before the commission, fifteen cents for each folio. No fees shall be charged or collected for copies of papers, records or official documents, furnished to public officers for use in their official capacity, or for the annual reports of the commission in the ordinary course of distribution. All fees charged and collected by the commission of the first district shall belong to the city of New York, and shall be paid monthly, accompanied by a detailed statement thereof, into the treasury of the city to the credit of the general fund, and all fees charged and collected by the commission of the second district shall belong to the people of the state, and shall be paid monthly, accompanied by a detailed statement thereof, into the treasury of the state to the credit of the general fund.

**§ 19. Attendance of witnesses and their fees.** 1. All subpoenas shall be signed and issued by a commissioner or by the secretary of a commission and may be served by any person of full age. The fees of witnesses required to attend before a commission, or a commissioner, shall be two dollars for each day's attendance, and five cents for every mile of travel by the nearest generally traveled route in going to and from the place where attendance of the witness is required, such fees to be paid when the witness is excused from further attendance; and the disbursements made in the payment of such fees shall be audited and paid in the first district in the same manner provided for the payment of expenses of the commission.

2. If a person subpoenaed to attend before a commission, or a commissioner fails to obey the command of such subpoena,

without reasonable cause, or if a person in attendance before a commission, or commissioner, shall, without reasonable cause, refuse to be sworn or to be examined or to answer a question or to produce a book or papers, when ordered so to do by the commission, or a commissioner, or to subscribe and swear to his deposition after it has been correctly reduced to writing, he shall be guilty of a misdemeanor and may be prosecuted therefor in any court of competent criminal jurisdiction.

If a person in attendance before a commission or a commissioner refuses without reasonable cause to be examined or to answer a legal and pertinent question or produce a book or paper, when ordered so to do by a commission or a commissioner, the commission may apply to any justice of the supreme court upon proof by affidavit of the facts for an order returnable in not less than two nor more than five days directing such person to show cause before the justice who made the order, or any other justice of the supreme court, why he should not be committed to jail; upon the return of such order the justice before whom the matter shall come on for hearing shall examine under oath such person whose testimony may be relevant, and such person shall be given an opportunity to be heard; and if the justice shall determine that such person has refused without reasonable cause or legal excuse to be examined, or to answer a legal and pertinent question, or to produce a book or paper which he was ordered to bring, he may forthwith, by warrant, commit the offender to jail, there to remain until he submits to do the act which he was so required to do or is discharged according to law.

**§ 20. Practice before the commissions; immunity of witnesses.** All hearings before a commission or a commissioner, shall be governed by rules to be adopted and prescribed by the commission. And in all investigations, inquiries or hearings the commission, or a commissioner, shall not be bound by the technical rules of evidence. No person shall be excused from testifying or from producing any books or papers in any investigation or inquiry by or upon any hearing before a commission or any commissioner, when ordered to do so by the commission, upon the ground that the testimony or evidence, books or documents required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall under oath have testified or produced documentary evidence; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury con-

mitted by him in his testimony. Nothing herein contained is intended to give, or shall be construed as in any manner giving unto any corporation immunity of any kind.

**§ 21. Court proceedings; preferences.** All actions and proceedings under this act, and all actions and proceedings commenced or prosecuted by order of either commission, and all actions and proceedings to which either commission or the people of the state of New York may be parties, and in which any question arises under this act or under the railroad law, or under or concerning any order or action of the commission, shall be preferred over all other civil causes except election causes in all courts of the state of New York and shall be heard and determined in preference to all other civil business pending therein excepting election causes, irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the commission in any action or proceeding in which he may be allowed to intervene.

**§ 22. Rehearing before commission.** After an order has been made by a commission any party interested therein may apply for a rehearing in respect to any matter determined therein, and the commission may grant and hold such a rehearing if in its judgment sufficient reason therefor be made to appear; if a rehearing shall be granted, the same shall be determined by the commission within thirty days after the same shall be finally submitted. An application for such a rehearing shall not excuse any common carrier, railroad corporation or street railroad corporation from complying with or obeying any order or any requirement of any order of the commission, or operate in any manner to stay or postpone the enforcement thereof except as the commission may by order direct. If, after such rehearing and a consideration of the facts, including those arising since the making of the order, the commission shall be of opinion that the original order or any part thereof is in any respect unjust or unwarranted, the commission may abrogate, change or modify the same. An order made after any such rehearing abrogating, changing or modifying the original order shall have the same force and effect as an original order but shall not affect any right or the enforcement of any right arising from or by virtue of the original order.

**§ 23. Service and effect of orders.** Every order of a commission shall be served upon every person or corporation to be affected thereby, either by personal delivery of a certified copy

thereof, or by mailing a certified copy thereof, in a sealed package with postage prepaid, to the person to be affected thereby or, in the case of a corporation, to any officer or agent thereof upon whom a summons may be served in accordance with the provisions of the code of civil procedure. It shall be the duty of every person and corporation to notify the commission forthwith, in writing, of the receipt of the certified copy of every order so served, and in the case of a corporation such notification must be signed and acknowledged by a person or officer duly authorized by the corporation to admit such service. Within a time specified in the order of the commission every person and corporation upon whom it is served must if so required in the order notify the commission in like manner whether the terms of the order are accepted and will be obeyed.

Every order of a commission shall take effect at a time therein specified and shall continue in force for a period therein designated unless earlier modified or abrogated by the commission or unless such order be unauthorized by this or any other act or be in violation of a provision of the constitution of the state or of the United States.

## ARTICLE 2

### Provisions Relating to Railroads, Street Railroads and Common Carriers

- Section 25. Application of article.
26. Adequate service; just and reasonable charges.
  27. Switch and side-track connections; powers of commissions.
  28. Tariff schedules; publication.
  29. Changes in schedule; notice required.
  30. Concurrence in joint tariffs; contracts, agreements or arrangements between any carriers.
  31. Unjust discrimination.
  32. Unreasonable preference.
  33. Transportation prohibited until publication of schedules; rates as fixed to be charged; passes prohibited.
  34. False billing, etc., by carrier or shipper.
  35. Discrimination prohibited; connecting lines.
  36. Long and short haul.
  37. Distribution of cars.
  38. Liability for damage to property in transit.
  39. Continuous carriage.
  40. Liability for loss or damage by violation of this act.

**§ 25. Application of article.** The provisions of this article shall apply to the transportation of passengers, freight or property, from one point to another within the state of New York, and to any common carrier performing such service.

**§ 26. Safe and adequate service; just and reasonable charges.** Every corporation, person or common carrier performing a service designated in the preceding section, shall furnish, with respect thereto, such service and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such corporation, person or common carrier for the transportation of passengers, freight or property or for any service rendered or to be rendered in connection therewith, as defined in section two of this act, shall be just and reasonable and not more than allowed by law or by order of the commission having jurisdiction and made as authorized by this act. Every unjust or unreasonable charge made or demanded for any such service or transportation of passengers, freight or property or in connection therewith or in excess of that allowed by law or by order of the commission is prohibited.

**§ 27. Switch and side track connections; powers of commissions.** 1. A railroad corporation, upon the application of any shipper tendering traffic for transportation, shall construct, maintain and operate upon reasonable terms a switch connection or connections with a lateral line of railroad or private sidetrack owned, operated or controlled by such shipper, and shall, upon the application of any shipper, provide upon its own property a sidetrack and switch connection with its line of railroad, whenever such sidetrack and switch connection is reasonably practicable, can be put in with safety and the business therefor is sufficient to justify the same.

2. If any railroad corporation shall fail to install or operate any such switch connection with a lateral line of railroad or any such side-track and switch connection as aforesaid, after written application therefor has been made to it, any corporation or person interested may present the facts to the commission having jurisdiction by written petition, and the commission shall investigate the matters stated in such petition, and give such hearing thereon as it may deem necessary or proper. If the commission be of opinion that it is safe and practicable to have a connection, substantially as prayed for, established or maintained, and that the business to be done thereon justifies the construction and maintenance thereof, it shall make an order directing the construction and establishment thereof, specifying the reasonable compensation



to be paid for the construction, establishment and maintenance thereof, and may in like manner upon the application of the railroad corporation order the discontinuance of such switch connection.

**§ 28. Tariff schedules; publication.** Every common carrier shall file with the commission having jurisdiction and shall print and keep open to public inspection schedules showing the rates, fares and charges for the transportation of passengers and property within the state between each point upon its route and all other points thereon; and between each point upon its route and all points upon every route leased, operated or controlled by it; and between each point on its route or upon any route leased, operated or controlled by it and all points upon the route of any other common carrier, whenever a through route and joint rate shall have been established or ordered between any two such points. If no joint rate over a through route has been established, the several carriers in such through route shall file, print and keep open to public inspection, as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid shall plainly state the places between which property and passengers will be carried, and shall also contain the classification of passengers, freight or property in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and any rules or regulations which may in any wise change, affect or determine any part, or the aggregate of, such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee. Such schedules shall be plainly printed in large type; copies thereof for the use of the public shall be kept posted in two public and conspicuous places in every depot, station and office of every common carrier where passengers or property are received for transportation, in such manner as to be readily accessible to and conveniently inspected by the public. The form of every such schedule shall be prescribed by the commission and shall conform as nearly as possible to the form of schedule required by the interstate commerce commission under the act of congress, entitled: "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended by act approved June twenty-ninth, nineteen hundred and six, and other amendments thereto. Where any similar schedule is required by law to be filed with both commissions they shall agree upon an identical form for such schedule. The commission shall have power, from time to time, in its dis-

cretion, to determine and prescribe by order such changes in the form of such schedules as may be found expedient.

**§ 29. Changes in schedule; notice required.** Unless the commission otherwise orders no change shall be made in any rate, fare or charge, or joint rate, fare or charge, which shall have been filed and published by a common carrier in compliance with the requirements of this act, except after thirty days' notice to the commission and publication for thirty days as required by section twenty-eight of this act, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, fare or charge will go into effect; and all proposed changes shall be shown by printing, filing and publishing new schedules or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission, for good cause shown, may allow changes in rates without requiring the thirty days' notice and publication herein provided for, by duly filing and publishing in such manner as it may direct an order specifying the change so made and the time when it shall take effect; all such changes shall be immediately indicated upon its schedules by the common carrier.

**§ 30. Concurrence in joint tariffs; contracts, agreements or arrangements between any carriers.** 1. The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the carriers filing the same also to file copies of the tariffs in which they are named as parties.

2. Every common carrier shall file with the commission sworn copies of every contract, agreement or arrangement with any other common carrier or common carriers relating in any way to the transportation of passengers, property or freight.

**§ 31. Unjust discrimination.** No common carrier shall, directly or indirectly, by any special rate, rebate, drawback, or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered in the transportation of passengers, freight or property, except as authorized in this act, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances and conditions.

**§ 32. Unreasonable preference.** No common carrier shall make or give any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic, to any prejudice or disadvantage in any respect whatsoever.

**§ 33. Transportation prohibited until publication of schedules; rates as fixed to be charged; passes prohibited.** No common carrier subject to the provisions of this act shall after the first day of November, nineteen hundred and seven, engage or participate in the transportation of passengers, freight or property, between points within the state, until its schedules of rates, fares and charges shall have been filed and published in accordance with the provisions of this act. No common carrier shall charge, demand, collect or receive a greater or less or different compensation for transportation of passengers, freight or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances. No common carrier subject to the provisions of this act shall, directly or indirectly, issue or give any free ticket, free pass or free transportation for passengers or property between points within this state, except to its officers, employees, agents, pensioners, surgeons, physicians, attorneys-at-law, and their families; to ministers of religion, officers and employees of railroad young men's Christian associations, inmates of hospitals, charitable and eleemosynary institutions and persons exclusively engaged in charitable and eleemosynary work; and to indigent, destitute and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to necessary caretakers of property in transit; to employees of sleeping-car companies, express companies, telegraph and telephone

companies doing business along the line of the issuing carrier; to railway mail service employees, post-office inspectors, customs inspectors and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation or proceeding in which the common carrier is interested, persons injured in accidents or wrecks and physicians and nurses attending such persons; to the carriage free or at reduced rates of persons or property for the United States, state or municipal governments, or of property to or from fairs and expositions for exhibit thereat. Nothing in this act shall be construed to prohibit the interchange of free or reduced transportation between common carriers of or for their officers, agents, employees, attorneys and surgeons and their families, nor to prohibit any common carrier from carrying passengers or property free, with the object of providing relief in cases of general epidemic, pestilence or other calamitous visitation; nor to prohibit any common carrier from transporting persons or property as incident to or connected with contracts for construction, operation or maintenance, and to the extent only that such free transportation is provided for in the contract for such work.

Provided further, that nothing in this act shall prevent the issuance of mileage, excursion, or commutation passenger tickets, or joint interchangeable mileage tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand miles or more. But before any common carrier, subject to the provision of this act, shall issue any such mileage, excursion, commutation passenger ticket or joint interchangeable mileage ticket, with special privileges as aforesaid, it shall file with the commission copies of the tariffs of rates, fares or charges on which such tickets are to be based, together with the specifications of the amount of free baggage permitted to be carried under such joint interchangeable mileage ticket, in the same manner as common carriers are required to do with regard to other rates by this act. Nor shall anything in this act prevent the issuance of passenger transportation in exchange for advertising space in newspapers at full rates.

**§ 34. False billing, etc., by carrier or shipper.** No common carrier or any officer or agent thereof or any person acting for or employed by it, shall assist, suffer or permit any person or corporation to obtain transportation for any passenger, freight or property between points within this state at less than the rates then established and in force in accordance with the schedules filed and published in accordance with the provisions of this act, by means of false billing, false classification, false

weight or weighing, or false report of weight, or by any other device or means. No person, corporation or any officer, agent or employee of a corporation, who shall deliver freight or property for transportation within the state to a common carrier, shall seek to obtain or obtain such transportation for such property at less than the rates then established and in force therefor, as aforesaid, by false billing, false or incorrect classification, false weight or weighing, false representation of the contents of a package, or false report or statement of weight, or by any other device or means, whether with or without the consent or connivance of the common carrier, or any of its officers, agents or employees.

**§ 35. Discrimination prohibited; connecting lines.**

Every common carrier is required to afford all reasonable, proper and equal facilities for the interchange of passenger, freight and property traffic between the lines owned, operated, controlled or leased by it and the lines of every other common carrier, and for the prompt transfer of passengers and for the prompt receipt and forwarding of freight and property to and from its said lines; and no common carrier shall in any manner discriminate in respect to rates, fares or charges or in respect to any service or in respect to any charges or facilities for any such transfer in receiving or forwarding between any two or more other common carriers or between passengers, freight or property destined to points upon the lines of any two or more other common carriers or in any respect with reference to passengers, freight or property transferred or received from any two or more other common carriers. This section shall not be construed to require a common carrier to permit or allow any other common carrier to use its tracks or terminal facilities. Every common carrier, as such, is required to receive from every other common carrier, at a connecting point, freight cars of proper standard, and haul the same through to destination, if the destination be upon a line owned, operated or controlled by such common carrier, or if the destination be upon a line of some other common carrier, to haul any car so delivered through to the connecting point upon the line owned, operated, controlled or leased by it, by way of route over which such car is billed, and there to deliver the same to the next connecting carrier. Nothing in this section shall be construed as in anywise limiting or modifying the duty of a common carrier to establish joint rates, fares and charges for the transportation of passengers, freight and property over the lines owned, operated, controlled and leased by it and the lines of other common carriers, nor as in any manner limiting

or modifying the power of the commission to require the establishment of such joint rates, fares and charges. A railroad corporation and a street railroad corporation shall not be required to interchange cars except on such terms and conditions as the commission may direct.

**§ 36. Long and short haul.** No common carrier, subject to the provisions of this act, shall charge or receive any greater compensation in the aggregate for the transportation of passengers or of a like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any such common carrier to charge and receive as great a compensation for a shorter as for a longer distance or haul. Upon application of a common carrier the commission may by order authorize it to charge less for longer than for shorter distances for the transportation of passengers or property in special cases after investigation by the commission, but the order must specify and prescribe the extent to which the common carrier making such application is relieved from the operation of this section, and only to the extent so specified and prescribed shall any common carrier be relieved from the operation and requirements of this section.

**§ 37. Distribution of cars.** 1. Every railroad corporation or other common carrier engaged in the transportation of freight shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor, and offer freight for transportation, sufficient and suitable cars for the transportation of such freight in car-load lots. Every railroad corporation and street railroad corporation shall have sufficient cars and motive power to meet all requirements for the transportation of passengers and property which may reasonably be anticipated, unless relieved therefrom by order of the commission. In case, at any particular time, a common carrier has not sufficient cars to meet all requirements for the transportation of property in car-load lots, all cars available to it for such purposes shall be distributed among the several applicants therefor, without discrimination between shippers, localities or competitive or non-competitive points, but preference may always be given in the supply of cars for shipment of livestock or perishable property.

2. The commission shall have power to make, and by order shall make, reasonable regulations for the furnishing and distribution of freight cars to shippers, for the switching of the same,

for the loading and unloading thereof, for demurrage charges in respect thereto, and for the weighing of cars and freight offered for shipment or transported by any common carrier.

**§ 38. Liability for damage to property in transit.**

Every common carrier and every railroad corporation and street railroad corporation shall, upon demand, issue either a receipt or bill of lading for all property delivered to it for transportation. No contract, stipulation or clause in any receipt or bill of lading shall exempt or be held to exempt any common carrier, railroad corporation or street railroad corporation from any liability for loss, damage or injury caused by it to freight or property from the time of its delivery for transportation until the same shall have been received at its destination and a reasonable time shall have elapsed after notice to consignee of such arrival to permit of the removal of such freight or property. Every common carrier, railroad corporation and street railroad corporation shall be liable for all loss, damage or injury to property caused by delay in transit due to negligence while the same is being carried by it, but in any action to recover for damages sustained by delay in transit the burden of proof shall be upon the defendant to show that such delay was not due to negligence. Every common carrier and railroad corporation shall be liable for loss, damage and injury to property carried as baggage up to the full value and regardless of the character thereof, but the value in excess of one hundred and fifty dollars shall be stated upon delivery to the carrier, and a written receipt stating the value shall be issued by the carrier, who may make a reasonable charge for the assumption of such liability in excess of one hundred and fifty dollars and for the carriage of baggage exceeding one hundred and fifty pounds in weight upon a single ticket. Nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

**§ 39. Continuous carriage.** No common carrier shall enter into or become a party to any combination, contract, agreement or understanding, written or oral, express or implied, to prevent by any arrangement or by change of arrangement of time schedule, by carriage in different cars or by any other means or device whatsoever the carriage of freight and property from being continuous from the place of shipment to the place of destination. No breakage of bulk, stoppage or interruption of carriage made by any common carrier shall prevent the carriage of freight and property from being treated as one continuous carriage from the place of

shipment to the place of destination. Nor shall any such breakage of bulk, stoppage or interruption of carriage be made or permitted by any common carrier except it be done in good faith for a necessary purpose without intention to avoid or unnecessarily interrupt or delay the continuous carriage of such freight or property or to evade any of the provisions of law, of this act or of an order of the commission.

**§ 40. Liability for loss or damage caused by violation of this act.** In case a common carrier shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by any law of the state of New York, by this act or by an order of the commission, such common carrier shall be liable to the persons or corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery, if the court shall find that such act or omission was wilful, it may in its discretion fix a reasonable counsel or attorney's fee, which fee shall be taxed and collected as part of the costs in the case. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any such person or corporation.

### ARTICLE 3

#### **Provisions Relating to the Powers of the Commissions in Respect to Common Carriers, Railroads and Street Railroads**

- Section 45. General powers and duties of commissions in respect to common carriers, railroads and street railroads.
46. Reports of common carriers, railroad corporations and street railroad corporations.
  47. Investigation of accidents.
  48. Investigations by commission.
  49. Rates and service to be fixed by the commissions.
  50. Power of commissions to order repairs or changes.
  51. Power of commissions to order changes in time schedules; running of additional cars and trains.
  52. Uniform system of accounts; access to accounts, et cetera; forfeitures.
  53. Franchises and privileges.
  54. Transfer of franchises or stocks.
  55. Approval of issues of stock, bonds and other forms of indebtedness.



- Section 56. Forfeiture; penalties.  
57. Summary proceedings.  
58. Penalties for other than common carriers.  
59. Action to recover penalties or forfeitures.  
60. Duties of commissions as to interstate traffic.

**§ 45. General powers and duties of commissions in respect to common carriers, railroads and street railroads.**

1. Each commission and each commissioner shall have power and authority to administer oaths, in all parts of the state, to witnesses summoned to testify in any inquiry, investigation, hearing or proceeding; and also to administer oaths in all parts of the state whenever the exercise of such power is incidentally necessary or proper to enable the commission or a commissioner to perform a duty or to exercise a power.

2. Each commission shall have the general supervision of all common carriers, railroads, street railroads, railroad corporations and street railroad corporations within its jurisdiction as herein-before defined, and shall have power to and shall examine the same and keep informed as to their general condition, their capitalization, their franchises and the manner in which their lines, owned, leased, controlled or operated, are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with all provisions of law, orders of the commission and charter requirements.

3. Each commission and each commissioner shall have power to examine all books, contracts, records, documents and papers of any person or corporation subject to its supervision, and by subpoena duces tecum to compel production thereof. In lieu of requiring production of originals by subpoena duces tecum, the commission or any commissioner may require sworn copies of any such books, records, contracts, documents and papers or parts thereof to be filed with it.

4. Either commission shall conduct a hearing and take testimony as to the advisability of any proposed change of law relating to any common carrier, railroad corporation or street railroad corporation, if requested to do so by the legislature, by the senate or assembly committee on railroads, or by the governor, and may conduct such a hearing, when requested to do so by any person or corporation, and shall report its conclusions to the officer, body, person or corporation at whose request the hearing was held. The commission may also recommend the enactment of such legislation, with respect to any matter within its jurisdiction, as it deems wise or necessary in the public interest, and may draft or cause to be

drafted such bills or acts as it may deem necessary or proper to enact into law the legislation recommended by it.

**§ 46. Reports of common carriers, railroad corporations and street railroad corporations.** Each commission shall prescribe the form of the annual reports required under this act to be made by common carriers, railroad and street railroad corporations, and may from time to time make such changes therein and additions thereto as it may deem proper; provided, however, that if any such changes or additions require any alteration in the method or form of keeping the accounts of such corporations, the commission shall give to them at least six months' notice before the expiration of any fiscal year of any such changes or additions, and on or before June thirtieth, in each year, shall furnish a blank form for such report. The contents of such report and the form thereof shall conform as near as may be to that required of common carriers under the provisions of the act of congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the act amendatory thereof approved June twenty-ninth, nineteen hundred and six, and other amendments thereto. The commission may require such report to contain information in relation to rates or regulations concerning fares or freights, agreements or contracts affecting the same, so far as such rates or regulations pertain to transportation within the state. When the report of any such corporation is defective, or believed to be erroneous, the commission shall notify the corporation to amend the same within thirty days. The originals of the reports, subscribed and sworn to as prescribed by law, shall be preserved in the office of the commission. The commission may also require such corporations to file monthly reports of earnings and expenses within a specified time. The commission may require of all such corporations specific answers to questions upon which the commission may need information. The annual report required to be filed by a common carrier, railroad or street railroad corporation shall be so filed on or before the thirtieth day of September in each year. The commission may extend the time for making and filing such report for a period not exceeding sixty days. If such corporation shall fail to make and file the annual report within the time above specified or within the time as extended by the commission, or shall fail to make specific answer to any question, or shall fail to make the monthly reports when required by the commission as herein provided, within thirty days from the time when it is required to make and file any such report or answer, such corporation shall forfeit to the state the sum of one hundred dollars for each and every day it shall continue to be in default with respect to such report or

answer. Such forfeiture shall be recovered in an action brought by the commission in the name of the people of the state of New York. The amount recovered in any such action shall be paid into the state treasury and credited to the general fund. Any railroad corporation operating a line partly within the second district and partly within the first district shall report to the commission of the second district; but the commission of the first district may, upon reasonable notice, require a special report from such railroad corporation. Any street railroad corporation operating a line partly within the first district and partly within the second district shall report to the commission of the first district; but the commission of the second district may, upon reasonable notice, require a special report from such street railroad corporation.

**§ 47. Investigation of accidents.** Each commission shall investigate the cause of all accidents on any railroad or street railroad within its district which result in loss of life or injury to persons or property, and which in its judgment shall require investigation. Every common carrier, railroad corporation and street railroad corporation is hereby required to give immediate notice to the commission of every accident happening upon any line of railroad or street railroad owned, operated, controlled or leased by it, within the territory over which such commission has jurisdiction in such manner as the commission may direct. Such notice shall not be admitted as evidence or used for any purpose against such common carrier, railroad corporation or street railroad corporation giving such notice in any suit or action for damages growing out of any matter mentioned in said notice.

**§ 48. Investigations by commission.** 1. Each commission may, of its own motion, investigate or make inquiry, in a manner to be determined by it, as to any act or thing done or omitted to be done by any common carrier, railroad corporation or street railroad corporation, subject to its supervision, and the commission must make such inquiry in regard to any act or thing done or omitted to be done by any such common carrier, railroad corporation or street railroad corporation in violation of any provision of law or in violation of any order of the commission.

2. Complaints may be made to the proper commission by any person or corporation aggrieved, by petition or complaint in writing setting forth any thing or act done or omitted to be done by any common carrier, railroad corporation or street railroad corporation in violation, or claimed to be in violation, of any provision of law or of the terms and conditions of its franchise or charter or of any order of the commission. Upon the presentation of such a complaint the commission shall cause a copy thereof to be for-

warded to the person or corporation complained of, accompanied by an order, directed to such person or corporation, requiring that the matters complained of be satisfied, or that the charges be answered in writing within a time to be specified by the commission. If the person or corporation complained of shall make reparation for any injury alleged and shall cease to commit, or to permit, the violation of law, franchise or order charged in the complaint, and shall notify the commission of that fact before the time allowed for answer, the commission need take no further action upon the charges. If, however, the charges contained in such petition be not thus satisfied, and it shall appear to the commission that there are reasonable grounds therefor, it shall investigate such charges in such manner and by such means as it shall deem proper, and take such action within its powers as the facts justify.

3. Whenever either commission shall investigate any matter complained of by any person or corporation aggrieved by any act or omission of a common carrier, railroad corporation or street railroad corporation under this section it shall be its duty to make and file an order either dismissing the petition or complaint or directing the common carrier, railroad corporation or street railroad corporation complained of to satisfy the cause of complaint in whole or to the extent which the commission may specify and require.

**§ 49. Rates and service to be fixed by the commission.** Whenever either commission shall be of opinion, after a hearing, upon a complaint made as provided in this act, that the rates, fares or charges demanded, exacted, charged or collected by any common carrier, railroad corporation or street railroad corporation subject to its jurisdiction for the transportation of persons, freight or property within the state, or that the regulations or practices of such common carrier, railroad corporation or street railroad corporation affecting such rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in anywise in violation of any provision of law, the commission shall determine the just and reasonable rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, and shall fix the same by order to be served upon all common carriers, railroad corporations or street railroad corporations by whom such rates, fares and charges are thereafter to be observed. (And whenever the commission shall be of opinion, after a hearing, had upon its own motion or upon complaint, that the regulations, practices, equipment, appliances, or service of any such common carrier,

railroad corporation or street railroad corporation in respect to transportation of persons, freight or property within the state are unjust, unreasonable, unsafe, improper or inadequate, the commission shall determine the just, reasonable, safe, adequate and proper regulations, practices, equipment, appliances and service thereafter to be in force, to be observed and to be used in such transportation of persons, freight and property and so fix and prescribe the same by order to be served upon every common carrier, railroad corporation and street railroad corporation to be bound thereby; and thereafter it shall be the duty of every common carrier, railroad corporation and street railroad corporation to observe and obey each and every requirement of every such order so served upon it, and to do everything necessary or proper in order to secure absolute compliance with and observance of every such order by all of its officers, agents and employees. The commission shall have power by order to require any two or more common carriers or railroad corporations whose lines, owned, operated, controlled or leased, form a continuous line of transportation or could be made to do so by the construction and maintenance of switch connection, to establish through routes and joint rates, fares and charges for the transportation of passengers, freight and property within the state as the commission may, by its order, designate; and in case such through routes and joint rates be not established by the common carriers or railroad corporations named in any such order within the time therein specified, the commission shall establish just and reasonable rates, fares and charges to be charged for such through transportation, and declare the portion thereof to which each common carrier or railroad corporation affected thereby shall be entitled and the manner in which the same shall be paid and secured.

**§ 50. Power of commissions to order repairs or changes.** If, in the judgment of the commission having jurisdiction, repairs or improvements to or changes in any tracks, switches, terminals or terminal facilities, motive power, or any other property or device used by any common carrier, railroad corporation or street railroad corporation in or in connection with the transportation of passengers, freight or property ought reasonably to be made, or that any additions should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers, freight or property, the commission shall, after a hearing either on its own motion or after complaint, make and serve an order directing such repairs, improvements, changes or additions to be made within a reasonable time and in a manner to be specified therein, and every common

carrier, railroad corporation and street railroad corporation is hereby required and directed to make all repairs, improvements, changes and additions required of it by any order of the commission served upon it.

**§ 51. Power of commissions to order changes in time schedules; running of additional cars and trains.** If, in the judgment of the commission having jurisdiction, any railroad corporation or street railroad corporation does not run trains enough or cars enough or possess or operate motive power enough, reasonably to accommodate the traffic, passenger and freight, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at a reasonable or proper time having regard to safety, or does not run any train or trains, car or cars, upon a reasonable time schedule for the run, the commission shall, after a hearing either on its own motion or after complaint, have power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power or to change the time for starting its trains or cars or to change the time schedule for the run of any train or car or make any other suitable order that the commission may determine reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation.

**§ 52. Uniform system of accounts; access to accounts, etc.; forfeitures.** Each commission may, whenever it deems advisable, establish a uniform system of accounts to be used by railroad and street railroad corporations or other common carriers which are subject to its supervision, and may prescribe the manner in which such accounts shall be kept. It may also in its discretion prescribe the forms of accounts, records and memoranda to be kept by such corporations, including the accounts, records and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The system of accounts established by the commission and the forms of accounts, records and memoranda prescribed by it as provided above shall conform as near as may be to those from time to time established and prescribed by the interstate commerce commission under the provisions of the act of congress entitled "An act to regulate commerce" approved February fourth, eighteen hundred and eighty-seven, as amended by the act approved June twenty-ninth, nineteen hundred and six, and amendments thereto. The commission shall at all times have access to all accounts, records and memoranda kept by railroad and street railroad corporations and may prescribe the accounts in which particular outlays and receipts shall

be entered, and may designate any of its officers or employees who shall thereupon have authority under the order of the commission to inspect and examine any and all accounts, records and memoranda kept by such corporations. Where the commission has prescribed the forms of accounts, records and memoranda to be kept by such corporations it shall be unlawful for them to keep any other accounts, records or memoranda than those so prescribed, or those prescribed by or under authority of the United States. Any employee or agent of the commission who divulges any fact or information which may come to his knowledge during the course of any such inspection or examination except in so far as he may be directed by the commission, or by a court or judge thereof, or authorized by law, shall be guilty of a misdemeanor.

**§ 53. Franchises and privileges.** Without first having obtained the permission and approval of the proper commission no railroad corporation, street railroad corporation or common carrier shall begin the construction of a railroad or street railroad, or any extension thereof, for which prior to the time when this act becomes a law a certificate of public convenience and necessity shall not have been granted by the board of railroad commissioners or where prior to said time said corporation or common carrier shall not have become entitled by virtue of its compliance with the provisions of the railroad law to begin such construction; nor, except as above provided in this section, shall any such corporation or common carrier exercise any franchise or right under any provision of the railroad law, or of any other law, not heretofore lawfully exercised, without first having obtained the permission and approval of the proper commission. The commission within whose district such construction is to be made, or within whose district such franchise or right is to be exercised, shall have power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the franchise or privilege is necessary or convenient for the public service. And if such construction is to be made, or such franchise to be exercised in both districts, the approval of both commissions shall be secured.

**§ 54. Transfer of franchises or stocks.** No franchise nor any right to or under any franchise, to own or operate a railroad or street railroad shall be assigned, transferred or leased, nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever, unless the assignment, transfer, lease, contract or

agreement shall have been approved by the proper commission. The permission and approval of the commission, to the exercise of a franchise under section fifty-three, or to the assignment, transfer or lease of a franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise, or to enlarge or add to the powers and privileges contained in the grant of any franchise, or to waive any forfeiture.

No railroad corporation, or street railroad corporation, domestic or foreign, shall hereafter purchase or acquire, take or hold, any part of the capital stock of any railroad corporation or street railroad corporation or other common carrier organized or existing under or by virtue of the laws of this state, unless authorized so to do by the commission empowered by this act to give such consent; and save where stock shall be transferred or held for the purpose of collateral security only with the consent of the commission empowered by this act to give such consent, no stock corporation of any description, domestic or foreign, other than a railroad corporation or street railroad corporation, shall purchase or acquire, take or hold, more than ten per centum of the total capital stock issued by any railroad corporation or street railroad corporation or other common carrier organized or existing under or by virtue of the laws of this state. Nothing herein contained shall be construed to prevent the holding of stock heretofore lawfully acquired. Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation, in violation of any provision of this act, shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such railroad corporation or street railroad corporation, or shall be recognized as effective for any purpose. The power conferred by this section to approve or disapprove a transaction relating to franchises, rights or stock of any railroad corporation or street railroad corporation, or other common carrier, shall be exercised by the commission which is authorized by this act to approve the issue of stock by such railroad corporation or street railroad corporation.

**§ 55. Approval of issues of stock, bonds and other forms of indebtedness.** A common carrier, railroad corporation or street railroad corporation organized or existing, or hereafter incorporated, under or by virtue of the laws of the state of New York, may issue stocks, bonds, notes or other evidence of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service or for the discharge or lawful refunding of its obligations, pro-



vided and not otherwise that there shall have been secured from the proper commission an order authorizing such issue, and the amount thereof and stating that, in the opinion of the commission, the use of the capital to be secured by the issue of such stock, bonds, notes or other evidence of indebtedness is reasonably required for the said purposes of the corporation, but this provision shall not apply to any lawful issue of stock, to the lawful execution and delivery of any mortgage or to the lawful issue of bonds thereunder, which shall have been duly approved by the board of railroad commissioners before the time when this act becomes a law. For the purpose of enabling it to determine whether it should issue such an order, the commission shall make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as it may deem of importance in enabling it to reach a determination. Such common carrier, railroad corporation or street railroad corporation may issue notes, for proper corporate purposes and not in violation of any provision of this or any other act, payable at periods of not more than twelve months without such consent, but no such notes shall, in whole or in part, directly or indirectly be refunded by any issue of stock or bonds or by any evidence of indebtedness running for more than twelve months without the consent of the proper commission. Provided, however, that the commission shall have no power to authorize the capitalization of any franchise to be a corporation or to authorize the capitalization of any franchise or the right to own, operate or enjoy any franchise whatsoever in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise or right; nor shall the capital stock of a corporation formed by the merger or consolidation of two or more other corporations, exceed the sum of the capital stock of the corporations so consolidated, at the par value thereof, or such sum and any additional sum actually paid in cash; nor shall any contract for consolidation or lease be capitalized in the stock of any corporation whatever; nor shall any corporation hereafter issue any bonds against or as a lien upon any contract for consolidation or merger. Whenever it shall happen that any railroad corporation shall own or operate its lines in both districts it shall, under this section, apply to the commission of the second district. Whenever it shall happen that any street railroad corporation shall own or operate its lines in both districts, it shall, under this section, apply to the commission of the first district. Any other common carrier not operating exclusively in the first district shall apply to the commission of the second district.

**§ 56. Forfeiture; penalties.** 1. Every common carrier, railroad corporation and street railroad corporation and all officers, and agents of any common carrier, railroad corporation or street railroad corporation shall obey, observe and comply with every order made by the commission, under authority of this act, so long as the same shall be and remain in force. Any common carrier, railroad corporation or street railroad corporation which shall violate any provision of this act, or which fails, omits or neglects to obey, observe or comply with any order or any direction or requirement of the commission, shall forfeit to the people of the state of New York not to exceed the sum of five thousand dollars for each and every offense; every violation of any such order or direction or requirement, or of this act, shall be a separate and distinct offense, and, in case of a continuing violation, every day's continuance thereof shall be and be deemed to be a separate and distinct offense.

2. Every officer and agent of any such common carrier or corporation who shall violate, or who procures, aids or abets any violation by any such common carrier or corporation of, any provision of this act, or who shall fail to obey, observe and comply with any order of the commission or any provision of an order of the commission, or who procures, aids or abets any such common carrier or corporation in its failure to obey, observe and comply with any such order or provision, shall be guilty of a misdemeanor.

**§ 57. Summary proceedings.** Whenever either commission shall be of opinion that a common carrier, railroad corporation or street railroad corporation subject to its supervision is failing or omitting or about to fail or omit to do anything required of it by law or by order of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the commission, it shall direct counsel to the commission to commence an action or proceeding in the supreme court of the state of New York in the name of the commission for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunction. Counsel to the commission shall thereupon begin such action or proceeding by a petition to the supreme court alleging the violation complained of and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify the time, not exceeding twenty days after service of a copy of the petition, within which the common carrier, railroad corporation or street railroad corporation complained of must answer the petition. In case of default in answer or after answer, the court shall

immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirement. Such other persons or corporations as the court shall deem necessary or proper to join as parties in order to make its order, judgment or writs effective, may be joined as parties upon application of counsel to the commission. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a writ of mandamus or an injunction or both issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief.

**§ 58. Penalties for other than common carriers.**

1. Any corporation, other than a common carrier, railroad corporation or street railroad corporation, which shall violate any provision of this act, or shall fail to obey, observe and comply with every order made by the commission under authority of this act, so long as the same shall be and remain in force, shall forfeit to the people of the state of New York a sum not exceeding one thousand dollars for each and every offense; every such violation shall be a separate and distinct offense, and the penalty or forfeiture thereof shall be recovered in an action as provided in section fifty-nine of this act.

2. Every person who, either individually or acting as an officer or agent of a corporation other than a common carrier, railroad corporation or street railroad corporation, shall violate any provision of this act or fail to obey, observe or comply with any order made by the commission under this act, so long as the same shall be or remain in force, or who shall procure, aid or abet any such corporation in its violation of this act or in its failure to obey, observe or comply with any such order, shall be guilty of a misdemeanor.

3. In construing and enforcing the provisions of this act relating to forfeitures and penalties the act of any director, officer or other person acting for or employed by any common carrier, railroad corporation, street railroad corporation or corporation, acting within the scope of his official duties or employment, shall be in every case and be deemed to be the act of such common carrier, railroad corporation, street railroad corporation or corporation.

**§ 59. Action to recover penalties or forfeitures.**

An action to recover a penalty or a forfeiture under this act may be brought in any court of competent jurisdiction in this state in the name of the people of the state of New York, and shall be commenced and prosecuted to final judgment by counsel to the commis-

sion. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order of the commission the defendant was actually and in good faith prosecuting a suit, action or proceeding in the courts to set aside such order, the court shall remit the penalties or forfeitures incurred during the pendency of such suit, action or proceeding. All moneys recovered in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund.

**§ 60. Duties of commissions as to interstate traffic.**

Either commission may investigate freight rates on interstate traffic on railroads within the state, and when such rates are, in the opinion of either commission, excessive or discriminatory or are levied or laid in violation of the interstate commerce law, or in conflict with the rulings, orders or regulations of the interstate commerce commission, the commission may apply by petition to the interstate commerce commission for relief or may present to the interstate commerce commission all facts coming to its knowledge, as to violations of the rulings, orders, or regulations of that commission or as to violations of the interstate commerce law.

**ARTICLE 4**

**Provisions Relating to Gas and Electrical Corporations; Regulation of Price of Gas and Electricity**

- Section 65. Application of article.
66. General powers of commissions in respect to gas and electricity.
67. Inspection of gas and electric meters.
68. Approval of incorporation and franchises; certificate.
69. Approval of issue of stock, bonds and other forms of indebtedness.
70. Approval of transfer of franchise.
71. Complaints as to quality and price of gas and electricity; investigation by commission; forms of complaints.

- Section 72. Notice and hearing; order fixing price of gas or electricity, or requiring improvements.
73. Forfeiture for noncompliance with order.
74. Summary proceedings.
75. Defense in case of excessive charge for gas or electricity.
76. Jurisdiction.
77. Powers of local officers.

**§ 65. Application of article.** This article shall apply to the manufacture and furnishing of gas for light, heat or power and the furnishing of natural gas for light, heat or power, and the generation, furnishing and transmission of electricity for light, heat or power.

**§ 66. General powers of commissions in respect to gas and electricity.** Each commission shall within its jurisdiction:

1. Have the general supervision of all persons and corporations having authority under any general or special law or under any charter or franchise to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality, for the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat or power, or maintaining underground conduits or ducts for electrical conductors.

2. Investigate and ascertain, from time to time, the quality of gas supplied by persons, corporations and municipalities; examine the methods employed by such persons, corporations and municipalities in manufacturing and supplying gas or electricity for light, heat or power and in transmitting the same, and have power to order such improvements as will best promote the public interest, preserve the public health and protect those using such gas or electricity and those employed in the manufacture and distribution thereof, or in the maintenance and operation of the works, wires, poles, lines, conduits, ducts and systems maintained in connection therewith.

3. Have power to fix the standard of illuminating power and purity of gas, not less than that prescribed by law, to be manufactured or sold by persons, corporations or municipalities for lighting, heating or power purposes, and to prescribe methods of regulation of the electric supply system as to the use for incandescent lighting and fix the initial efficiency of incandescent

lamps furnished by the persons, corporations or municipalities generating and selling electric current for lighting, and by order to require the gas so manufactured or sold to equal the standard so fixed by it, and to establish the regulations as to pressure at which gas shall be delivered. For the purpose of determining whether the gas sold by such persons, corporations or municipalities for lighting, heating or power purposes conforms to the standard of illuminating power and purity and, of its own motion, examine and investigate the methods employed in manufacturing, delivering and supplying the gas so sold, and shall have access through its members or persons employed and authorized by it to make such examinations and investigations to all parts of the manufacturing plants owned, used or operated for the manufacture or distribution of gas by any such person, corporation or municipality. Any employee or agent of the commission who divulges any fact or information which may come to his knowledge during the course of any such inspection or examination, except in so far as he may be directed by the commission, or by a court or judge thereof, or authorized by law, shall be guilty of a misdemeanor.

4. Have power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by the persons, corporations and municipalities engaged in the manufacture, sale and distribution of gas and electricity for light, heat or power.

5. Examine all persons, corporations and municipalities under its supervision, keep informed as to the methods employed by them in the transaction of their business and see that their property is maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

6. Require every person and corporation under its supervision to submit to it an annual report, verified by the oath of the president, treasurer, or general manager thereof, showing in detail (1) the amount of its authorized capital stock and the amount thereof issued and outstanding; (2) the amount of its authorized bonded indebtedness and the amount of its bonds and other forms of evidence of indebtedness issued and outstanding; (3) its receipts and expenditures during the preceding year; (4) the amount paid as dividends upon its stock and as interest upon its bonds; (5) the name of, and the amount paid as salary to each officer and the amount paid as wages to its employees; (6) the location of its plant or plants and system, with a full description of its property and franchises, stating in detail how each franchise stated to be owned was acquired, and (7) such other facts

pertaining to the operation and maintenance of the plant and system, and the affairs of such person or corporation as may be required by the commission. Such reports shall be in the form, cover the period and be submitted at the time prescribed by the commission. The commission may, from time to time, make changes and additions in such forms, giving to the persons, corporations and municipalities six months' notice before the time fixed by the commission as the expiration of the fiscal year of any changes or additions which would require any alteration in the method or form of keeping their accounts for the ensuing year. When any such report is defective or believed to be erroneous, the commission shall notify the person, corporation or municipality making such report to amend the same within thirty d.ys. Any such person or corporation or municipality which shall neglect to make any such report within the time specified by the commission, or which shall fail to correct any such report within thirty days after notice, shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same, to be sued for in the name of the people of the state of New York. The amount recovered in any such action shall be paid into the state treasury and be credited to the general fund. The commission may extend the time herein limited for cause shown.

7. Require each municipality engaged in operating any works or systems for the manufacture and supplying of gas or electricity to make an annual report to the commission, verified by the oath of the general manager or superintendent thereof, showing in detail, (1) the amount of its authorized bonded indebtedness and the amount of its bonds and other forms of evidence of indebtedness issued and outstanding for lighting purposes, (2) its receipts and expenditures during the preceding year, (3) the amount paid as interest upon its bonds and upon other forms of evidence of indebtedness, (4) the name of and the amount paid to each person receiving a yearly or monthly salary, and the amount paid as wages to employees, (5) the location of its plant and system with a full description of the property, and (6) such other facts pertaining to the operation and maintenance of the plant and system, as may be required by the commission. Such report shall be in the form, cover the period and be submitted at the time prescribed by the commission.

8. Have power, either through its members or inspectors or employees duly authorized by it, to enter in or upon and to inspect the property, buildings, plants, factories, power houses and offices of any of such corporations, persons or municipalities.

9. Have power to examine the books and affairs of any such corporation, persons or municipalities, and to compel the production before it of books and papers pertaining to the affairs being investigated by it.

10. Have power, either as a commission or through its members, to subpoena witnesses, take testimony and administer oaths to witnesses in any proceeding or examination instituted before it, or conducted by it in reference to any matter within its jurisdiction under this article.

**§ 67. Inspection of gas and electric meters.** 1. Each commission shall appoint inspectors of gas and electric meters whose duty it shall be when required, to inspect, examine, prove and ascertain the accuracy of any and all gas meters used or intended to be used for measuring or ascertaining the quantity of illuminating or fuel gas or natural gas furnished by any gas corporation to or for the use of any person and any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat and power by any electrical corporation to or for the use of any person or persons and when found to be or made to be correct, the inspector shall stamp or mark all such meters and each of them with some suitable device, which device shall be recorded in the office of the secretary of state.

2. No corporation or person shall furnish or put in use any gas meter which shall not have been inspected, proved and sealed, or any electric meter which shall not have been inspected, approved, stamped or marked by an inspector of the commission. Every gas and electrical corporation shall provide or keep in and upon its premises a suitable and proper apparatus, to be approved and stamped or marked by the commission, for testing and proving the accuracy of gas and electric meters furnished for use by it, and by which apparatus every meter may and shall be tested, on the written request of the consumer to whom the same shall be furnished, and in his presence if he desires it.

If any consumer to whom a meter has been furnished, shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested; if the same on being so tested shall be found to be, four per cent. if an electric meter, or two per cent. if a gas meter, defective or incorrect to the prejudice of the consumer, the inspector shall order the gas or electrical corporation forthwith to remove the same and to place instead thereof a correct meter, and the expense of such inspection and test shall be borne by the corporation; if the same on being so tested shall be found to be correct the expense of such inspection and test shall be borne by the consumer. A uni-



form reasonable charge shall be fixed by the commission for this service.

**§ 68. Approval of incorporation and franchises; certificate.** No gas corporation or electrical corporation incorporated under the laws of this or any other state shall begin construction, or exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised without first having obtained the permission and approval of the proper commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation,\* showing that it has received the required consent of the proper municipal authorities. No municipality shall build, maintain and operate for other than municipal purposes any works or systems for the manufacture and supplying of gas or electricity for lighting purposes without a certificate of authority granted by the commission. If the certificate of authority is refused, no further proceedings shall be taken before the commission, but a new application may be made therefor after one year from the date of such refusal.

**§ 69. Approval of issues of stock, bonds and other forms of indebtedness.** A gas corporation or electrical corporation organized or existing, or hereafter incorporated, under or by virtue of the laws of the state of New York, may issue stocks, bonds, notes or other evidence of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of its plant or distributing system, or for the improvement or maintenance of its service or for the discharge or lawful refunding of its obligations, provided and not otherwise that there shall have been secured from the proper commission an order authorizing such issue, and the amount thereof, and stating that, in the opinion of the commission, the use of the capital to be secured by the issue of such stock, bonds, notes or other evidence of indebtedness is reasonably required for the said purposes of the corporation. For the purpose of enabling it to determine whether or not it should issue such an order, the commission shall make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as it may deem of importance in enabling it to reach a determination. Such gas corporation or electrical corporation may issue notes, for proper corporate pur-

\* So in original.

poses and not in violation of any provision of this or of any other act, payable at periods of not more than twelve months without such consent; but no such notes shall, in whole or in part, directly or indirectly be refunded by any issue of stock or bonds or by any evidence of indebtedness running for more than twelve months without the consent of the proper commission. Provided, however, that the commission shall have no power to authorize the capitalization of any franchise to be a corporation or to authorize the capitalization of any franchise or the right to own, operate or enjoy any franchise whatsoever in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to any political subdivision thereof as the consideration for the grant of such franchise or right. Nor shall the capital stock of a corporation formed by the merger or consolidation of two or more other corporations, exceed the sum of the capital stock of the corporations, so consolidated, at the par value thereof, or such sum and any additional sum actually paid in cash; nor shall any contract for consolidation or lease be capitalized in the stock of any corporation whatever; nor shall any corporation hereafter issue any bonds against or as a lien upon any contract for consolidation or merger.

**§ 70. Approval of transfer of franchise.** No gas corporation or electrical corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the proper commission. The permission and approval of the commission, to the exercise of a franchise under section sixty-eight of this act, or to the assignment, transfer or lease of a franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture. No such corporation shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business, or proposing to operate or operating under a franchise from the same or any other municipality, unless authorized so to do by the commission. Save where stock shall be transferred or held for the purpose of collateral security only with the consent of the commission empowered by this act to give such consent, no stock corporation of any description, domestic or foreign, other than a gas or electrical corporation, shall purchase or acquire, take or hold, more than ten per centum of the total capital stock issued by any gas corporation or electrical corporation organized or exist-

ing under or by virtue of the laws of this state. Nothing herein contained shall be construed to prevent the holding of stock heretofore lawfully acquired. Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation, in violation of any provision of this act, shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such gas corporation, or electrical corporation, or shall be recognized as effective for any purpose.

**§ 71. Complaints as to quality and price of gas and electricity; investigation by commission; forms of complaints.** Upon the complaint in writing of the mayor of a city, the trustees of a village or the town board of a town in which a person or corporation is authorized to manufacture, sell or supply gas or electricity for heat, light or power, or upon the complaint in writing of not less than one hundred customers or purchasers of such gas or electricity in cities of the first or second class, or of not less than fifty in cities of the third class, or of not less than twenty-five elsewhere, either as to the illuminating power, purity, pressure or price of gas or the initial efficiency of the electric incandescence lamp supply, or the regulation of the voltage of the supply system used for incandescence lighting, or price of electricity sold and delivered in such municipality, the proper commission shall investigate as to the cause for such complaint. When such complaint is made, the commission may, by its agents, examiners and inspectors, inspect the works, system, plant and methods used by such person or corporation in manufacturing, transmitting and supplying such gas or electricity, and may examine or cause to be examined the books and papers of such person or corporation pertaining to the manufacture, sale, transmitting and supplying of such gas or electricity. The form and contents of complaints made as provided in this section shall be prescribed by the commission. Such complaints shall be signed by the officers, or by the customers, purchasers or subscribers making them, who must add to their signatures their places of residence, by street and number, if any.

**§ 72. Notice and hearing; order fixing price of gas or electricity, or requiring improvement.** Before proceeding under a complaint presented as provided in section seventy-one, the commission shall cause notice of such complaint, and the purpose thereof, to be served upon the person or corporation affected thereby. Such person or corporation shall have an opportunity to be heard in respect to the matters complained of

at a time and place to be specified in such notice. If an investigation be instituted upon motion of the commission the person or corporation affected by the investigation may be permitted to appear before the commission at a time and place specified in the notice and answer all charges which may be preferred by the commission. After a hearing and after such investigation as may have been made by the commission or its officers, agents, examiners or inspectors, the commission within lawful limits may, by order, fix the maximum price of gas or electricity to be charged by such corporation or person, or may order such improvement in the manufacture or supply of such gas, in the manufacture, transmission or supply of such electricity, or in the methods employed by such person or corporation, as will in its judgment improve the service. The price so fixed by the commission shall be the maximum price to be charged by such person or corporation for gas or electricity in such municipality until the commission shall upon complaint as provided in this section or upon an investigation conducted by it on its own motion, again fix the maximum price of such gas or electricity. In determining the price to be charged for gas or electricity the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein.

**§ 73. Forfeiture for noncompliance with order.**

Every gas corporation and electrical corporation and the officers, agents or employees thereof shall obey, observe and comply with every order made by the commission under authority of this act, so long as the same shall be and remain in force. Any such corporation, or any officer, agent or employee thereof, who knowingly fails or neglects to obey or comply with such order, or any provision of this act, shall forfeit to the state of New York not to exceed the sum of one thousand dollars for each offense. Every distinct violation of any such order or of this act, shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense. An action to recover such forfeiture may be brought in any court of competent jurisdiction in this state in the name of the people of the state of New York, and shall be commenced and prosecuted to final judgment by counsel to the commission. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove

that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order of the commission the defendant was actually and in good faith prosecuting the suit, action or proceeding in the courts to set aside such order, the court shall remit the penalties or forfeitures incurred during the pendency of such suit, action or proceeding. All moneys recovered in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund.

**§ 74. Summary proceedings.** Whenever either commission shall be of opinion that a gas corporation, electrical corporation or municipality within its jurisdiction is failing or omitting or about to fail or omit to do anything required of it by law or by order of the commission or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the commission, it shall direct counsel to the commission to commence an action or proceeding in the supreme court of the state of New York in the name of the commission for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunction. Counsel to the commission shall thereupon begin such action or proceeding by a petition to the supreme court alleging the violation complained of and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify the time not exceeding twenty days after service of a copy of the petition within which the gas corporation, electrical corporation or municipality complained of must answer the petition. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirement. Such other persons or corporations, as it shall seem to the court necessary or proper to join as parties in order to make its order, judgment or writs effective, may be joined as parties upon application of counsel to the commission. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a writ of mandamus or an injunction or both issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief.

**§ 75. Defense in case of excessive charges for gas or electricity.** If it be alleged and established in an action brought in any court for the collection of any charge for gas

or electricity, that a price has been demanded in excess of that fixed by the commission or by statute in the municipality wherein the action arose, no recovery shall be had therein, but the fact that such excessive charges have been made shall be a complete defense to such action.

**§ 76. Jurisdiction.** Whenever any corporation supplies gas or electricity to consumers in both districts, any application or report to a commission required by this act shall be made to the commission of the district within which it is mainly supplying, or proposing to supply, such service to consumers. But nothing herein contained shall be construed to deprive the commission of either district of the power of supervision and regulation within its district. And either commission shall have power to enter and inspect the plant of such corporation, wherever situated.

**§ 77. Powers of local officers.** If in any city of the first or second class there now exists or shall hereafter be created a board, body or officer having jurisdiction of matters pertaining to gas or electric service, such board, body or officer shall have and may exercise such power, jurisdiction and authority in enforcing the laws of the state and the orders, rules and regulations of the commission as may be prescribed by statute or by the commission.

## ARTICLE 5

### **Commissions and Offices Abolished; Saving Clause; Repeal**

- Section 80. Board of railroad commissioners abolished; effect thereof.
- 81. Commission of gas and electricity abolished; effect thereof.
- 82. Inspector of gas meters abolished; effect thereof.
- 83. Board of rapid transit railroad commissioners abolished; effect thereof.
- 84. Transfer of records.
- 85. Pending actions and proceedings.
- 86. Construction.
- 87. Repeal.
- 88. Appropriation.
- 89. Time of taking effect.

**§ 80. Board of railroad commissioners abolished; effect thereof.** On and after the taking effect of this act the board of railroad commissioners shall be abolished. All the

powers and duties of such board conferred and imposed by any statute of this state shall thereupon be exercised and performed by the public service commissions.

**§ 81. Commission of gas and electricity abolished; effect thereof.** On and after the taking effect of this act the commission of gas and electricity shall be abolished. All the powers and duties of such commission conferred and imposed by any statute of this state shall be exercised and performed by the public service commissions.

**§ 82. Inspector of gas meters abolished; effect thereof.** On and after the taking effect of this act the offices of inspector and deputy inspectors of gas meters shall be abolished. All the powers and duties of such inspector conferred and imposed by any statute of this state shall be exercised and performed by the public service commissions. But any meter inspected, proved and sealed, by the said inspector of gas meters, prior to the taking effect of this act, shall be deemed to have been inspected by the commission.

**§ 83. Board of rapid transit railroad commissioners abolished; effect thereof.** On and after the taking effect of this act the board of rapid transit railroad commissioners shall be abolished. All the powers and duties of such board conferred and imposed by any statute of this state shall thereupon be exercised and performed by the public service commission of the first district.

**§ 84. Transfer of records.** 1. The board of railroad commissioners, the commission of gas and electricity, and the inspector of gas meters, shall transfer and deliver to the public service commission of the second district all books, maps, papers and records of whatever description, now in their possession; and upon taking effect of this act, the said commission is authorized to take possession of all such books, maps, papers and records.

2. The board of rapid transit railroad commissioners shall transfer and deliver to the public service commission of the first district all contracts, books, maps, plans, papers and records of whatever description, now in their possession; and upon taking effect of this act, the said commission is authorized to take possession of all such contracts, books, maps, plans, papers and records. The said commission may also, at its pleasure, retain in its employment any person or persons now employed by the said board of rapid transit railroad commissioners, and all said persons shall

be eligible for transfer and appointment to positions under the public service commission of the first district.

**§ 85. Pending actions and proceedings.** This act shall not affect pending actions or proceedings, civil or criminal, brought by or against the board of railroad commissioners or the commission of gas and electricity, or the board of rapid transit railroad commissioners, but the same may be prosecuted or defended in the name of the public service commission, provided the subject-matter thereof is within the statutory jurisdiction of such commission. Any investigation, examination or proceeding undertaken, commenced or instituted by the said boards or commission or either of them prior to the taking effect of this act may be conducted and continued to a final determination by the proper public service commission in the same manner under the same terms and conditions, and with the same effect as though such boards or commission had not been abolished.

**§ 86. Construction.** Wherever the terms board of railroad commissioners, or commission of gas and electricity or inspector of gas meters or board of rapid transit railroad commissioners occur in any law, contract or document or whenever in any law, contract or document reference is made to such boards, commission or inspector, such terms or reference shall be deemed to refer to and include the public service commissions as established by this act, so far as such law, contract or document pertains to matters which are within the jurisdiction of the said public service commissions. Nothing in this act contained shall be deemed to apply to or operate upon interstate or foreign commerce.

**§ 87. Repeal.** The following acts and parts of acts, together with all other acts amendatory of such acts, and all acts and parts of acts otherwise in conflict with this act, are hereby repealed;

Laws of 1905, chapter 737.

Laws of 1905, chapter 728.

Laws of 1904, chapter 158.

Laws of 1902, chapter 373.

Laws of 1896, chapter 456.

Laws of 1894, chapter 452.

Laws of 1892, chapter 534.

Laws of 1891, chapter 4, sections 1, 2 and 3.

Laws of 1890, chapter 565, sections 150 to 172 inclusive.

Laws of 1890, chapter 566, sections 62, 63 and 64.



**§ 88. Appropriation.** There shall be appropriated for the use of the commissions, and for the payment of salaries and disbursements under this act, from money not otherwise appropriated, the sum of three hundred thousand dollars, one hundred and fifty thousand dollars for the use of the commission of the first district and one hundred and fifty thousand dollars for the use of the commission of the second district.

**§ 89. Time of taking effect.** This act shall take effect July first, nineteen hundred and seven.

## RAILROAD LAW

- (1) The Railroad Law.
- (2) Amended certificate.
- (3) Time for construction.
- (4) Elections.
- (5) Consolidations.
- (6) Change of gauge.
- (7) Corporations owning canals.
- (8) Intersections.
- (9) Tunnels.
- (10) Air brakes.
- (11) Couplers.
- (12) Fares and mileage books.
- (13) Street railroads.
- (14) Sale of property found in street cars.
- (15) Park railroads in New York city.
- (16) Elevated railroads.
- (17) Powers of certain bridge corporations.



## **(1) The Railroad Law\***

**L. 1890, Ch. 565. "An Act in relation to railroads constituting chapter thirty-nine of the general laws."**

(In effect May 1, 1891.)

### **CHAPTER 39 OF THE GENERAL LAWS**

- Article 1. Organization; general powers; location (§§ 1-23).  
2. Construction; operation; management (§§ 30-69).  
3. Consolidation; lease; sale; reorganization (§§ 70-81).  
4. Street surface railroads (§§ 90-112).  
5. Other railroads in cities and counties (§§ 120-142).

#### **ARTICLE 1**

##### **Organization, General Powers, Location**

- Section 1. Short title.  
2. Incorporation.  
3. Supplemental certificate.  
4. Additional powers conferred:  
1. Entry upon lands for purpose of survey.  
2. Acquisition of real property.  
3. Construction of road.  
4. Intersection of streams, highways, plank-roads, turnpikes and canals.  
5. Intersection of other railroads.  
6. Buildings and stations.  
7. Transportation of persons and property.  
8. Time and manner of transportation.  
9. Purchase of lands and stock in other states.  
10. [Borrowing money, issuing bonds and mortgages.]  
5. When corporate powers to cease.  
6. Location of route.  
7. Acquisition of title to real property; additions, betterments and facilities.  
8. Railroads through public lands.  
9. Railroads through Indian lands.  
10. Railroads through Chautauqua assembly grounds.

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\* A proposed railroad law was reported to the Legislature and passed, but was not signed by the Governor.

- Section**
11. Intersection of highways, additional lands for.
  12. Intersection of other railroads.
  13. Change of route, grade or terminus.
  14. Construction of part of line in another state.
  15. Two roads having the same location.
  16. Tunnel railroads.
  17. Railroads in other countries.
  18. Additional corporate powers of such road.
  19. Location of principal office of such road.
  20. Individual, joint-stock association, or other corporation may lay down and maintain railroad tracks in certain cases.
  21. Powers of electric light and power corporations.
  - \*21. [Operation of roads used for summer travel.]
  22. Substituted lines in cases of eminent domain.
  23. [Application of section twenty-four of stock corporation law.]

**§ 1. Short title.** This chapter shall be known as the railroad law.

**§ 2. Incorporation.** Fifteen or more persons may become a corporation, for the purpose (1) of building, maintaining and operating a railroad, or (2) of maintaining and operating a railroad already built, not owned by a railroad corporation, or for both purposes, or (3) of building, maintaining and operating a railroad for use by way of extension or branch or cut-off of any railroad then existing, or for shortening or straightening or improving the line or grade of such railroad or of any part thereof, by executing, acknowledging and filing a certificate, in which shall be stated:

1. The name of the corporation.
2. The number of years it is to continue.
3. The kind of road to be built or operated.
4. Its length and termini.
5. The name of each county in which any part of it is to be located.
6. The amount of capital stock, which shall not be less than ten thousand dollars for every mile of road built, or proposed to be built, except a narrow-gauge road, when it shall not be less than three thousand dollars for every such mile.
7. The number of shares into which the capital stock is to be divided.
8. If the capital stock is to consist of common and preferred stock, the amount of each class and the rights and privileges of the latter over the former.

\* So in original.

9. The names and post-office addresses of the directors of the corporation, not less than nine, who shall manage its affairs for the first year.

10. The place where its principal office is to be located.

11. If a street surface railroad, the names and description of the streets, avenues and highways in which the road is to be constructed.

12. If it is to be a railway corporation, specified in article five of this chapter, the statements required by that article to be inserted in the certificate of incorporation.

13. The name and post-office address of each subscriber to the certificate and the number of shares of stock he agrees to take.

Such certificate shall have indorsed thereon, or annexed thereto, to be taken as a part thereof, an affidavit of at least three of such directors, that at least ten per cent of the minimum amount of capital stock authorized by law has been subscribed thereto, and paid in good faith and in cash to the directors named in the certificate, and that it is intended in good faith to build, maintain and operate the road mentioned therein. In case of a railway corporation specified in article five of this chapter, the affidavit of the directors shall show that the full amount of such capital stock has been in good faith subscribed, and there shall be annexed to the certificate of incorporation and as a part thereof the certificate of the railroad commissioners showing the organization of the corporation for the purposes mentioned in the certificate.

The filing of every certificate, where the amount of stock required by this section has not been in good faith subscribed and paid in cash, shall be void. (*Thus amended by L. 1892, ch. 676, and L. 1905, ch. 727.*)

**§ 3. Supplemental certificate.** If the names and places of residence of the directors of the corporation have been omitted from the certificate, when executed and acknowledged, and thereafter the requisite number of directors has been chosen at a meeting of the subscribers to the certificate, a supplemental certificate, containing their names and places of residence, may be filed with such certificate with the same force and effect as if the names and places of residence of the directors had been originally inserted therein.

**§ 4. Additional powers conferred.** Subject to the limitations and requirements of this chapter, every railroad corporation, in addition to the powers given by the general and stock corporation laws, shall have power.

1. *Entry upon lands for purposes of survey.* To cause the nec-

essary examination and survey for its proposed railroad to be made for the selection of the most advantageous route; and for such purpose, by its officers, agents or servants, to enter upon any lands or waters subject to liability to the owner for all damages done.

2. *Acquisition of real property.* To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of its railroad; and to acquire by condemnation such real estate and property as may be necessary for such construction, maintenance and accommodation in the manner provided by law, but the real property acquired by condemnation shall be held and used only for the purposes of the corporation during the continuance of the corporate existence.

3. *Construction of road.* To lay out its road not exceeding six rods in width, and to construct the same; and, for the purpose of cuttings and embankments, to take such additional lands as may be necessary for the proper construction and security of the road; and to cut down any standing trees that may be in danger of falling on the road, upon making compensation therefor.

4. *Intersection of streams, highways, plank-roads, turnpikes and canals.* To construct its road across, along or upon any stream, water-course, highway, plank-road, turnpike, or across any of the canals of the state, which the route of its road shall intersect or touch.

5. *Intersection of other railroads.* To cross, intersect, join, or unite its railroad with any other railroad before constructed, at any point on its route and upon the ground of such other railroad corporation, with the necessary turnouts, sidings, switches, and other conveniences in furtherance of the objects of its connections.

6. *Buildings and stations.* To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of its passengers, freight and business.

7. *Transportation of persons and property.* To take and convey persons and property on its railroad by the power or force of steam or of animals, or by any mechanical power, except where such power is specially prescribed in this chapter and to receive compensation therefor.

8. *Time and manner of transportation.* To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor.

9. *Purchase of lands and stock in other states.* To acquire and dispose of any real property in any other state through which any part of its railroad is operated, and stock in any foreign corporation owning lands in another state for the purpose of secur-

ing for such railroad corporation in this state a permanent supply of fuel for its use, and stock of corporations in this state, formed for the purpose of erecting union railway depots.

10. [*Borrowing money.*] From time to time to borrow such sums of money as may be necessary for completing and finishing or operating or improving its railroad, or for any other of its lawful purposes and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its property and franchises to secure the payment of any debts contracted by the company for the purposes aforesaid, notwithstanding any limitation on such power contained in any general or special law. But no mortgage, except purchase-money mortgages, shall be issued by any railroad corporation under this or any other law without the consent of the board of railroad commissioners, and the consent of the stockholders owning at least two-thirds of the stock of the corporation, which consent shall be in writing, and shall be given and certified and be filed and recorded in the office of the clerk or register of the county where it has its principal place of business, as provided in section \*two of the stock corporation law; or else the consent of the board of railroad commissioners and the consent by their votes of stockholders owning at least two-thirds of the stock of the corporation which is represented and voted upon in person or by proxy at a meeting called for that purpose upon a notice stating the time, place and object of the meeting, served at least three weeks previously upon each stockholder personally, or mailed to him at his post-office address, and also published at least once a week for three weeks successively in some newspaper printed in the city, town or county where such corporation has its principal office, and a certificate of the vote at such meeting shall be signed and sworn to and shall be filed and recorded as provided by section \*two of the stock corporation law. When authorized by the stockholders consent to any bonds made or issued under this section, the directors, under such regulations as they may adopt, may confer on the holder of any such bonds the right to convert the principal thereof, after two and not more than twelve years from the date of the bond, into stock of the corporation at a price fixed by the board of directors, which may be either par or a price not less than the market value thereof at the date of such consent to such bonds; and if the capital stock shall not be sufficient to meet the conversion when made, the board of directors shall authorize an increase of capital stock sufficient for that purpose. (*Thus amended by L. 1892, ch. 676. Subd. 10 thus amended by L. 1897, ch. 377; L. 1899, ch. 583; L. 1900, ch. 482, and L. 1902, ch. 504.*)

\* See L. 1909, ch. 61, § 6.



**§ 5. When corporate powers to cease.** If any domestic railroad corporation shall not, within five years after its certificate of incorporation is filed, begin the construction of its road and expend thereon ten per centum of the amount of its capital, or shall not finish its road and put it in operation in ten years from the time of filing such certificate, its corporate existence and powers shall cease. But if any such steam railroad corporation whose certificate of incorporation was filed since the year eighteen hundred and eighty, and whose road as designated in such certificate is wholly within one county and not more than ten miles in length, has acquired the real property necessary for its road-bed by purchase, its corporate existence and powers shall not be deemed to have ceased because of its failure to comply with the provisions of this article; and the time for beginning the construction of its road and expending thereon ten per centum of its capital, is extended until thirteen years from the date of the filing of such certificate and the time for finishing its road and putting it in operation, is extended until eighteen years from the date of such filing. This section shall not apply to any street surface railroad company incorporated prior to July first, eighteen hundred and ninety-five, which has obtained or become the owner of the consents of the local authorities, of any city of the first or second class, given under article four of the railroad law to the use of public streets, avenues or highways for the construction and operation of the railroad thereon. (*Thus amended by L. 1893, ch. 433, and L. 1901, ch. 508.*)

**§ 6. Location of route.** Every railroad corporation, except a street surface railroad corporation and an elevated railway corporation, before constructing any part of its road in any county named in its certificate of incorporation, or instituting any proceedings for the condemnation of real property therein, shall make a map and profile of the route adopted by it in such county, certified by the president and engineer of the corporation, or a majority of the directors, and file it in the office of the clerk of the county in which the road is to be made. The corporation shall give written notice to all actual occupants of the lands over which the route of the road is so designated, and which has not been purchased by or given to it, of the time and place such map or profile were filed, and that such route passes over the lands of such occupants. Any such occupant or the owner of the land aggrieved by the proposed location, may, within fifteen days after receiving such notice, give ten days' written notice to such corporation and to the owners or occupants of lands to be affected by any proposed alteration, of the time and place

of an application to a justice of the supreme court, in the judicial district where the lands are situated, by petition duly verified, for the appointment of commissioners to examine the route.

The petition shall state the objections to the route designated, shall designate the route to which it is proposed to alter the same, and shall be accompanied with a survey, map and profile of the route designated by the corporation, and of the proposed alteration thereof, and copies thereof shall be served upon the corporation and such owners or occupants with the notice of the application. The justice may, upon the hearing of the application, appoint three disinterested persons, one of whom must be a practical civil engineer, commissioners to examine the route proposed by the corporation, and the route to which it is proposed to alter the same, and after hearing the parties, to affirm the route originally designated, or adopt the proposed alteration thereof, as may be consistent with the just rights of all parties and the public, including the owners or occupants of lands upon the proposed alterations; but no alteration of the route shall be made except by the concurrence of the commissioner who is a practical civil engineer, nor which will cause greater damage or injury to lands or materially greater length of road than the route designated by the corporation, nor which shall substantially change the general line adopted by the corporation.

The commissioners shall, within thirty days after their appointment, make and certify their written determination, which with the petition, map, survey and profile, and any testimony taken before them shall be immediately filed in the office of the county clerk of the county. Within twenty days after such filing, any party may, by written notice to the other, appeal to the general term of the supreme court from the decision of the commissioners, which appeal shall be heard and decided at the next term held in the department in which the lands of the petitioners or any of them are situated, for which the same can be noticed, according to the rules and practice of the court. On the hearing of such appeal, the court may affirm the route proposed by the corporation or may adopt that proposed by the petitioner.

The commissioners shall each be entitled to six dollars per day for their services, and to their reasonable and necessary expenses, to be paid by the persons who applied for their appointment. If the route of the road, as designated by the corporation, is altered by the commissioners, or by the order of the court, the corporation shall refund to the petitioner the amount so paid, unless the decision of the commissioners is reversed upon appeal taken by the corporation. No such corporation shall institute any proceedings for the condemnation of real property in

any county until after the expiration of fifteen days from the service by it of the notice required by this section. Every such corporation shall transmit to the board of railroad commissioners the following maps, profiles and drawings exhibiting the characteristics of their road, to wit:

A map or maps showing the length and direction of each straight line; the length and radius of each curve; the point of crossing of each town and county line, and the length of line of each town and county accurately determined by measurements to be taken after the completion of the road.

Whenever any part of the road is completed and used, such maps and profiles of such completed part shall be filed with such board within three months after the completion of any such portion and the commencement of its operation; and when any additional portion of the road shall be completed and used, other maps shall be filed within the same period of time, showing the additional parts so completed. If the route, as located upon the map and profile filed in the office of any county clerk, shall have been changed, it shall also cause a copy of the map and profile filed in the office of the railroad commissioners, so far as it may relate to the location in such county, to be filed in the office of the county clerk. (*Thus amended by L. 1892, ch. 676.*)

**§ 7. Acquisition of title to real property; additions, betterments and facilities.** All real property, required by any railroad corporation for the purpose of its incorporation or for any purpose stated in the railroad law, shall be deemed to be required for a public use, and may be acquired by such corporation. If the corporation is unable to agree for the purchase of any such real property, or of any right, interest or easement therein, required for any such purpose, or if the owner thereof shall be incapable of selling the same, or if after diligent search and inquiry the name and residence of any such owner can not be ascertained, it shall have the right to acquire title thereto by condemnation. Every railroad corporation shall have the power from time to time to make and use upon or in connection with any railroad either owned or operated by it, such additions, betterments and facilities as may be necessary or convenient for the better management, maintenance or operation of any such railroad, and shall have the right by purchase or by condemnation, to acquire any real property required therefor, and it shall also have the right of condemnation in the following additional cases:

1. Where title to real property has been acquired, or attempted to be acquired, and has been found to be invalid or defective.

2. Where its railroad shall be lawfully in possession of a lessee, mortgagee, trustee or receiver, and additional real property shall be required for the purpose of running or operating such railroad.

3. Where it shall require for any railroad owned or operated by it any further rights to lands or the use of lands for additional main tracks or for branches, sidings, switches, or turn-outs or for connections or for cut-offs or for shortening or straightening or improving the line or grade of its road or any part thereof. Also where it shall require any further rights to lands or the use of lands for filling any structures of its road, or for constructing, widening or completing any of its embankments or roadbeds, by means of which greater safety or permanency may be secured, and such lands shall be contiguous to such railroad and reasonably accessible.

4. Where it shall require any further right to lands or to the use of lands for the flow of water occasioned by railroad embankments or structures now in use, or hereafter rendered necessary, or for any other purpose necessary for the operation of such railroad, or for any right to take and convey water from any spring, pond, creek or river to such railroad, for the uses and purposes thereof, together with the right to build or lay aqueducts or pipes for the purpose of conveying such water, and to take up, relay and repair the same, or for any right of way required for carrying away or diverting any water, stream or floods from such railroad for the purpose of protecting its road or for the purpose of preventing any embankment, excavation or structure of such railroad from injuring the property of any person who may be rendered liable to injury thereby.

Waters commonly used for domestic, agricultural or manufacturing purposes, shall not be taken by condemnation to such an extent as to injuriously interfere with such use in future. No railroad corporation shall have the right to acquire by condemnation any right or easement in or to any real property owned or occupied by any other railroad corporation, except the right to intersect or cross the tracks and lands owned or held for right of way by such other corporation, without appropriating or affecting any lands owned or held for depots or gravel-beds. (*Thus amended by L. 1892, ch. 676, and L. 1905, ch. 727.*)

**§ 8. Railroads through public lands.** The commissioner of the land office may grant to any domestic railroad corporation land belonging to the people of the state, except the reservation at Niagara and the Concourse lands on Coney island, which may be required for the purposes of its road on such terms as may be agreed upon by them; or such cor-

poration may acquire title thereto by condemnation; and the county or town officers having charge of any land belonging to any county or town, required for such corporation for the purposes of its road, may grant such land to the corporation for such compensation as may be agreed upon. In case the land or any right, interest or easement therein, required by such railroad corporation is used for prison purposes the commissioners of the land office may grant such land, or any right, interest or easement therein, provided the plans of such railroad corporation for the use of such prison lands, or such right, interest or easement therein, have the approval of the superintendent of state prisons. (*Thus amended by L. 1904, ch. 313.*)

**§ 9. Railroads through Indian lands.** Any railroad corporation may contract with the chiefs of any nation of Indians, over whose lands it may be necessary to construct its railroad, for the right to make such road upon such lands, but such contract shall not vest in the corporation the fee to the land, nor the right to occupy the same for any purposes other than may be necessary for the construction, occupancy and maintenance of such railroad, and such contract shall not be valid or effectual until it shall be ratified by the county court of the county where the land shall be situated.

**§ 10. Railroads through Chautauqua assembly grounds.** No railroad corporation shall build, construct or operate any railroad in, upon, over or through the grounds, lands or premises owned by the Chautauqua assembly corporation in the town and county of Chautauqua, without the written consent of a majority of the board of trustees of such assembly corporation.

**§ 11. Intersection of highways additional lands for.** No railroad corporation shall erect any bridge or other obstruction across, in or over any stream or lake, navigated by steam or sail boats at the place where it may be proposed to be erected, nor shall it construct its road in, upon or across any street of any city without the assent of the corporation of such city, nor across, upon or along any highway in any town or street in any incorporated village, without the order of the supreme court of the district in which such highway or street is situated, made at a special term thereof, after at least ten days' written notice of the intention to make application for such order shall have been given to the commissioners of highways of such town, or board of trustees of the village in which such highway or street is situated. Every railroad corporation which shall build

its road along, across or upon any stream, water-course, street, highway, plank-road or turnpike, which the route of its road shall intersect or touch, shall restore the stream or water-course, street, highway, plank-road and turnpike, thus intersected or touched, to its former state, or to such state as not to have unnecessarily impaired its usefulness, and any such highway, turnpike or plank-road may be carried by it, under or over its track, as may be found most expedient. Where an embankment or cutting shall make a change in the line of such highway, turnpike or plank-road desirable, with a view to a more easy ascent or descent, it may construct such highway, turnpike or plank-road, on such new line as its directors may select, and may take additional lands therefor by condemnation if necessary. Such lands so taken shall become part of such intersecting highway, turnpike or plank-road, and shall be held in the same manner and by the same tenure as the adjacent parts of the highway, turnpike or plank-road are held for highway purposes. Every railroad corporation shall pay all damages sustained by any turnpike or plank-road corporation in consequence of its crossing or occupation of any turnpike or plank-road, and in case of inability to agree upon the amount of such damages it may acquire the right to such crossing or occupation by condemnation.

**§ 12. Intersection of other railroads.** Every railroad corporation, whose road is or shall be intersected by any new railroad, shall unite with the corporation owning such new railroad in forming the necessary intersections and connections, and grant the requisite facilities therefor. If the two corporations can not agree upon the amount of compensation to be made therefor or upon the line or lines, grade or grades, points or manner of such intersections and connections, the same shall be ascertained and determined by commissioners, one of whom must be a practical civil engineer and surveyor, to be appointed by the court, as is provided in the condemnation law. Such commissioners may determine whether the crossing or crossings of any railroad before constructed shall be beneath, at, or above the existing grade of such railroad, and upon the route designated upon the map of the corporation seeking the crossing or otherwise. All railroad corporations whose roads are or shall hereafter be so crossed, intersected or joined, shall receive from each other and forward to their destination all goods, merchandise and other property intended for points on their respective roads, with the same dispatch as, and at a rate of freight not exceeding the local tariff rate charged for similar goods, merchandise and other property, received at or forwarded from the same point for individuals and other corporations. (*Thus amended by L. 1892, ch. 676.*)

**§ 13. Change of route, grade or terminus.** Every railroad corporation, except elevated railway corporations, may, by a vote of two-thirds of all its directors, alter or change the route or any part of the route of its road or its termini, or locate such route, or any part thereof, or its termini, in a county adjoining any county named in its certificate of incorporation, if it shall appear to them that the line can be improved thereby, upon making and filing in the clerk's office of the proper county a survey, map and certificate of such alteration or change. If the same is made after the corporation has commenced grading the original route, compensation shall be made to all persons for injury done by such grading to any lands donated to the corporation. But neither terminus can be changed, under this section, to any other county than one adjoining that in which it was previously located; nor can the route or terminus of any railroad be so changed in any town, county or municipal corporation, which has issued bonds and taken any stock or bonds in aid of the construction of such railroad without the written consent of a majority of the taxpayers appearing upon the last assessment-roll of such town, county or municipal corporation, unless such terminus, after the change, will remain in the same village or city as theretofore. No alteration of the route of any railroad after its construction shall be made, or new line or route of road laid out or established, as provided in this section, in any city or village, unless approved by a vote of two-thirds of the common council of the city or trustees of the village. Any railroad corporation whose road as located terminates at any railroad previously constructed or located, whereby communication might be had with any incorporated city of the state, may amend its certificate of incorporation so as to terminate its road at the point of its intersection with any railroad subsequently located to intersect it, and thereby, by itself or its connection, afford communication with such city, with the consent of the stockholders owning two-thirds of the stock of the corporation. Any railroad corporation may, by a vote of its directors, change the grade of any part of its road, except that in the city of Buffalo such change must conform to the general plan heretofore adopted and filed by the grade crossing commissioners of said city, or any modification thereof, within the territory covered by said general plan, in such manner as it may deem necessary to avoid accidents and facilitate the use of such road; and it may by such vote alter the grade of its road, for such distance and in such manner as it may deem necessary, on each or either side of the place where the grade of its road has been changed by direction of the superintendent of public works, at any point where its road crosses any canal or canal feeder, except that in the city of Buffalo

such change must conform to the general plan heretofore adopted and filed by the grade crossing commissioners of said city, or any modification thereof, within the territory covered by said general plan. The superintendent of public works shall have a general and supervisory power over that part of any railroad which passes over, or approaches within ten rods of any canal or canal feeder belonging to the state so far as may be necessary to preserve the free and perfect use of such canals or feeders, or to make any repairs, improvements or alterations, in the same. Any railroad corporation whose tracks cross any of the canals of the state, and the grade of which may be raised by direction of the superintendent of public works, with the assent of such superintendent, may lay out a new line of road to cross such canal at a more favorable grade, and may extend such new line and connect the same with any other line of road owned by such corporation upon making and filing in the clerk's office of the proper county a survey map and certificate of such new or altered line. No portion of the track of any railroad, as described in its certificate of incorporation, shall be abandoned under this section. (*Thus amended by L. 1892, ch. 676, and L. 1897, ch. 235.*)

**§ 14. Construction of part of line in another state.**

Any railroad corporation, whose proposed railroad is to be built between any two points in this state, may, by a vote of two-thirds of all its directors, locate and construct a part of its road in an adjoining state; and the sections of its road within this state shall be deemed a connected line, according to the certificate of incorporation, and the directors may reduce the capital stock of the corporation to such amount as may be deemed proper, but not less than ten thousand dollars per mile for the number of miles of road to be actually constructed in this state.

**§ 15. Two roads having the same location.** If two railroad corporations for a portion of their respective lines embrace the same location of line, or if their lines connect, or are tributary to each other, such corporations may by agreement provide for the construction by one of them of so much of such line as is common to both, or connects with its own line, and for the manner and terms upon which the business thereon shall be performed, and the corporation that is not to construct the part of the line which is common to both, may amend its certificate of incorporation, and terminate its line at the point of intersection, and may reduce its capital to a sum not less than ten thousand dollars for each mile of road proposed to be constructed in such amended certificate.



**§ 16. Tunnel railroads.** When, according to the route and plan for the building of its road, adopted by any railroad corporation, including corporations organized under chapter one hundred and forty of the laws of eighteen hundred and fifty, and the acts amendatory thereof, and supplementary thereto, it shall be necessary or proper to build it or any part of it underground, or to tunnel or bridge any river or waters, such corporation may enter upon, acquire title to and use such lands under water and uplands, except on or along any canals of the state, as shall be necessary for the purpose herein mentioned, and may construct, erect and secure the necessary foundations and other structures which may be required for operating and maintaining such road, or connecting the same with another, and to acquire, in the manner provided by law, such land or rights or easements in lands along its route, upon, over or beneath the surface thereof as may be necessary for the construction of its road and making such connections. Where such road runs underneath the ground, at such depth as to enable the corporation to tunnel the same, such tunnel shall be so built and at all times kept in such condition as to make the surface of the ground above the same and in the neighborhood thereof firm and safe for buildings and other erections thereon, and if surface excavations are made the surface shall be restored to its former condition as soon as can be done, except so far as may be actually required for ventilation of the tunnel beneath the same or access thereto. Such road or any part of it may be built within the limits of any city or incorporated village of this state, and run by means of a tunnel underneath any of the streets, roads or public places thereof, provided such corporation shall before constructing the same underneath any such street, road or public place, have obtained the consent of the owners of one-half in value of the property bounded on the line of such street, road or public place, and the consent of the board of trustees of the village, by a resolution adopted at a regular meeting and entered on the records of the board, or of the proper authorities of the city having control of such streets, roads or public places. If the consent of such property owners can not be obtained, the general term of the supreme court in the district in which said city or village or any part thereof is situated, may upon application appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be built underneath such streets, roads or public places, or any of them, and in what manner the same may be so built with the least damage to the surface and to the use of the surface by the public and the determination of the commissioners confirmed by the court may be taken in lieu of the consent of

the property owners. All railroad corporations constructing their road under this section shall be subject to all the provisions of this chapter applicable thereto. Any other railroad corporation may connect its road therewith, at such points or places as it may elect, and where such connections shall be made by connecting roads, the railroad corporations owning such roads shall build, at their joint expense, and for their joint use, such passenger and freight depots, and other accommodations for handling passengers and freight, as may be required for the convenience of the public. All railroad corporations, constructing any tunnel under this section shall be liable to any person or corporation for all damages which may be sustained by reason of the construction of such tunnel. Whenever it shall be necessary in constructing any railroad authorized by this section through any city or incorporated village, to alter the position or course of any sewer, or water or gas pipes, it shall be done at the expense of the railroad corporation under the direction of the department or corporation having charge thereof, so as not to interfere with such work. In all cases the uses of streets, docks and lands beneath which such railroad is constructed, and on the route thereof and the right of way beneath the same, for the purpose of such railroad shall be considered, and is hereby declared, a public use, consistent with and one of the uses for which streets and docks are publicly held. No public park or square in any city or village of this state shall be used or occupied by any corporation for any of the purposes of this section, and every road constructed hereunder in or through any such street or public place shall be wholly underground and constructed in a tunnel and not otherwise, but nothing in this section shall operate to revive any charter or franchise heretofore granted by or in the city of Brooklyn. This act does not authorize the construction of any bridge over or across the East or North rivers. (*Thus amended by L. 1892, ch. 676; L. 1892, ch. 702, and L. 1893, ch. 316.*)

**§ 17. Railroads in other countries.** A railroad corporation may be formed under this chapter for the purpose of constructing, maintaining and operating in any foreign country a railroad for public use in the transportation of persons and property, or for the purpose of maintaining and operating therein any railroad already constructed, in whole or in part, for the like public use, and of constructing, maintaining and operating, in connection therewith, telegraph lines and lines of steamboats or sailing vessels. Any corporation formed for the construction and operation of a railroad by stationary power, may construct, operate and maintain a railroad in any other state or country, if not in conflict with the laws thereof, but the assent of the in-

ventors or patentees of the method of propulsion used must be first obtained in the same manner and to the same extent as would be necessary within the United States. The term "foreign" in this and the next two sections of this law shall include Porto Rico. (*Thus amended by L. 1892, ch. 676, and L. 1902, ch. 225.*)

**§ 18. Additional corporate powers of such road.**

The corporation specified in the preceding section shall have the following additional powers:

1. To expend money in making preliminary examinations and surveys for its proposed railroad, telegraph lines, and lines of steamboats and sailing vessels, and in acquiring from foreign countries, nations or governments, the grants, concessions and privileges herein authorized.

2. To take and receive from foreign countries, nations and governments, such grants, concessions or privileges, for the construction, acquisition, maintenance and operation of railroads, telegraph lines and vessels, as may be consistent with the purposes of the corporation, and as may be granted and conceded to it, and to hold the same under such restrictions and with such duties and liabilities as may be fixed by the laws of such foreign country, nation or government, or as may be annexed to such grants or concessions.

3. To construct, acquire, maintain and operate the lines of railroad, telegraph and shipping provided for by its certificate of incorporation, and to take and hold by purchase or by voluntary grant such real estate and other property in foreign countries as may be necessary and convenient for the construction, maintenance and accommodation of such lines, and to sell, convey, mortgage or lease such real estate or other property; and to acquire by purchase or otherwise any railroad or lines of telegraph constructed or in process of construction in any foreign country, and any grants, concessions, franchises, rights, privileges and immunities relating thereto, and to issue therefor the capital stock of the company or any part thereof at such valuation or valuations and on such terms as may be agreed upon, and to mortgage or sell and convey such railroad or lines of telegraph constructed or in process of construction in any foreign country, and any grants, concessions, franchises, rights, privileges and immunities relating thereto, or any part of its property to any person or corporation created by this or any other state or foreign government, subject to the laws of the country or countries where such property may be, and the power of sale hereby granted shall be exercised only by a majority of the entire board of directors of the corporation, with the written concurrence of the holders of two-thirds in amount of its capital stock.

4. To take and convey persons and property on its transportation lines by the power or force of steam or of animals, or by mechanical or other power, and receive compensation therefor subject to the laws of the place or country where the same are situated.

5. To acquire and use such real estate and other property in this state as may be necessary in the conduct of its business, but the value of such real estate held at any one time shall not exceed the sum of one million dollars. (*Thus amended by L. 1897, ch. 504.*)

**§ 19. Location of principal office of such road.**

Every such corporation shall maintain its principal office within this state and shall have during business hours, an officer or agent upon whom service of process may be made, and shall hold in this state at least one meeting of the stockholders in each year for the choice of directors, which shall be known as the annual meeting and be held at the time and place fixed by the by-laws of the corporation. (*Thus amended by L. 1892, ch. 676.*)

**§ 20. Individual, joint stock association, or other corporation may lay down and maintain railroad tracks in certain cases.** Any individual, joint stock association or corporation, engaged in any lawful business in this state, may, except in any city of the state, lay down and maintain such railroad tracks on or across any street or highway, not exceeding three miles in length, as shall be necessary for the transaction of its business, and to connect any place of business owned by them with the track of any railroad corporation, and render such place of business more accessible to the public, upon obtaining the written consent of the owners of all the lands bounded on and of the local authorities having control of that portion of the street or highway, upon which it is proposed to construct or operate such railroad. If the consent of such property owners can not be obtained, the general term of the supreme court of the department in which such railroad is to be constructed, may upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and the amount of damages, if any, to be paid to such property owners, and their determination confirmed by the court may be taken in lieu of the consent of the property owners. But no such railroad shall be so located, graded, built or operated as to interfere with or obstruct the traveled part of any highway, or its use as a highway, or the use of any street or highway intersecting the same.

**§ 21. Powers of electric light and power corporations.** Whenever all of the stockholders of any domestic electric light and power company, incorporated under a general or special law, having not less than five stockholders, and actually engaged in carrying on business in this state, shall execute and file, in the offices in which its original certificates of incorporation are filed, an amended certificate of incorporation, complying in every other respect than as to the number of signers and directors, who shall not be less than five, with the provisions of the railroad law, and in which certificate the corporate name of such corporation shall be amended by adding before the word "company," in its corporate name, the words, "and railroad," or the words, "railroad and land," such corporation shall have the right to build, maintain and operate by electricity as a motive power, a railroad or railroads, not exceeding twenty-five miles in length, and within that distance from the power station, and shall also have the right to acquire the property and franchises of a railroad company or companies owning such a railroad or railroads, already constructed, and so operated, and to maintain and operate the same, provided that the directors of such railroad company or companies and all of its or their stockholders shall first have assented in writing to the transfer of the property and franchises of such railroad company or companies, to such corporation; in which event and by the filing of such assent of directors and stockholders in the offices where the certificates of incorporation of the railroad company or companies were required to be filed, the rights, property and franchises of such railroad company or companies shall be transferred to, and shall vest in such corporation, and such corporation so acquiring such railroad or railroads shall be subject to all the provisions of chapter thirty-nine of the general laws with respect to the railroad property or properties and franchises, and shall have all the powers, rights and privileges conferred by said chapter upon railroad corporations; provided that no such corporation shall construct any railroad which is in whole or in part a street surface railroad without complying with the provisions of article four of the railroad law. Upon filing such certificate, such corporation shall also have the right to acquire by gift or by voluntary purchase and sale land not exceeding two thousand acres along the line of, or contiguous to, said railroad, and to hold, improve, lease or sell same. Whenever any such corporation shall furnish power to any water-works corporation carrying on its business in the county, or in a county adjoining that in which the operations of such corporation are carried on, it may acquire the shares of the capital stock of said water-works corporation, and, if such corporation shall become

the owner of all the stock of said water-works corporation, it may, on executing and filing a certificate in accordance with the requirements of section \* fifty-eight of the stock corporations law, become possessed of all the estate, rights, property, privileges and franchises of such water-works corporation, with the effect provided in said section \* fifty-eight. This section shall not confer any powers upon any corporation located in, or authorize the construction, maintenance or operation of a railroad in a city of the first or second class, except in that part of any city of the first class which is or may be situate in a county of less than one hundred thousand inhabitants, according to the last preceding enumeration for the national census. (*Added by L. 1892, ch. 676, and amended by L. 1894, ch. 648; L. 1898, ch. 170, and L. 1901, ch. 731.*)

**§ 21. [Operation of roads used for summer travel.]**

Any corporation, whose railroad is or shall be not longer than sixteen miles and is or shall be in large part intended for or used in summer travel or the convenience of summer sojourners need not operate its road beyond the months of June, July, August and September, inclusive. The motive power may be electricity. If the road be not longer than ten miles, such corporation may fix and collect fare for transporting each passenger, together with ordinary baggage, if any, not to exceed fifteen cents for each mile and fraction thereof. (*Added by L. 1892, ch. 700.*)

**§ 22. Substituted lines in cases of eminent domain.**

Where a portion of a steam surface railroad or branch thereof, shall be specifically authorized by statute to be taken for any other public use, and such portion lies wholly outside of any city, any corporation owning or operating such portion may locate, as provided in section six of this article, and may construct and operate, in substitution for such portion, and with proper connections with the former line, a new line of steam surface railroad, wholly or partly in the same or any adjoining county, and wholly outside of any city, and not exceeding twenty-five miles in length, in the manner, with the powers and subject to the limitations and requirements provided in this chapter with respect to steam surface railroads. (*Added by L. 1898, ch. 656.*)

**§ 23. [Application of section twenty-four of stock corporation law.]** Section twenty-four of the stock corporation law does not apply to a railroad corporation. (*Added by L. 1898, ch. 80.*)

\* See L. 1909, ch. 61, § 15.

† So in the original.

**ARTICLE 2****Construction, Operation and Management**

- Section 30. Liability of corporation to employees of contractor.
31. Weight of rail.
32. Fences, farm crossings and cattle-guards.
33. [Sign boards and flagmen at crossings.]
34. Notice of starting trains; no preferences.
35. Accommodation of connecting roads.
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**§ 30. Liability of corporation to employees of contractor.** An action may be maintained against any railroad corporation by any laborer for the amount due him from any contractor for the construction of any part of its road, for ninety or any less number of days' labor performed by him in constructing such road, if within twenty days thereafter a written notice shall have been served upon the corporation, and the action shall have been commenced after the expiration of ten days and within six months after the service of such notice, which shall contain a statement of the month and particular days upon which the labor was performed and for which it was unpaid, the price per day, the amount due, the name of the contractor from whom due, and the section upon which performed, and shall be signed by the laborer or his attorney and verified by him to the effect that of his own knowledge the statements contained in it are true. The notice shall be served by delivering the same to an engineer, agent or superintendent having charge of the section of the road, upon which the labor was performed, personally, or by leaving it at his office or usual place of business with some person of suitable age or discretion; and if the corporation has no such agent, engineer or superintendent, or in case he can not be found and has no place of business open, service may



in like manner be made on any officer or director of the corporation.

**§ 31. Weight of rail.** The rail used in the construction or the relaying of the track of every railroad hereafter built or relaid in whole or in part shall be of iron or steel, weighing not less than twenty-five pounds to the lineal yard on narrow-gauge roads, and on all other roads not less than fifty-six pounds to the lineal yard on grades of one hundred and ten feet to the mile or under, and not less than seventy pounds to the lineal yard on grades of over one hundred and ten feet to the mile, except for turnouts, sidings and switches.

**§ 32. Fences, farm crossings and cattle-guards.** Every railroad corporation, and any lessee or other person in possession of its road, shall, before the lines of its road are opened for use, and so soon as it has acquired the right of way for its roadway erect and thereafter maintain fences on the sides of its road of height and strength sufficient to prevent cattle, horses, sheep and hogs from going upon its road from the adjacent lands with farm crossings and openings with gates therein at such farm crossings whenever and wherever reasonably necessary for the use of the owners and occupants of the adjoining lands, and shall construct where not already done, and hereafter maintain, cattle-guards at all road crossings, suitable and sufficient to prevent cattle, horses, sheep and hogs from going upon its railroad. So long as such fences are not made, or are not in good repair, the corporation, its lessee or other person in possession of its road, shall be liable for all damages done by their agents or engines or cars to any domestic animals thereon. When made and in good repair, they shall not be liable for any such damages, unless negligently or wilfully done. A sufficient post and wire fence of requisite height shall be deemed a lawful fence within the provisions of this section, but barbed wire shall not be used in its construction.

No railroad need be fenced, when not necessary to prevent horses, cattle, sheep and hogs from going upon its track from the adjoining lands. Every adjoining land owner, who, or whose grantor, has received compensation for fencing the line of land taken for a railroad, and has agreed to build and maintain a lawful fence along such line, shall build and maintain such fence. If such owner, his heir or assign shall not build such fence, or if built, shall neglect to maintain the same during the period of thirty days after he has been notified so to do by the railroad corporation, such corporation shall thereafter build and maintain such fence, and may recover of the person

neglecting to build and maintain it the expense thereof. And when such railroad shall cross timbered or forest lands, the company shall construct and maintain suitable and sufficient crossings, whenever and wherever reasonably necessary to enable the respective owners of said lands, to transport logs, timber and lumber for manufacture or sale, or for banking on any stream, to be floated or driven down the same. In case of any neglect or dispute the supreme court may by mandamus or other appropriate proceedings, compel the same, and also fix the point or location of any such crossing. (*Thus amended by L. 1891, ch. 367, and L. 1892, ch. 676.*)

**§ 33. [Sign boards and flagmen at crossings.]**

Every railroad corporation shall cause a sign board to be placed, well supported and constantly maintained, at every crossing where its road is crossed by a public highway at grade. Such sign board shall be of a shape and design to be approved by the board of railroad commissioners, and shall have suitable words painted thereon to warn travelers of the existence of such grade crossing. The board of railroad commissioners shall have power to prescribe the location and elevation of such sign and the words of warning thereon. The commission may dispense with the use of such sign boards at such crossings as they may designate in cities and villages. At any point where a railroad crosses a street, highway, turnpike, plank-road, or traveled way at grade, or where a steam railroad crosses a horse railroad at grade, and the corporation owning or operating such railroad, refuses, upon request of the local authorities, to station a flagman or erect gates, to be opened and closed when an engine or train passes, the supreme court or the county court, may, upon the application of the local authorities and upon ten days' notice to the corporation, order that a flagman be stationed at such point, or that gates shall be erected thereat, and that a person be stationed to open and close them when an engine or train passes, or may make such other order respecting the same as it deems proper. Whenever the crossing by a railroad at grade of the streets, highways, turnpike, plank-roads, or traveled ways of any village or city, having a population by the last state or federal enumeration of less than fifty thousand, shall be protected by gates with persons to open and close the same, when an engine or train passes, the local authorities of the city or village shall not impose any limitation, less than forty miles an hour, on the rate of speed at which such engine or train shall be run, or enforce any existing limitation upon such rate of speed, less than forty miles an hour. (*Thus amended by L. 1892, ch. 676, and L. 1901, ch. 301.*)

**§ 34. Notice of starting trains; no preferences.**

Every railroad corporation shall start and run its cars for the transportation of passengers and property at regular times, to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of all passengers and property which shall be offered for transportation at the place of starting, within a reasonable time previously thereto, and at the junctions of other railroads, and at the usual stopping places established for receiving and discharging way passengers and freight for that train; and shall take, transport and discharge such passengers and property at, from and to, such places, on the due payment of the fare or freight legally authorized therefor. No station established by any railroad corporation for the reception or delivery of passengers or property, or both, shall be discontinued without the consent of the board of railroad commissioners first had and obtained. No preference for the transaction of the business of a common carrier upon its cars, or in its depots or buildings, or upon its grounds, shall be granted by any railroad corporation to any one of two or more persons, associations or corporations competing in the same business, or in the business of transporting property for themselves or others. Any such station in an incorporated village shall have the same name as the village; if any road shall have more than one such station in any such village the station, nearest the geographical center thereof shall have such name. (*Thus amended by L. 1892, ch. 676.*)

**§ 35. Accommodation of connecting roads.** Every railroad corporation whose road, at or near the same place, connects with or is intersected by two or more railroads competing for its business, shall fairly and impartially afford to each of such connecting or intersecting roads equal terms of accommodation, privileges and facilities in the transportation of cars, passengers, baggage and freight over and upon its roads, and over and upon their roads, and equal facilities in the interchange and use of passenger, baggage, freight and other cars required to accommodate the business of each road, and in furnishing passage tickets to passengers who may desire to make a continuous trip over any part of its roads and either of such connecting roads. The board of railroad commissioners may, upon application of the corporation owning or operating either of the connecting or intersecting roads, and upon fourteen days' notice to the corporation owning or operating the other road, prescribe such regulations as will secure, in their judgment, the enjoyment of equal privileges, accommodations and facilities to such connecting or intersecting roads as may

be required to accommodate the business of each road, and the terms and conditions upon which the same shall be afforded to each road. The decision of the commissioners shall be binding on the parties for two years, and the supreme court shall have power to compel the performance thereof by attachment, mandamus, or otherwise.

**§ 36. Locomotives must stop at grade crossings.**

All trains and locomotives on railroads crossing each other at grade shall come to a full stop before crossing, not less than two hundred or more than eight hundred feet from the crossing, and shall then cross only when the way is clear and upon a signal from a watchman stationed at the crossing. If the corporations can not agree as to the expense of the watchman, it shall be determined by the supreme court, upon motion thereto by either of them. If the corporations disagree as to the precedence of trains, the board of railroad commissioners may, after hearing, upon the application of either corporation, prescribe rules in relation thereto. The full stop and crossing on signal may be discontinued if the board of railroad commissioners shall decide it to be impracticable, or if, with the approval of the commissioners, an interlocking switch and signal apparatus is adopted and put in operation \*as such a crossing. The full stop and crossing on signal shall not be required in depot yards, or the approaches thereto, if the crossing roads are under lease or subject to the same management or control in the use of tracks. An engineer, violating the foregoing provisions of this section, or any such rule of the railroad commissioners, shall be liable to a penalty of one hundred dollars; and any corporation or person operating the railroad, violating any of such provisions or rules shall be liable to a penalty of five hundred dollars. The board of railroad commissioners may, whenever in its judgment the public safety requires the erection of interlocking switch and signal devices at points where steam and street surface railroads intersect at grade, direct the erection of such devices and apportion the expense of construction, operation and maintenance thereof between the companies affected thereby. No railroad corporation, or any officer, agent or employee thereof, shall stop its cars, horses, or locomotives upon a grade crossing of a railroad of another corporation, for the purpose of receiving or delivering passengers or freight, or other purpose, and any person or corporation violating this provision, shall be liable to a penalty of two hundred and fifty dollars. (*Thus amended by L. 1898, ch. 466.*)

**§ 37. Rates of fare.** Every railway corporation may fix and collect the following rates of fare as compensation to be paid

\* So in original.

for transporting any passenger and his baggage, not exceeding one hundred and fifty pounds in weight, for each mile or fraction of a mile.

1. Where the motive power is rope or cable, propelled by stationary power, five cents, with right to a minimum fare of ten cents; but if the railroad is less than two miles in length, and overcomes an elevation of five hundred feet or more to the mile, five cents for each one hundred feet of elevation so overcome, and the same rates of fare if the motive power is locomotives, furnished with cogs working into cogs on the railway, and the length of road does not exceed four miles.

2. If a road, not incorporated prior to May fifteenth, eighteen hundred and seventy-nine, and not located in the counties of New York and Kings, or within the limits of any incorporated city, and not more than twenty-five miles in length, five cents; if over twenty-five and not more than forty miles, four cents; and if over forty miles, three cents. Where by the laying down of a third rail upon a railroad of the ordinary gauge, a narrow-gauge track is created and used for the transportation of passengers, and the length of road does not exceed six miles, including any connecting road of the same gauge, such railroad, for the purpose of fare, shall be deemed a narrow gauge road.

3. If its railroad overcomes an elevation of two hundred feet to the mile, for at least two consecutive miles, and does not exceed twenty miles in length, ten cents; if it overcomes an elevation exceeding three hundred feet to the mile, within a distance of two miles, five cents for each one hundred feet of elevation; and where it overcomes an elevation of more than one thousand feet, within a distance of two miles, seven cents for each one hundred feet of elevation in a mile.

4. If the line of its road does not exceed fifteen miles in length, and does not enter or traverse the limits of any incorporated city, and the distance traveled thereon by the passenger does not exceed one mile, five cents.

5. In all other cases, three cents for every such mile or fraction thereof, with a right to a minimum single fare of not less than five cents.

This chapter shall not be construed to allow any rate of fare for way passengers greater than two cents per mile to be charged or taken over the track or tracks of the railroad known as the New York Central Railroad Company, and the rate of fare for way passengers over the track or tracks of such company shall continue to be two cents per mile and no more, wherever it is restricted to that rate of fare, nor shall any consolidated railroad corporation charge a higher rate of fare per passenger per mile,

upon any part or portion of the consolidated line than was allowed by law to be charged by each existing corporation thereon previously to such consolidation. (*Thus amended by L. 1892, ch. 676.*)

**§ 38. Legislature may alter or reduce fare.** The legislature may, when any such railroad shall be opened for use, from time to time, alter or reduce the rate of freight, fare or other profits upon such road; but the same shall not, without the consent of the corporation, be so reduced as to produce with such profits less than ten per centum per annum on the capital actually expended; nor unless on an examination of the amounts received and expended, to be made by the board of railroad commissioners they shall ascertain that the net income derived by the corporation from all sources, for the year then last past, shall have exceeded an annual income of ten per centum upon the capital of the corporation actually expended. No person shall issue or sell, or offer to sell any passage ticket or instrument giving or purporting to give any right, either absolute or upon any condition or contingency to a passage or conveyance upon any vessel or railway train, or for a berth or stateroom in any vessel unless he is an authorized agent of the owners or consignees of such vessel or of the company running such trains, excepting as allowed by sections \*six hundred and twenty-two and six hundred and twenty-three of the penal code; and no person is deemed an authorized agent of such owners, consignees or company unless he has received a certificate of authority in writing therefor, specifying the name of the company, line, vessel or railway for which he is authorized to act as agent, and the city, town or village, together with the street and street number in which his office is kept for the sale of tickets; and no general passenger agent or other officer of a common carrier whose duty it may be to supply tickets to the agents of said common carrier for sale to the public shall supply tickets for sale to any persons other than such regularly authorized agents or persons specified in sections \*six hundred and twenty-two and six hundred and twenty-three of the penal code. (*Thus amended by L. 1901, ch. 639.*)

**§ 39. Penalty for excessive fare.** Any railroad corporation, which shall ask or receive more than the lawful rate of fare, unless such overcharge was made through inadvertence or mistake, not amounting to gross negligence, shall forfeit fifty dollars, to be recovered with the excess so received by the party paying the same; but no action can be maintained therefor, unless commenced within one year after the cause of action accrued.

\* See L. 1909, ch. 88, §§ 1568, 1569.

**§ 40. Passenger refusing to pay fare may be ejected.** If any passenger shall refuse to pay his fare the conductor of the train, and the servants of the corporation, may put him and his baggage out of the cars, using no unnecessary force, on stopping the train, at any usual stopping place, or near any dwelling house, as the conductor may elect.

**§ 41. Sleeping and parlor cars.** Any railroad corporation may contract with any person, association or corporation for the hauling by the special or regular trains of said railroad corporation, the parlor, drawing-room or sleeping car or cars of such person, association or corporation, in which extra accommodations shall be furnished, for which said person, association or corporation furnishing such parlor, drawing-room or sleeping car or cars, may charge for the carriage and transportation of persons and property therein, a reasonable compensation for such extra accommodation, in addition to the fare and charges now allowed by law for the carriage and transportation of passengers and property in the ordinary cars of said railroad corporation. But said railroad corporation so contracting shall be liable in the same way and to the same extent as if the said car or cars were owned by it, and shall furnish sufficient ordinary cars for the reasonable accommodation of the traveling public. (*Thus amended by L. 1892, ch. 676.*)

**§ 42. Persons employed as drivers, conductors, motormen or gripmen.** Any railroad corporation may employ any inhabitant of the state, of the age of twenty-one years, not addicted to the use of intoxicating liquors, as a car driver, conductor, motorman or gripman, or in any other capacity, if fit and competent therefor. All applicants for positions as motormen or gripmen on any street surface railroad in this state shall be subjected to a thorough examination by the officers of the corporation as to their habits, physical ability and intelligence. If this examination is satisfactory, the applicant shall be placed in the shop or power house where he can be made familiar with the power and machinery he is about to control. He shall then be placed on a car with an instructor, and when the latter is satisfied as to the applicant's capability for the position of motorman or gripman, he shall so certify to the officers of the company, and, if appointed, the applicant shall first serve on the lines of least travel. Any violation of the provisions of this section shall be a misdemeanor. (*Thus amended by L. 1895, ch. 513.*)

**§ 42-a. [Liability to employees.]** In all actions against a railroad corporation, foreign or domestic, doing business in this state, or against a receiver thereof, for personal injury to,

or death resulting from personal injury of any person, while in the employment of such corporation, or receiver, arising from the negligence of such corporation or receiver or of any of its or his officers or employees, every employee, or his legal representatives, shall have the same rights and remedies for an injury, or for death, suffered by him, from the act or omission of such corporation or receiver or of its or his officers or employees, as are now allowed by law, and, in addition to the liability now existing by law, it shall be held in such actions that persons engaged in the service of any railroad corporation, foreign or domestic, doing business in this state, or in the service of a receiver thereof, who are intrusted by such corporation or receiver, with the authority of superintendence, control or command of other persons in the employment of such corporation or receiver, or with the authority to direct or control any other employee in the performance of the duty of such employee, or who have, as a part of their duty, for the time being, physical control or direction of the movement of a signal, switch, locomotive engine, car, train or telegraph office, are vice-principals of such corporation or receiver, and are not fellow-servants of such injured or deceased employee. If an employee, engaged in the service of any such railroad corporation, or of a receiver thereof, shall receive any injury by reason of any defect in the condition of the ways, works, machinery, plant, tools or implements, or of any car, train, locomotive or attachment thereto belonging, owned or operated, or being run and operated by such corporation or receiver, when such defect could have been discovered by such corporation or receiver, by reasonable and proper care, tests or inspection, such corporation or receiver, shall be deemed to have had knowledge of such defect before and at the time such injury is sustained; and when the fact of such defect shall be proved upon the trial of any action in the courts of this state, brought by such employee or his legal representatives, against any such railroad corporation or receiver, on account of such injuries so received, the same shall be prima facie evidence of negligence on the part of such corporation or receiver. This section shall not affect actions or causes of action now existing; and no contract, receipt, rule or regulation, between an employee and a railroad corporation or receiver, shall exempt or limit the liability of such corporation or receiver from the provisions of this section. (*Added by L. 1906, ch. 657.*)

**§ 43. Conductors and employees must wear badges.**

Every conductor and employee of a railroad corporation employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office or employment, and the initial letters of the corporation employing



him. No conductor or collector without such badge shall demand or receive from any passenger any fare or ticket or exercise any of the powers of his employment. No officer or employe without such badge shall meddle or interfere with any passenger, his baggage or property. (*Thus amended by L. 1892, ch. 676.*)

**§ 44. Checks for baggage.** A check, made of some proper substance of convenient size and form, plainly stamped with numbers, and furnished with a convenient strap or other appendage for attaching to baggage, shall be affixed to every piece or parcel of baggage when taken for transportation for a passenger by the agent or employe of such corporation, if there is a handle, loop or fixture therefor upon the piece or parcel of baggage, and a duplicate thereof given to the passenger or person delivering the same to him. If such check be refused on demand the corporation shall pay to the passenger the sum of ten dollars, and no fare shall be collected or received from him; and if he shall have paid his fare it shall be refunded to him by the conductor in charge of the train. Such baggage shall be delivered, without unnecessary delay, to the passenger or any person acting in his behalf, at the place to which it was to be transported, where the cars usually stop, or at any other regular intermediate stopping place upon notice to the baggage-master in charge of baggage on the train of not less than thirty minutes, upon presentation of such duplicate check to the officer or agent of the railroad corporation, or of any corporation, over any portion of whose road it was transported. Bicycles are hereby declared to be and be deemed baggage for the purposes of this article and shall be transported as baggage for passengers by railroad corporations and subject to the same liabilities, and no such passenger shall be required to crate, cover or otherwise protect any such bicycle; provided, however, that a railroad corporation shall not be required to transport, under the provisions of this act, more than one bicycle for a single person. (*Thus amended by L. 1892, ch. 676; L. 1896, ch. 333, and L. 1902, ch. 388.*)

**§ 45. Penalties for injuries to baggage.** Any person, whose duty it is for or on behalf of the common carrier to handle, remove, or care for the baggage of passengers, who shall recklessly or wilfully injure or destroy any trunk, valise, box, bag, package or parcel, while loading, unloading, transporting, delivering or storing the same, or any railroad corporation, which shall knowingly keep in its employment any such wilful or reckless person, or which shall permit any injury or destruction of such property, through failure to provide sufficient help and facilities

for the handling thereof, shall pay to the party injured thereby the sum of fifty dollars, in addition to such damages.

**§ 46. Unclaimed freight and baggage.** Every railroad or other transportation corporation, doing business in this state, which shall have unclaimed freight or baggage, not live stock or perishable, in its possession for the period of sixty days, may deliver the same to any warehouse company, or person or persons engaged in the warehouse business, within this state, and take a warehouse receipt for the storage thereof. Upon such delivery and upon taking such warehouse receipt, every such railroad or other transportation corporation shall be discharged of all liability in respect to any such unclaimed freight or baggage from and after such delivery. At any time within two years from such delivery, such railroad or other transportation corporation shall surrender and transfer such warehouse receipt to the owner of any such unclaimed freight or baggage upon demand, and upon payment of all charges and expenses for transportation and storage then due, if any, to any such railroad or other transportation corporation. In case any such railroad or other transportation company shall have had unclaimed freight or baggage, not live stock or perishable, in its possession for a period of one year and shall not have delivered the same to a warehouse company or person or persons engaged in the warehouse business as above provided, then such railroad or other transportation company may proceed to sell the same at public auction, and out of the proceeds may retain the charges of transportation, handling and storage of such unclaimed freight or baggage, and the expenses of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale, to be published weekly in a newspaper published in or nearest the town or city to which such unclaimed freight or baggage was consigned, or at which it was directed to be left, and also at the town or city where such sale is to take place; and said notice shall contain a general description of such unclaimed freight or baggage, the name of the shipper thereof, if known, and a statement of the consignment thereof, whether to a designated consignee or to order, if known, or the place, at which the same was to be left, as near as may be; and the expenses incurred for advertising shall be a lien upon such unclaimed freight or baggage in a ratable proportion, according to the value of each article, package or parcel, if more than one. Such railroad or other transportation company shall make an entry of the balance of the proceeds of the sale, if any, of the unclaimed freight or baggage consigned to the same consignee or covered by each consignment, as near as can be ascertained, and at any time

within five years thereafter, shall refund any surplus so retained to the owners of such unclaimed freight or baggage, his personal representatives or assigns, on satisfactory proof of such ownership. In case such balance shall not be claimed by the rightful owner within five years after the sale as above specified, then it shall be paid to the county treasurer, for the use of the county poor of the county where the sale is made.

Unclaimed live stock and perishable freight or baggage may be sold by any such railroad or other transportation corporation without notice, as soon as it can be, upon the best terms that can be obtained. All moneys arising from the sale of any such unclaimed live stock, perishable freight or baggage, after deducting therefrom all charges and expenses for transportation, storage, keeping, commissions for selling the property, and any amount previously paid for its loss or non-delivery, shall be deposited by the corporation making such sale with a report thereof, and proof that the property was live stock or perishable freight, with the comptroller for the benefit of the general fund of the state, and shall be held by him in trust for reclamation by the person or persons entitled to receive the same. (*Thus amended by L. 1892, ch. 676; L. 1896, ch. 974, and L. 1899, ch. 582.*)

**§ 47. Tickets and checks for connecting steamboats.** The proprietors of any line of steamboats, terminating or stopping for passengers at any place where a railroad corporation has a depot or station, may furnish tickets and baggage checks to such corporation for the use of passengers, traveling over its road, who desire to connect with such line of boats at any such place, and the railroad corporation shall sell such tickets and deliver a duplicate of one of such checks to any such passenger applying therefor, and shall account for and pay over to the proprietor of such line of boats all moneys received by it for the sale of such tickets; and any such railroad corporation may furnish tickets and checks for baggage to the proprietors of any such line of steamboats for the use of passengers traveling over any part of such line of boats, who desire to connect with the railroad of any such corporation at any such place, and such proprietors shall sell such tickets and deliver a duplicate of one of such checks to any such passenger applying therefor, and shall account for and pay over to such corporation all moneys received by them for the sale of such tickets. No greater rate of fare shall be charged by any railroad corporation to any such passenger for the distance traveled over its road than is charged to travelers for the same distance whose trip ends at the place where connection is made with any such line of boats, and no greater rate of fare shall be charged by the pro-

prietors of any such steamboat line to any such passenger for the distance traveled over its line, than is charged to travelers for the same distance whose trip ends at the place where connection is made with any such railroad. Any additional cost of transfer of a passenger or his baggage from railroad depot or station to steamboat landing, or from steamboat landing to depot or station, shall be borne by the passenger or the proprietors of the steamboat line or the railroad corporation at whose instance or for whose benefit such transfer is made. Every railroad corporation and the proprietors of any line of steamboats, their agents or servants, who shall neglect or refuse to sell tickets or furnish a check to any passenger applying for the same, when the same shall have been furnished to them, shall pay to such passenger the sum of ten dollars, and no fare or toll shall be collected from him for riding over such road or upon such boats, as the case may be; and in addition thereto any railroad corporation so neglecting or refusing, shall pay the proprietors of such line of boats two hundred and fifty dollars for each day it shall so neglect or refuse; and the proprietors of any such line of boats so neglecting or refusing, shall pay to such railroad corporation a like sum for each day they shall so neglect or refuse.

Every such railroad corporation shall also receive any freight which shall be delivered at any station on the line of its road, marked to go by way of boat or any particular line of boats from any station on its road at which such boat or line of boats terminates or stops for freight, and shall transport such freight with all convenient speed to such station, and on its arrival there cause the proprietors of the steamboat line by which it is directed to be sent, or their agent, to be notified of such arrival, and shall deliver such freight to such proprietors or their agent with the bill of charges thereon due such railroad corporation, for the payment of which charges the proprietor or proprietors of such steamboat line shall be responsible, and shall account for and pay the same to such railroad corporation on demand. The railroad corporation shall not charge for the transportation of such freight over its road any greater sum pro rata than it charges for carrying the same kind of freight the same distance over its road, if it was to be transported by such corporation by rail to its final destination, or to the terminus of the road of such corporation in case it terminates before such final destination is reached. Any freight delivered by the proprietors of any steamboat or steamboat line, or their authorized agent, at any station, at a place where such steamboat or steamboats have a landing, to any such railroad corporation, for transportation over its road or any part thereof, shall be transported by such corpora-

tion to its place of destination for the same price pro rata which would be charged for the same kind of freight the same distance over its road, if the same had been taken on at the point of first shipment by boat, or at the terminus of the road of such corporation, in case it does not extend to the point of first shipment.

**§ 48. Rights and liabilities as common carriers.**

Every railroad corporation doing business in this state shall be a common carrier. Any one of two or more corporations owning or operating connecting roads, within this state, or partly within and partly without the state, shall be liable as a common carrier, for the transportation of passengers or delivery of freight received by it to be transported by it to any place on the line of a connecting road; and if it shall become liable to pay any sum by reason of neglect or misconduct of any other corporation it may collect the same of the corporation by reason of whose neglect or misconduct it became liable. (*Thus amended by L. 1892, ch. 676.*)

**§ 49. Switches; warning signals; automatic couplers; automatic or other safety brake; tools in passenger car; water.** It shall be the duty of every railroad corporation operating its road by steam:

1. To lay, in the construction of new and in the renewal of existing switches, upon freight or passenger main line tracks, switches on the principle of either the so-called Tyler, Wharton, Lorenze, or split-point switch, or some other kind of safety switch, which shall prevent the derailment of a train, when such switch is misplaced or a switch interlocked with distant signals.

2. To erect and thereafter maintain such suitable warning signals at every road, bridge, or structure which crosses the railroad above the tracks, where such warning signals may be necessary, for the protection of employees on top of cars from injury.

3. [Repealed by L. 1900, ch. 740.]

4. To use upon every new freight car, built or purchased for use, couplers which can be coupled and uncoupled automatically, without the necessity of having a person guide the link, lift the pin by hand, or go between the ends of the cars.

5. To attach to every car used for passenger transportation an automatic air-brake or other form of safety-power brake, applied from the locomotive, excepting cars attached to freight trains, the schedule rate of speed of which does not exceed twenty miles an hour.

6. To provide each closed car in use in every passenger train

owned or regularly used upon a railroad, with one set of tools, consisting of an axe, sledge hammer, crowbar and hand saw and such other or additional tools as the board of railroad commissioners may require, to be placed where directed by the board of railroad commissioners. (*Thus am'd by L. 1898, ch. 521.*)

7. To provide, in each passenger car, where the line of road shall exceed forty continuous miles in length, a suitable receptacle for water, with a cup or drinking utensil attached upon or near such receptacle, and to keep such receptacle, while the car is in use, constantly supplied with cool water.

Every corporation, person or persons, operating such railroad, and violating any of the provisions of this section, except subdivision seven, shall be liable to a penalty of one hundred dollars for each offense, and the further penalty of ten dollars for each day that it shall omit or neglect to comply with any of such provisions. For every violation of the provisions of the seventh subdivision of this section every such corporation shall be liable to a penalty of twenty-five dollars for each offense.

**§ 49-a. Inspection of locomotive boilers.** It shall be the duty of every railroad corporation operated by steam power, within this state, and of the directors, managers or superintendents of such railroad to cause thorough inspections to be made of the boilers and their appurtenances of all the steam locomotives which shall be used by such corporation or corporations, on said railroads. Said inspections shall be made, at least every three months under the direction and superintendence of said corporations, or the directors, managers or superintendents thereof, by persons of suitable qualifications and attainments to perform the services required of inspectors of boilers, and who from their knowledge of the construction and use of boilers and the appurtenances therewith connected, are able to form a reliable opinion of the strength, form, workmanship and suitability of boilers, to be employed without hazard of life, from imperfections in material, workmanship or arrangement of any part of such boiler and appurtenances. All such boilers so used shall comply with the following requirements: The boilers must be made of good and suitable materials; the openings for the passage of water and steam respectively, and all pipes and tubes exposed to heat shall be of proper dimensions; the safety valves, fusible plugs, low water glass indicator, gauge cocks and steam gauges, shall be of such construction, condition and arrangement that the same may be safely employed in the active service of the railroad corporation without peril to life; and each inspector shall satisfy himself by thorough examination that said requirements have been fully

complied with. No boiler, nor any connection therewith shall be approved which is unsafe in its form, or dangerous from defects, workmanship or other cause. The person or persons who shall make the said inspections if he or they approve of the boiler or boilers and the appurtenances throughout, shall make and subscribe his or their name to a written or printed certificate which shall contain the number of each boiler inspected, the date of its inspection, the condition of the boiler inspected, and such details as may be required by the forms and regulations which shall be prescribed by the railroad commissioners. Every certificate shall be verified by the oath of the inspector, and he shall cause said certificate or certificates to be filed in the office of the railroad commissioners, within ten days after each inspection shall be made, and also a copy thereof with the chief operating officer or employee of such railroad having charge of the operation of such locomotive boiler; a copy shall also be placed by such officer or employee in a conspicuous place in the cab connected with the locomotive boiler inspected, and there kept framed under glass. The railroad commissioners shall have power, from time to time, to formulate rules and regulations for the inspection and testing of boilers as aforesaid, and may require the removal of incompetent inspectors of boilers under the provisions of this act. Copies of such rules and regulations shall be mailed to every corporation operating a railroad by steam in this state. If it shall be ascertained by such inspection and test or otherwise, that any locomotive boiler is unsafe for use, the same shall not again be used until it shall be repaired, and made safe, so as to comply with the requirements of this section. Every corporation, director, manager or superintendent operating such railroad and violating any of the provisions of this section shall be liable to a penalty, to be paid to the people of the state of New York, of one hundred dollars for each offense, and the further penalty of one hundred dollars for each day it or they shall omit or neglect to comply with said provisions, and the making or filing of a false certificate shall be a misdemeanor, and every inspector who wilfully certifies falsely touching any steam boiler, or any appurtenance thereto belonging, or any matter or thing contained or required to be contained in any certificate, signed and sworn to by him, shall be guilty of a misdemeanor. Any person, upon application to the secretary of said board of railroad commissioners, and on the payment of such reasonable fee as said board may by rule fix, shall be furnished with a copy of any such certificate. (*Added by L. 1905, ch. 611, and amended by L. 1907, ch. 208.*)

**§ 49-b. State inspector of locomotive boilers.**  
Within twenty days after this section takes effect, the state rail-

road commission shall appoint a competent person as inspector of locomotive boilers, who shall receive a compensation to be fixed by the commission, not exceeding three thousand dollars per year. Such inspector shall, under the direction of the commission, inspect boilers or locomotives used by railroad corporations operating steam railroads within the state, and may cause the same to be tested by hydrostatic test and shall perform such other duties in connection with the inspection and test of locomotive boilers as the commission shall direct. But this section shall not relieve any railroad corporation from the duties imposed by the preceding section. (*Added by L. 1905, ch. 611.*)

**49-c. Care of steam locomotives; steam and water cocks; penalty.** It shall be the duty of every corporation operating a steam railroad, within this state, and of its directors, managers or superintendents, to cause the boiler of every locomotive used on such railroad to be washed out as often as once every thirty days, and to equip each boiler with, and maintain thereon at all times, a water glass, showing the height of water in the boiler, having two valves or shut-off cocks, one at each end of such glass, which valves or shut-off cocks shall be so constructed that they can be easily opened and closed by hand; also to cause such valves or shut-off cocks and all gauge cocks or try-cocks attached to the boiler to be removed and cleaned whenever the boiler is washed out pursuant to the foregoing requirements of this section; also to keep all steam valves, cocks and joints, studs, bolts and seams in such repair that they will not at any time emit steam in front of the engineer, so as to obscure his vision. No locomotive shall hereafter be driven in this state unless the same is equipped and cared for in conformity with the provisions of this section; but nothing here contained shall be construed to excuse the observance of any other requirement imposed by this chapter upon railroad corporations, their directors, officers, managers and superintendents. Every corporation, person or persons operating a steam railroad and violating any of the provisions of this section, shall be liable to a penalty of one hundred dollars for each offense, and the further penalty of ten dollars for each day that such violation shall continue. The board of railroad commissioners shall enforce the provisions of this act. (*Added by L. 1907, ch. 208.*)

**§ 50. Railroad commissioners may approve other safeguards.** The board of railroad commissioners may, on the application of any railroad corporation, authorize it to use any other safeguard or device approved by the board, in place of any safeguard or device required by this article, which shall



thereafter be used in lieu thereof, and the same penalties for neglect or refusal to use the same shall be incurred and imposed as for a failure to use the safeguard or device hereinbefore required, in lieu of which the same is to be used.

**§ 51. Use of stoves or furnaces prohibited.** It shall not be lawful for any railroad corporation, operating a steam railroad in this state, of the length of fifty miles or more, excepting foreign railroad corporations, incorporated without the jurisdiction of the United States, running cars upon tracks in this state for a distance of less than thirty miles, to heat its passenger cars, on other than mixed trains, excepting dining-room cars, by any stove or furnace kept inside the car, or suspended therefrom, unless in case of accident or other emergency, when it may temporarily use such stove or furnace with necessary fuel, in cars which have been equipped with apparatus to heat by steam, hot water or hot air from the locomotive, or from a special car, the present stove may be retained to be used only when the car is standing still, and no stove or furnace shall be used in a dining-room car, except for cooking purposes, and of pattern and kind to be approved by the railroad commissioners. This section shall not be held to affect or interfere with the use by the commissioners of fisheries of this or other states, or of the United States, of stoves for heating or cooking or boilers for hatching operations in their fish car or cars. Any person or corporation, violating any of the provisions of this section, shall be liable to a penalty of one thousand dollars, and to the further penalty of one hundred dollars for each and every day during which such violation shall continue. (*Thus amended by L. 1896, ch. 299.*)

**§ 52. Canada thistles to be cut.** Every railroad corporation doing business within this state, shall cause all Canada thistles, white and yellow daisies and other noxious weeds growing on any lands owned or occupied by it, to be cut down twice in each and every year, once between the fifteenth day of June and the twenty-fifth day of June, and once between the fifteenth day of August and the twenty-fifth day of August. If any such corporation shall neglect to cause the same to be so cut down, any person may cut the same, between the twenty-fifth day of June and the fifth day of July inclusive, and between the twenty-fifth day of August and the fifth day of September inclusive in each year, at the expense of the corporation on whose lands the same shall be so cut, at the rate of three dollars per day for the time occupied in cutting.

**§ 53. Riding on platform; walking along track.**

No railroad corporation shall be liable for any injury to any passenger while on the platform of a car, or in any baggage, wood or freight car, in violation of the printed regulations of the corporation, posted up at the time in a conspicuous place inside of the passenger cars, then in the train, if there shall be at the time sufficient room for the proper accommodation of the passenger inside such passenger cars. No person other than those connected with or employed upon the railroad shall walk upon or along its track or tracks, except where the same shall be laid across or along streets or highways, in which case he shall not walk upon the track unless necessary to cross the same. Any person riding, leading or driving any horse or other animal upon any railroad, or within the fences and guards thereof, other than at a farm or street or forest crossing, without the consent of the corporation, shall forfeit to the people of the state the sum of ten dollars, and pay all damages sustained thereby to the party aggrieved. (*Thus amended by L. 1892, ch. 676.*)

**§ 54. Corporations may establish ferries.** Any steam railroad corporation, incorporated under the laws of this state, with a terminus in the harbor of New York, may purchase or lease boats propelled by steam or otherwise, and operate the same as a ferry or otherwise, over the waters of the harbor of New York, but this section shall not be construed to affect the rights of the cities of New York and Brooklyn. (*Thus amended by L. 1892, ch. 676.*)

**§ 55. Certain railroads may cease operation in winter.** The directors of any railroad corporation operating a railroad, constructed and used principally for transporting lumber or ores, during the summer months, or for summer travel, may, by a resolution duly passed at a meeting thereof, apply to the board of railroad commissioners for permission to cease the operation of their road during the winter season, for a period, not exceeding seven months in any one year, specifying the date of such suspension, and the date of the reopening thereof; and such board may, in their discretion, make an order granting the application wholly or in part, and thereupon such railroad corporation shall be relieved of the duty of operating its road during the period specified in the order. A copy of such order shall be posted in all the depots and at the termini of such railroad, and published in every newspaper in each town in any part of which such road shall be constructed at least four weeks prior to the date of such suspension.

**§ 56. Mails.** Any railroad corporation shall, when applied to by the postmaster-general, convey the mails of the United States on its road, and in case such corporation and the postmaster-general shall not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and condition of carrying the same, the board of railroad commissioners shall fix the prices, terms and conditions therefor, after giving the corporation reasonable opportunity to be heard. Such price shall not be less for carrying such mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car. If the postmaster-general shall require the mail to be carried at other hours, or at higher speed than the passenger trains are run, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof, and for the service to be fixed as herein provided.

Every railroad corporation refusing or neglecting to comply with any provision of this section shall forfeit to the people of the state one hundred dollars for every day such neglect or refusal continues. (*Thus amended by L. 1892, ch. 676.*)

**§ 57. Corporations must make annual report.**

Every person or corporation owning, leasing, operating or in possession of a railroad, wholly or partly, in this state, shall make an annual report to the board of railroad commissioners of its operations for the year ending with June thirtieth, and of its condition on that day which shall be verified by the oaths of the president, or treasurer, and the general manager, or acting superintendent, and shall be filed in the office of such board on or before September first in each year. Every such person or corporation shall make quarterly and further reports to such board in the form and within the time prescribed by it. Such board may in its discretion change the date of the annual report and of filing the same, but the length of time between the date of the annual report and the filing of the same shall not be less than herein prescribed. Any person or railroad corporation which shall neglect to make any such report, or which shall fail to correct any such report within ten days after notice by the board of railroad commissioners, shall be liable to a penalty of two hundred and fifty dollars, and an additional penalty of twenty-five dollars for each day after September first on which it shall neglect to file the same, to be sued for in the name of the people of the state of New York, for their use.

The board of railroad commissioners may extend the time herein limited for cause shown. (*Thus amended by L. 1892, ch. 676.*)

**§ 58. [When conductors and brakemen may be policemen.]** The governor may appoint any conductor or brakeman on any train conveying passengers on any steam railroad in this state, a policeman, with all the powers of a policeman in cities and villages, for the preservation of order and of the public peace, and the arrest of all persons committing offenses upon the land or property of the corporation owning or operating such railroad; and he may also appoint, on the application of any such corporation, or of any steamboat company, such additional policemen, designated by it, as he may deem proper, who shall have the same powers. Every such policeman shall within fifteen days after receiving his commission, and before entering upon the duties of his office, take and subscribe the constitutional oath of office, and file it with his commission in the office of the secretary of state. Every such policeman shall when on duty wear a metallic shield, with the words "railroad police" or "steamboat police" as the case may be, and the name of the corporation for which appointed inscribed thereon, which shall always be worn in plain view, except when employed as a detective. The compensation of every such policeman shall be such as may be agreed upon between him and the corporation for which he is appointed, and shall be paid by the corporation. When any corporation shall no longer require the services of any such policeman they may file notice to that effect in the office in which notice of his appointment was originally filed, and thereupon such appointment shall cease and be at an end. (*Thus amended by L. 1899, ch. 539, and L. 1906, ch. 380.*)

**§ 59. Requisites to exercise of powers of future railroad corporations.** No railroad corporation hereafter formed under the laws of this state shall exercise the powers conferred by law upon such corporations or begin the construction of its road until the directors shall cause a copy of the articles of association to be published in one or more newspapers in each county in which the road is proposed to be located, at least once a week for three successive weeks, and shall file satisfactory proof thereof with the board of railroad commissioners; nor until the board of railroad commissioners shall certify that the foregoing conditions have been complied with, and also that public convenience and a necessity require the construction of said railroad as proposed in said articles of association. The foregoing certificate shall be applied for within six months after the completion of the three weeks' publication hereinbefore provided for. If certificate is refused no further proceedings shall be had before said board, but the application may be renewed after one year

from the date of such refusal. Prior to granting or refusing said certificate the board shall have a right to permit errors, omissions or defects to be supplied and corrected. After a refusal to grant such certificate the board shall certify a copy of all maps and papers on file in its office and of the findings of the board when so requested by the directors afore-said. Such directors may there-upon present the same to a general term of the supreme court of the department within which said road is proposed in whole or in part to be constructed, and said general term shall have power, in its discretion, to order said board, for reasons stated, to issue said certificate, and it shall be issued accordingly. Such certificate shall be filed in the office of the secretary of state, and a copy thereof, certified to be a copy by the secretary of state, or his deputy, shall be evidence of the fact therein stated. Nothing in this section shall prevent any such railroad corporation from causing such examinations and surveys for its proposed railroad to be made as may be necessary to the selection of the most advantageous route; and for such purpose by its officers or agents and servants, to enter upon the lands or water of any person, but subject to the responsibility for all damages which shall be done thereto. (*Added by L. 1892, ch. 676, and amended by L. 1895, ch. 545.*)

**§ 59-a. Railroad commissioners may certify part of the route of a street surface railroad; power to revoke certificates; street surface railroad extension.** Whenever application is made by a street surface railroad company for a certificate of public convenience and a necessity as required by the provisions of the foregoing section, and it shall appear to the board of railroad commissioners, after examination of the proposed route of the applicant company that public convenience and a necessity do not require the construction of said railroad as proposed in its articles of association but do require the construction of a part of the said railroad, the board of railroad commissioners may issue its certificate for the construction of such part of the said railroad as seems to it to be required by public convenience and a necessity. In case any railroad company which shall hereafter obtain the certificate of the board of railroad commissioners that public convenience and a necessity require the construction of the whole or a part of the said railroad shall fail to begin such construction within two years from the date of the issuing of said certificate, the board of railroad commissioners may inquire into the reason for such failure and the said board may revoke said certificate if it shall appear to it to be in the public interest so to do. Any street surface railroad company which proposes to extend its road beyond the limits of

any city or incorporated village by a route which will be practically parallel with a street surface railroad already constructed and in operation shall first obtain the certificate of the board of railroad commissioners that public convenience and a necessity require the construction of such extension as provided in the case of a railroad corporation newly formed. Before making application for such certificate the corporation shall cause to be advertised the route of the proposed extension in one or more newspapers in each county in which such extension is to be constructed, at least once a week for three successive weeks, and shall file satisfactory proof of such publication with the board of railroad commissioners. Nothing in this section shall prevent street railroad companies from making extensions within the limits of cities or incorporated villages upon compliance with the provisions of law now applicable thereto. (*Added by L. 1898, ch. 643, and amended by L. 1902, ch. 226.*)

**§ 59-b. [Revocation of consent by board in certain cases.]** Whenever it shall be made to appear to the board of railroad commissioners that any steam railroad corporation, which has obtained from it a certificate under section fifty-nine of the railroad law since eighteen hundred and ninety-four and whose road is less than ten miles in length, and was to be built in the counties of Saratoga and Washington, shall not have completed its construction and put it in operation within three years after obtaining such certificates, the said board, on notice to such corporation, shall have the power to revoke the said certificate and consent and thereupon the corporate existence and power of such railroad corporation shall cease and determine. (*Added by L. 1899, ch. 597.*)

**§ 60. [Grade crossings.]** All steam surface railroads, hereafter built except additional switches and sidings, must be so constructed as to avoid all public crossings at grade, whenever practicable so to do. Whenever application is made to the board of railroad commissioners, under section fifty-nine of the railroad law, there shall be filed with said board a map showing the streets, avenues and highways proposed to be crossed by the new construction, and the said board shall determine whether such crossings shall be under or over the proposed railroad, except where said board shall determine such method of crossing to be impracticable. Whenever an application is made under this section to determine the manner of crossing, the said board shall designate a time and place when and where a hearing will be given to such railroad company, and shall notify the municipal corporation having jurisdiction over such streets,

avenues or highways proposed to be crossed by the new railroad. The said board shall also give public notice of such hearing in at least two newspapers, published in the locality affected by the application, and all persons owning land in the vicinity of the proposed crossings shall have the right to be heard. The decision of the said board rendered in any proceedings under this section shall be communicated, within twenty days after final hearing, to all parties to whom notice of the hearing in said proceedings was given, or who appeared at said hearing by counsel or in person. (*Added by L. 1897, ch. 754.*)

**§ 61. New streets across railroads.** When a new street, avenue or highway, or new portion of a street, avenue or highway or a state or county highway deviating from the line of an existing highway, shall hereafter be constructed across a steam surface railroad, other than pursuant to the provisions of section sixty-two of this chapter, such street, avenue or highway or portion of such street, avenue or highway, shall pass over or under such railroad or at grade as the public service commission shall direct. Notice of intention to lay out such street, avenue or highway, or new portion of a street, avenue or highway, across a steam surface railroad, shall be given to such railroad company by the municipal corporation at least fifteen days prior to the making of the order laying out such street, avenue or highway by service personally on the president or vice-president of the railroad corporation, or any general officer thereof. In case of the construction of a state or county highway, which deviates from the line of an existing highway, across a steam surface railroad, a like notice shall be given to such railroad company, by the state commission of highways, at least fifteen days prior to the adoption of the maps, plans and specifications for such state or county highway, by such commission. Such notice shall designate the time when and place where a hearing will be given to such railroad company, and such railroad company shall have the right to be heard before the authorities of such municipal corporation upon the question of the necessity of such street, avenue or highway, or before the state commission of highways, in case of a state or county highway, on the question of the location of such highway. If the municipal corporation determines such street, avenue or highway to be necessary, or if the state commission of highways determines that such state or county highway, which deviates from the line of an existing highway, shall be constructed across such railroad at the place indicated in the maps, plans and specifications therefor, such municipal corporation or commission of highways, shall then apply to the public service commission before any

further proceedings are taken, to determine whether such street, avenue or highway shall pass over or under such railroad, or at grade. The said public service commission shall thereupon appoint a time and place for hearing such application, and shall give such notice thereof, as it shall judge reasonable, not, however, less than ten days, to the railroad company whose railroad is to be crossed by such new street, avenue or highway, or new portion of a street, avenue or highway, to the state commission of highways, or in the case of a state or county highway, which deviates from the line of an existing highway, to the municipal corporation and to the owners of land adjoining the railroad and that part of the street, avenue or highway to be opened, extended, or constructed. The public service commission shall determine whether such street, avenue or highway, or new portion of a street, avenue or highway, or state or county highway shall be constructed over or under such railroad or at grade. If said commission determine that such street, avenue or highway shall be carried across such railroad above grade, then said commission shall determine the height, the length and the material of the bridge or structure by means of which such street, avenue or highway shall be carried across such railroad, and the length, character and grades of the approaches thereto. If said commission shall determine that such street, avenue or highway shall be constructed or extended below the grade, said commission shall determine the manner and method in which the same shall be so carried under, and the grade or grades thereof, and if said commission shall determine that said street, avenue or highway shall be constructed or extended at grade, said commission shall determine the manner and method in which the same shall be carried over said railroad at grade and what safeguards shall be maintained. The decision of the commission as to the manner and method of carrying such new street, avenue or highway, or new portion of a street, avenue or highway, or state or county highway which deviates from the line of an existing highway, across such railroad, shall be final, subject, however, to the right of appeal herein-after given. The decision of said commission rendered in any proceeding under this section shall be communicated within twenty days after final hearing to all parties to whom notice of the hearing in such proceeding was given or who appeared at such hearing by counsel or in person. (*Added by L. 1897, ch. 754, and amended by L. 1898, ch. 520, and L. 1909, ch. 153, in effect April 5, 1909.*)

**§ 62. Petition for alteration of existing crossing.** The mayor and common council of any city, the president and trustees of any village, the town board of any town within which a street, avenue or highway crosses or is crossed by a steam



surface railroad at grade, or any steam surface railroad company, whose road crosses or is crossed by a street, avenue or highway at grade, may bring their petition, in writing, to the public service commission, therein alleging that public safety requires an alteration in the manner of such crossing, its approaches, the method of crossing, the location of the highway or crossing, the closing and discontinuance of a highway crossing and the diversion of the travel thereon to another highway or crossing, or if not practicable to change such crossing from grade or to close and discontinue the same, the opening of an additional crossing for the partial diversion of travel from the grade crossing, and praying that the same may be ordered. Where a street, avenue or highway in a city, village or town, which crosses or is crossed by a steam surface railroad at grade, is a part of a highway which the state commission of highways shall have determined to construct or improve as a state or county highway, as provided in article six of the highway law, such \*commissioner of highways may bring a petition containing any of the allegations above specified, and praying for a like order. Upon any such petition being brought the public service commission shall appoint a time and place for hearing the petition, and shall give such personal notice thereof as it shall judge reasonable, of not less than ten days, however, to said petitioner, the railroad company, the municipality in which such crossing is situated, to the owners of the lands adjoining such crossing and adjoining that part of the highway to be changed in grade or location, or the land to be opened for a new crossing, and to the state commission of highways, in case of a state or county highway. The public service commission shall cause notice of said hearing to be advertised in at least two newspapers published in the locality affected by the application. Upon such a notice and after a hearing the public service commission shall determine what alterations or changes, if any, shall be made. If the application be made by the state commission of highways in respect to a street, avenue or highway proposed to be constructed or improved as a part of a state highway, the decision shall state whether such highway shall cross such railroad above or below the grade of the highway; in case of a county highway, such decision shall state whether such highway shall cross such railroad at grade, or above or below the grade of the highway. The decision of said public service commission rendered in any proceeding under this section, shall be communicated within twenty days after final hearing to all parties to whom notice of the hearing in said proceeding was given, or who appeared at said hearing by counsel or in person. Any person aggrieved by such decision, or by a decision made

\* So in original.

pursuant to sections sixty and sixty-one hereof, and who was a party to said proceeding, may within sixty days appeal therefrom to the appellate division of the supreme court in the department in which such grade crossing is situated and to the court of appeals, in the same manner and with like effect as is provided in the case of appeals from an order of the supreme court. (*Added by L. 1897, ch. 754, and amended by L. 1898, ch. 520; L. 1899, ch. 359, and L. 1909, ch. 153, in effect April 5, 1909.*)

**§ 63. Acquisition of land, right or easement in crossing.** The municipal corporation in which the highway crossing is located, or the state commission of highways, in case of a street, avenue or highway to be constructed or improved as a part of a state or county highway, may, with the approval of the railroad company, acquire by purchase any lands, rights or easements necessary or required for the purpose of carrying out the provisions of sections sixty, sixty-one, and sixty-two of this chapter, but if unable to do so shall acquire such lands, rights or easements by condemnation either under the condemnation law, or under the provisions of the charter of such municipal corporation. The railroad company shall have notice of any such proceedings and the right to be heard therein. (*Added by L. 1897, ch. 754, and amended by L. 1899, ch. 226, and L. 1909, ch. 153, in effect April 5, 1909.*)

**§ 64. Repair of bridges and subways at crossings.** When a highway crosses a railroad by an overhead bridge, the frame work of the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the roadway thereover and the approaches thereto shall be maintained and kept in repair by the municipality in which the same are situated; except that in the case of any overhead bridge constructed prior to the first day of July, eighteen hundred and ninety-seven, the roadway over and the approaches to which the railroad company was under obligation to maintain and repair, such obligations shall continue, provided the railroad company shall have at least ten days' notice of any defect in the roadway thereover and the approaches thereto, which notice must be given in writing by the town superintendent of highways or other duly constituted authorities, and the railroad company shall not be liable by reason of any such defect unless it shall have failed to make repairs within ten days after the service of such notice upon it. When a highway passes under a railroad, the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the subway and its approaches shall be maintained and kept in repair by the municipality in which the same are situated. In case such

highway is a part of a state or county highway, constructed or improved as provided in article six of the highway law, the roadway over such railroad or the subway underneath the same, and the approaches thereto shall be maintained and kept in repair under the supervision and control of the state commission of highways in the manner provided by the highway law for the maintenance and repair of state and county highways. (*Added by L. 1897, ch. 754, and amended by L. 1902, ch. 140, and L. 1909, ch. 153, in effect April 5, 1909.*)

**§ 65. Expense of constructing new crossings.** Whenever, under the provisions of section sixty of this chapter, new railroads are constructed across existing highways, the expense of crossing above or below the grade of the highway shall be paid entirely by the railroad corporations. Whenever under the provisions of section sixty-one of this chapter, a new street, avenue or highway is constructed across an existing railroad, the railroad corporation shall pay one-half and the municipal corporation wherein such street, avenue or highway is located, shall pay the remaining one-half of the expense of making such crossing above or below grade; and whenever a change is made as to an existing crossing in accordance with the provisions of section sixty-two of this chapter, fifty per centum of the expense thereof shall be borne by the railroad corporation, twenty-five per centum by the municipal corporation, and twenty-five per centum by the state. Whenever, under the provisions of sections sixty-one and sixty-two of this chapter, a highway is constructed across an existing railroad and is a part of a state or county highway constructed or improved as provided in the highway law, one-half of the expense of making such crossing above or below grade shall be paid by the railroad corporation, and the remaining one-half of such expense shall be paid by the state in the case of a state highway, and jointly by the state, county and town in the case of a county highway, in the same proportion and in the same manner as the cost of the construction or improvement of such state or county highway is paid. Whenever, in carrying out the provisions of section sixty-one or sixty-two of this chapter, two or more lines of steam surface railroad, owned and operated by different corporations, cross a highway at a point where a change in grade is made, each corporation shall pay such proportion of fifty per centum of the expense thereof as shall be determined by the public service commission. In carrying out the provisions of sections sixty, sixty-one and sixty-two of this chapter, the work shall be done by the railroad corporation or corporations affected thereby, subject to the supervision and approval of the public service commission, and in all cases, except where the entire

expense is paid by the railroad corporation, the expense of construction shall be paid primarily by the railroad company, and the expense of acquiring additional lands, rights or easements, shall be paid primarily by the municipal corporation wherein such highway crossings are located, or, in case of a state or county highway, upon the order of the state commission of highways out of moneys available therefor. Plans and specifications of all changes proposed under sections sixty-one and sixty-two of this chapter, and an estimate of the expense thereof, shall be submitted to the public service commission for its approval before the letting of any contract. If such changes are proposed in a highway which is to be constructed or improved as a state or county highway, such plans and specifications shall also be submitted to the state commission of highways for its approval before the letting of any contract. In case the work is done by contract the proposals of contractors shall be submitted to the public service commission, and if the commission shall determine that the bids are excessive it shall have the power to require the submission of new proposals. The commission may employ temporarily such experts and engineers as may be necessary to properly supervise any work that may be undertaken under sections sixty, sixty-one and sixty-two of this chapter, the expense thereof to be paid by the comptroller upon the requisition and certificate of the commission, said expense to be included in the cost of the particular change in grade on account of which it is incurred and finally apportioned in the manner provided in this section. Upon the completion of the work and its approval by the commission an accounting shall be had between the railroad corporation and the municipal corporation, or the state commission of highways of the amounts expended by each with interest, and if it shall appear that the railroad corporation or the municipal corporation, or the state commission of highways has expended more than its proportion of the expense of the crossing as herein provided, a settlement shall be forthwith made in accordance with the provisions of this section. All items of expenditure shall be verified under oath, and, in case of a dispute between the railroad corporation and the municipal corporation or the state commission of highways as to the amount expended, any judge of the supreme court in the judicial district in which the municipality, or the state or county highway, is situated, may appoint a referee to take testimony as to the amount expended, and the confirmation of the report of the referee shall be final. In the event of the failure or refusal of the railroad corporation to pay its proportion of the expense, the same, with interest from the date of such accounting, may be levied and assessed upon

the railroad corporation and collected in the same manner that taxes and assessments are now collected by the municipal corporation within which the work is done; and in the event of the failure or refusal of the municipal corporation to pay its proportion of the expense, suit may be instituted by the railroad corporation for the collection of the same with interest from the date of such accounting, or the railroad corporation may offset such amount with interest against any taxes levied or assessed against it or its property by such municipal corporation. The legislature shall annually appropriate out of any moneys not otherwise appropriated the sum of one hundred thousand dollars for the purpose of paying the state's proportion of the expense of a change in an existing grade crossing, other than that required to be paid by the state from funds appropriated for the construction of state and county highways as above provided. If, in any year, any less sum than one hundred thousand dollars is expended by the state for the purpose aforesaid the balance remaining unexpended shall be applied to reduce the amount appropriated by the state in the next succeeding year, except that no such deduction shall be made in case there are outstanding and unadjusted obligations on account of a change in an existing grade crossing for a proportion of which the state is liable under the provisions of this section. In the event of the appropriation made by the state in any one year being insufficient to pay the state's proportion of the expense of any change that may be ordered the first payment from the appropriation of the succeeding year shall be on account of said change, and no payment shall be made on account of any subsequent change that may be ordered, nor shall any subsequent change be ordered until the obligation of the state on account of the first named change in grade has been fully discharged, unless the same shall be provided for by an additional appropriation to be made by the legislature. The state's proportion of the expense of changing any existing grade crossing shall be paid by the state treasurer on the warrant of the comptroller, to which shall be appended the certificate of the public service commission to the effect that the work has been properly performed and a statement showing the situation of the crossing that has been changed, the total cost and the proportionate expense thereof, and the money shall be paid in whole or in part to the railroad corporation or to the municipal corporation as the public service commission may direct, subject, however, to the rights of the respective parties as they appear from the accounting to be had as hereinbefore provided for. No claim for damages to property on account of the change or abolishment of any crossing under the provisions of this article shall be allowed unless notice of such claim is filed with the public

service commission within six months after completion of the work necessary for such change or abolishment. (*Added by L. 1897, ch. 754, and amended by L. 1898, ch. 520; L. 1900, ch. 517, and L. 1909, ch. 153, in effect April 5, 1909.*)

**§ 66. [Commission may institute proceedings to alter grade crossing.]** The railroad commissioners may, in the absence of any application therefor, when, in their opinion, public safety requires an alteration in an existing grade crossing, institute proceedings on their own motion for an alteration in such grade crossing, upon such notice as they shall deem reasonable, of not less than ten days, however, to the railroad company, the municipal corporation and the person or persons interested, and proceedings shall be conducted as provided in section sixty-two of this act. The changes in existing grade crossings authorized or required by the board of railroad commissioners in any one year shall be so distributed and apportioned over and among the railroads and the municipalities of the state as to produce such equality of burden upon them for their proportionate part of the expenses as herein provided for as the nature and circumstances of the cases before them will permit. (*Added by L. 1897, ch. 754.*)

**§ 67. [Proceedings to enforce compliance with recommendations of the commission.]** It shall be the duty of the corporation, municipality or person or persons to whom the decisions or recommendations of the board of railroad commissioners are directed, as provided in sections sixty, sixty-one, sixty-two and sixty-six of this act to comply with such decisions and recommendations, and in case of their failure so to do, the board shall present the facts in the case to the attorney-general, who shall thereupon take proceedings to compel obedience to the decisions and recommendations of the board of railroad commissioners. The supreme court at a special term shall have the power in all cases of such decisions and recommendations by the board of railroad commissioners to compel compliance therewith by mandamus, subject to appeal to the appellate division of the supreme court and the court of appeals, in the same manner, and with like effect, as is provided in case of appeals from any order of the supreme court. (*Added by L. 1897, ch. 754.*)

**§ 67-a. [Municipal corporation may borrow money.]** Whenever in carrying out any of the provisions of sections sixty, sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, or sixty-seven of this act, any municipality shall incur any expense or become liable for the payment of any moneys, it shall be lawful for such municipality to temporarily

borrow such moneys on the notes or certificates of such municipality, and to include the amount of outstanding notes or certificates, or any part thereof, in its next annual tax levy for municipal purposes, or in the discretion of the common council in case of a city, the board of trustees in case of a village or the town board in case of a town, to borrow the same, or any part thereof, on the credit of the municipality, and to issue bonds therefor, which bonds shall be signed by the mayor and clerk in case of a city, the president and clerk in case of a village and the town board in case of a town, and shall be in such form and for such sums and be payable at such times and places with interest not exceeding four per centum per annum, as the common council in case of a city, the board of trustees in case of a village, and the town board in case of a town, shall direct. (*Added by L. 1899, ch. 541, and amended by L. 1902, ch. 198.*)

**§ 68. [Intersections of railroads.]** All steam railroads hereafter constructed across the tracks of any other railroad and any street surface railroad hereafter constructed across a steam railroad shall be above, below, or at grade of such existing railroad as the board of railroad commissioners shall determine, and such board shall in such determination fix the proportion of expense of such crossing to be paid by each railroad. (*Added by L. 1897, ch. 754, and amended by L. 1900, ch. 739.*)

**§ 69. [Application of act.]** The provisions of this act shall also apply to all existing or future steam surface railroads, on which, after the passage of this act, electricity or some other agency than steam shall be substituted as a motive power. (*Added by L. 1897, ch. 754, § 1.*)

None of the provisions of sections sixty to sixty-nine, as added by chapter seven hundred and fifty-four of the laws of eighteen hundred and ninety-seven, shall apply to crossings in the city of Buffalo under the jurisdiction of the grade crossing commissioners of that city, nor shall they be applicable to the University avenue or Brown street crossing, in the city of Rochester. (*L. 1897, ch. 754, § 2.*)

### ARTICLE 3

## Consolidation, Lease, Sale, and Reorganization

Section 70. [Consolidation of corporations.]

71. Conditions.

1. Joint agreement; amount of capital stock.
2. Agreement to be submitted to meeting of stockholders.

- Section** 72. New corporation.  
73. Creditors' rights not to be impaired.  
74. Assessment of property of new corporation.  
75. Stocks of municipal corporations, how represented.  
76. Foreclosure of mortgages made by (consolidated) railroads partly in the state.  
77. Powers of corporations organized to acquire and operate railroads partly in the state.  
78. Lease of road.  
79. Lessees of railroad may acquire stock therein.  
80. Consolidation and lease of parallel lines prohibited.  
81. Mortgagee may purchase at foreclosure sale.  
82. Certificates of stock may be issued after foreclosure in certain cases.  
83. Liabilities of reorganized railroad corporations.  
84. [Foreign railroads.]

**§ 70. [Consolidation of corporations.]** Any railroad or other corporation, organized under the laws of this state, or of this state and any other state, and owning or operating a railroad, bridge or tunnel, either wholly within or partly within and partly without the state, or whose lines or routes of road have been located but not constructed, may merge and consolidate its capital stock, franchises, and property with the capital stock, franchises and property of any other railroad, tunnel or bridge corporation or corporations organized under the laws of this state or of this state and any other state, or under the laws of any other state or states, whenever the two or more railroads of the companies or corporations so to be consolidated, tunnels, bridges or branches or any part thereof, or the line or routes of their road, if not constructed, shall or may form a continuous or connected line of railroad with each other or by means of any intervening railroad bridge, tunnel or ferry and any such consolidated corporation may thereupon construct or finish the construction of such continuous line of railroad, if not previously constructed, and operate the same, subject to all provisions of law applicable to such railroad corporations. Where the road to be operated is in whole or in part a tunnel or sub-surface road, authorized by section sixteen of this chapter, its consolidation with another road or roads under the provisions of this section shall not prevent any connecting railroad from having equal rights of transit for its passengers and freight through or over the tunnel or bridge of any such road, upon the same equitable terms, nor shall such consolidation be made where such tunnel or sub-surface road exceeds five miles in length. Any railroad corporation, which by consolidation or merger under any provision of the law, now owns, or shall here-



after own parallel or substantially parallel lines of railroad between any two points or stations, shall have the right, upon obtaining the consent of the public service commission of the proper district, to abandon such portion of its railroad and its franchise to own, maintain and operate the same on either of the said parallel lines, as shall, in the opinion of the said public service commission, be no longer necessary to furnish proper and adequate service to the public in the transportation of passengers and freight within the district in which such parallel lines may be operated. Such application for abandonment shall not be made until after it shall have been authorized by resolution of the board of directors of the corporation under its seal, and such resolution shall have been submitted to the stockholders thereof at a meeting called and conducted in the same manner as required by section seventy-eight of the railroad law. If the stockholders shall at such meeting ratify such action of the directors, the secretary of the corporation shall so certify under the seal of the corporation, upon such resolution. If approved by the commission, such approval shall be indorsed upon such resolution and annexed thereto, and such resolution shall thereupon be filed and recorded in the office of the secretary of state and the date of such abandonment shall be as of the date of such filing. The property of any person, taken, affected or damaged by such abandonment shall be deemed to be required for a public purpose, and if such corporation, before making application to the public service commission, shall have been unable to agree with any person damaged or claiming to be damaged as a result of such abandonment, as to the compensation, if any, which should justly be made therefor, such property, when paid for by such corporation as hereinafter provided shall be deemed to have been taken by condemnation, and the proceeding thereon, as herein provided shall be deemed to be a special proceeding, and subject to all the provisions of the code of civil procedure regulating special proceedings. Any such railroad corporation shall have the right within thirty days after filing such resolution and approval, to make application by verified petition to a special term of the supreme court in and for the county or one of the counties in which the portion of the route to be abandoned may be located, for the appointment of commissioners to ascertain and determine the compensation, if any, which shall justly be made for the property of any person so taken, affected or damaged and such abandonment shall not be deemed to be effective against such person unless and until said corporation shall have filed in the office of the clerk of the county in which said application shall have been made, an undertaking in an amount approved by the court that it will pay to the person

or persons determined to be damaged by the abandonment the amounts, if any, finally awarded to him or them in the proceedings; notice of the appointment of such commissioners and of the time and place of their first meeting shall be published once a week for four successive weeks in two newspapers published in said county or counties, and affidavits of such publication and the filing of such undertaking shall be filed in the office of the public service commission. If such corporation shall fail to file such petition within said period of thirty days, any person or persons claiming to be damaged, may by separate petition to the court apply for the appointment of commissioners to ascertain and determine the said compensation with like effect, as if such corporation had filed its petition. Nothing in this act shall be construed to impair or affect the rights of any lienor or mortgagee in and to the portion of the property of the said railroad or railroads affected by said abandonment, and no such abandonment shall be consented to as herein provided unless such liens or mortgages shall have first been discharged of record. (*Thus amended by L. 1892, ch. 676, and L. 1909, ch. 564, in effect May 28, 1909.*)

**§ 71. Conditions.** Such consolidation shall be made in the following manner:

1. Joint agreement; amount of capital stock. The directors of the corporations proposing to consolidate may enter into a joint agreement, under the corporate seal of each corporation, for the consolidation of such corporations, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers and their places of residence, the number of shares of the capital stock, the amount or par value of each share, and the manner of converting the capital stock of each corporation into that of the new corporation, and how and when the directors and officers shall be chosen, with such other details as they shall deem necessary to perfect such new organization and the consolidation of such corporations. But in no case shall the capital stock of the corporation formed by such consolidation exceed the sum of the capital stock of the corporations so consolidated, at the par value thereof. Nor shall any bonds or other evidences of debt be issued as a consideration for, or in connection with, such consolidation. If either of the corporations so to be consolidated is a corporation organized under the laws of any other state the joint agreement herein provided for may fix the location of the principal office of the new corporation in either state. (*Thus amended by L. 1904, ch. 228.*)

2. Agreement to be submitted to meeting of stockholders.

If stockholders owning two-thirds of all the stock of each of such corporations shall by a consent in writing, acknowledged as are deeds entitled to be recorded and indorsed upon said lease or agreement, signify their assent thereto, it shall be deemed and taken as the adoption of such agreement by and on behalf of such corporation, and the original or certified copy thereof shall be filed as hereinafter provided. If such agreement shall not be consented to in writing by holders of two-thirds of the stock of either of such corporations as hereinbefore provided, such agreement shall be submitted to the stockholders of each of such corporations at a meeting thereof called separately for the purpose of taking the same into consideration. Due notice of the time and place of holding such meeting, and the object thereof, shall be given by each corporation to its stockholders by written or printed notices addressed to each of the persons in whose names the capital stock of such corporation stands on the books thereof, and delivered to such persons respectively, or sent to them by mail, when their post-office address is known to the corporation, at least thirty days before the time of holding such meeting, and also by a general notice published at least once a week for four weeks successively in some newspaper printed in the city, town or county where such corporation has its principal office or place of business. At such meeting of stockholders such agreement shall be considered, and a vote by ballot taken for the adoption or rejection of the same, and if the votes of the stockholders owning at least two-thirds of the stock of each corporation present and voting in person or by proxy shall be for the adoption of such agreement, then that fact shall be certified thereon by the secretaries of the respective corporations, under the seal thereof, and the agreement so adopted, or a certified copy thereof, shall be filed in the office of the secretary of state, and in the office of the clerk of the county where the new corporation is to have its principal place of business, and shall from thence be deemed and taken to be the agreement and act of consolidation of such corporations, and thereafter such corporations, parties thereto, shall be one corporation by the name provided in such agreement, but such act of consolidation shall not release such new corporation from any of the restrictions, liabilities or duties of the several corporations so consolidated. (*Whole section thus amended by L. 1892, ch. 676.*)

**§ 72. New corporation.** Upon the consummation of such act of consolidation all the rights, privileges, exemptions and franchises of each of the corporations, parties to the same, and all the property, real, personal and mixed, and all the debts due on whatever account to either of them, as well as all stock sub-

scriptions and other things in action belonging to either of them shall be taken and deemed to be transferred to and vested in such new corporation, without further act or deed; and all claims, demands, property, rights of way, and every other interest shall be as effectually the property of the new corporation as they were of the former corporations, parties to such agreement and act; and the title to all real estate, taken by deed or otherwise, under the laws of this state, vested in either of such corporations, parties to such agreement and act, shall not be deemed to revert or be in any way impaired by reason of this act, or anything done by virtue thereof, but shall be vested in the new corporation by virtue of such act of consolidation. And it shall be lawful for any railroad company or corporation, now or hereafter formed by the consolidation of one or more railroad companies or corporations organized under the laws of this state, or under the laws of this state and other states, with one or more railroad companies or corporations organized under the laws of any other state, or of the laws of this state and other states, to issue its bonds for the purpose of paying or retiring any bonds theretofore issued by either of said companies or corporations so consolidated, or for any purpose and to the amount authorized by the laws of the state under which either of said companies or corporations so consolidated was organized, and secure the same by a mortgage upon its real or personal property, franchises, rights and privileges, whether within or without this state, and subject to the remedies for the enforcement of the same under the laws of either of said states. Nothing in this act contained shall authorize the execution of any such mortgage without the consent of the stockholders as now required by the laws of this state, nor compel any bondholder to accept payment in whole or in part of any bond or bonds held by him or to surrender the same before they shall become due. (*Thus amended by L. 1891, ch. 362.*)

**§ 73. Creditors' rights not to be impaired.** The rights of all creditors of, and all liens upon the property of, either of such corporations, parties to such agreement and act, shall be preserved unimpaired, and the respective corporations shall be deemed to continue in existence to preserve the same, and all debts and liabilities incurred by either of such corporations shall thenceforth attach to such new corporation, and be enforced against it and its property to the same extent as if incurred or contracted by it. No actions or proceedings in which either of such corporations is a party shall abate or be discontinued by such agreement and act of consolidation, but may be conducted to final judgment in the names of such corporations, or such new corporation may be, by order of the court, on motion substituted as a party.

**§ 74. Assessment of property of new corporation.**

The real estate of such new corporations, situate within this state, shall be assessed and taxed in the several towns and cities where the same shall be situated in like manner as the real estate of other railroad corporations is or may be taxed and assessed, and such proportion of the capital stock and personal property of such new corporation shall in like manner be assessed and taxed in this state, as the number of miles of its railroad situate in this state bears to the number of miles of its railroad situate in the other state or states.

**§ 75. Stocks of municipal corporations, how represented.**

At any meeting of the stockholders of any railroad corporation to consider any agreement or proposition to consolidate or lease, the commissioners or other officers of any municipal corporation holding or having charge of any of the capital stock of such railroad corporation shall represent such municipal corporation, and may act and vote in person or by proxy on all matters relating to such consolidation or lease in the same manner as individual stockholders. (*Thus amended by L. 1893, ch. 546.*)

**§ 76. Foreclosure of mortgages made by (consolidated) railroads partly in the state.**

Whenever a railroad corporation of this or of any other state or states whose line of road lies partly in this state and partly in another state or states, shall have executed a mortgage upon its entire line of railroad, and a sale of the entire line of road under such mortgage shall have been or may hereafter be ordered, adjudged and decreed by a court of competent jurisdiction of the state or states, or by a court of the United States sitting within the state or states in which the greater part of such line of railroad may be situated, upon the confirmation of such judgment or decree, and of the sale made thereunder, by the supreme court of this state or by the circuit court of the United States in the judicial district in which some part of such line of road is situated, such sale shall operate to pass title to the purchaser, of that part of the line of railroad lying in this state, together with its appurtenances and franchises, with the same force and effect as if the judgment or decree under which such sale is had, had been made by a court of competent jurisdiction of this state. Such judgment or decree and sale may be so ordered, adjudged, decreed or confirmed in any action or proceeding heretofore or hereafter brought in the supreme court, or in a court of the United States sitting in this state, for the foreclosure of such mortgage, or in aid of an action for that purpose in such other state or states, if it shall appear that such confirmation is for the interest of the public and of the parties, due

and lawful provision being made for and in respect of any liens upon that part of the line of road or other property sold situate in this state, and for such costs, expenses, and charges which may appear to be just and lawful. If a receiver of the entire line of such railroad shall have been, or may hereafter be appointed by such court of competent jurisdiction of the state in which the greater part of the line of railroad is situated, or by a court of the United States sitting in such other state, such receiver may perform, within this state, the duties of his office not inconsistent with the laws of this state, and may sue and be sued in the courts of this state. (*Thus amended by L. 1896, ch. 356.*)

**§ 77. Powers of corporations organized to acquire and operate railroads partly in the state.** A railroad corporation created under the laws of the state or states in which the greater part of the line of its railroad may be situated, or a railroad corporation created under the railroad law, or under article one of the stock corporation law in this state, for the purpose of taking title to, and operating, the line of road as so sold, under a judgment or decree of a court of this state, or of a court of the United States sitting in this state, for the foreclosure of a mortgage, with its franchises and appurtenances, may hold, possess and operate not only those parts of the railroad lying in other states, but also that part of the line of such railroad lying in this state, and shall be subject to the duties and liabilities to which such corporation was, by the laws of this state, subject, and to such further or other duties and liabilities as are now or may hereafter be imposed by law upon railroad corporations of this state, and the provisions of the stock corporation law concerning reorganization of corporations shall apply to, and in respect of, every such successor railroad corporation. An exemplified copy of the certificate or certificates of incorporation, under and by virtue of which any such corporation is created in any other state, and a certified copy of the judgment or decree of any court sitting in any other state, under which said railroad shall have been sold, and a certified copy of the order or judgment or decree of confirmation and approval required by the preceding section, or of the order, judgment or decree of the court of this state, or of the United States in this state, which decreed the sale, confirming the same, shall be filed in the office of the secretary of state for this state, and in the office of the county clerk of the county where its principal business office in this state is or shall be located. (*Thus amended by L. 1895, ch. 454, and L. 1896, ch. 356.*)

L. 1896, ch. 356, § 3. This act shall take effect immediately, and shall apply in respect of decrees, foreclosures, sales, confirmations, reorganizations and

incorporations, whether heretofore or hereafter made, provided, however, that nothing in this act shall affect any action or proceeding pending in any court, on or before the first day of April, eighteen hundred and ninety-six, to establish the invalidity of any foreclosure or reorganization theretofore had, or to enforce any judgment or claim arising before such foreclosure or reorganization.

**§ 78. Lease of road.** Any railroad corporation or any corporation owning or operating any railroad or railroad route within this state may contract with any other such corporation for the use of their respective roads or routes, or any part thereof, and thereafter use the same in such manner and for such time as may be prescribed in such contract. Such contract may provide for the exchange or guaranty of the stock and bonds of either of such corporations by the other and shall be executed by the contracting corporations under the corporate seal of each corporation, and if such contract shall be a lease of any such road and for a longer period than one year, such contract shall not be binding or valid unless approved by the votes of stockholders owning at least two-thirds of the stock of each corporation which is represented and voted upon in person or by proxy at an annual meeting of the stockholders for the purpose of electing directors, called in the manner prescribed by law, provided that the notice of such meeting shall state that one of the purposes thereof will be the approval of such lease, or at a meeting, called separately for that purpose upon a notice stating the time, place and object of the meeting, served at least thirty days previously upon each stockholder personally, or mailed to him at his post-office address and also published at least once a week, for four weeks successively, in some newspaper printed in the city, town or county where such corporation has its principal office, and there shall be indorsed upon the contract the certificate of the secretaries of the respective corporations under the seals thereof, to the effect that the same has been approved by such votes of the stockholders, and the contract shall be executed in duplicate and filed in the offices where the certificates of incorporation of the contracting corporations are filed. The road of a corporation can not be used under any such contract in a manner inconsistent with the provisions of law applicable to its use by the corporation owning the same at the time of the execution of the contract. Such contracts shall be executed by the corporations, parties thereto, and proved and acknowledged in such manner as to entitle the same to be recorded in the office of the clerk or register of each county through or into which the road so to be used shall run. If any contract so recorded shall be or has been terminated by the contracting corporations in pursuance

of resolutions of their respective boards of directors prior to the time specified in such contract for the termination thereof, then the contracting corporations shall execute, acknowledge and procure to be recorded in each office where such contract is recorded a certificate to the effect that such contract has been terminated, stating the date of the termination thereof, and said certificates so recorded shall be presumptive evidence of the termination of such contract accordingly. Nothing in this section shall apply to any lease in existence prior to May first, eighteen hundred and ninety-one. (*Thus amended by L. 1892, ch. 676; L. 1893, ch. 433, and L. 1905, ch. 695.*)

**§ 79. Lessees of railroad may acquire stock therein.** Any railroad corporation created by the laws of this state, or its successors, being the lessee of the road of any other railroad corporation, may take a surrender or transfer of the capital stock of the stockholders, or any of them in the corporation whose road is held under lease, and issue in exchange therefor the like additional amount of its own capital stock at par, or on such other terms and conditions as may be agreed upon between the two corporations; and whenever the greater part of the capital stock of any such corporation shall have been so surrendered or transferred, the directors of the corporation taking such surrender or transfer shall thereafter, on a resolution electing so to do, to be entered on their minutes, become ex officio the directors of the corporation whose road is so held under lease, and shall manage and conduct the affairs thereof, as provided by law; and whenever the whole of such capital stock shall have been so surrendered or transferred, and a certificate thereof filed in the office of the secretary of state, under the common seal of the corporation to whom such surrender or transfer shall have been made, the estate, property, rights, privileges and franchises of the corporation whose stock shall have been so surrendered or transferred, shall thereupon vest in and be held and enjoyed by the corporation, to whom such surrender or transfer shall have been made, as fully and entirely, and without change or diminution, as the same were before held and enjoyed, and be managed and controlled by the board of directors of the corporation, to whom such surrender or transfer of such stock shall have been made, and in the corporate name of such corporation. Where stock shall have been so surrendered or transferred, the existing liabilities of the corporation, and the rights of the creditors and of any stockholder not surrendering or transferring his stock, shall not be affected thereby.

**§ 80. Consolidation and lease of parallel lines prohibited.** No railroad corporation or corporations owning or operating railroads whose roads run on parallel or competing



lines, except street surface railroad corporations, shall merge or consolidate, or enter into any contract for the use of their respective roads, or lease the same, the one to the other, unless the board of railroad commissioners of the state or a majority of such board shall consent thereto. (*Thus amended by L. 1892, ch. 676.*)

**§ 81. Mortgagee may purchase at foreclosure sale.** Any mortgagee of the property and franchises of any railroad corporation may become the purchaser of the same at any sale thereof under the mortgage, upon foreclosure by advertisement, or under a judgment, or decree, or otherwise, and hold and use the same, with all the rights and privileges belonging thereto or connected therewith for the period of six months, and convey the same to any railroad corporation.

**§ 82. Certificates of stock, may be issued after foreclosure in certain cases.** If any person or corporation shall be entitled to certificates of stock subscribed to and paid for in any railroad corporation whose property and franchises have been sold under mortgage foreclosure, and such certificates have not been issued before foreclosure, the officers of the corporation shall, at any time within six months after the foreclosure sale issue and deliver to the person or corporation entitled thereto, upon demand, such certificates of stock, which shall have all the force and effect and confer upon the holder all the rights which he would have had if such certificates of stock had been issued at the time of the payment of the subscription thereto.

**§ 83. Liabilities of reorganized railroad corporations.** A railroad corporation, reorganized under the provisions of law, relating to the formation of new or reorganized corporations upon the sale of their property or franchise, shall not be compelled or required to extend its road beyond the portion thereof constructed, at the time the new or reorganized corporation acquired title to such railroad property and franchise, provided the board of railroad commissioners of the state shall certify that in their opinion the public interests under all the circumstances do not require such extension. If such board shall so certify and shall file in their office such certificate, which certificate shall be irreversible by such board, such corporation shall not be deemed to have incurred any obligation so to extend its road and such certificate shall be a bar to any proceedings to compel it to make such extension or to annul its existence for failure so to do, and shall be final and conclusive in all courts and proceedings whatever. This section shall not authorize the abandonment of any portion of a railroad which has been constructed and operated, or apply to Kings county.

**§ 84. [Foreign railroads.]** All the provisions contained in the several sections of this act shall extend, apply to and cover the consolidation, lease, sale or reorganization of any railroad or other corporation heretofore or hereafter organized, under the laws of this state, and any other state or country, to build, lease, buy, sell, maintain or operate any of the lines or routes of railroads, tunnels, bridges, ferries or branches or any part thereof mentioned in this article, and any similar lines or routes of railroad, tunnels, bridges, ferries or any part thereof, constructed or to be located and constructed in any foreign country. (*Added by L. 1895, ch. 921.*)

#### ARTICLE 4

##### Street Surface Railroads

- |         |                                                                                                                                                 |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| Section | 90. Street surface railroads; general provisions.                                                                                               |
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- Section 109. Center-bearing rails prohibited.
110. Right to cross bridge substituted for bridge crossed for five years.
111. Protection of employees.
- 111-a. Protection to employees.
112. Protection of employees in the counties of Kings and Queens.
- \*112. [Payment of license fees and percentages.]

**§ 90. Street surface railroads; general provisions.**

The provisions of this article shall apply to every corporation which, under the provisions thereof, or of any other law, has constructed or shall construct or operate, or has been or shall be organized to construct or operate, a street surface railroad, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons and property for compensation, upon and along any street, avenue, road, highway, or private property, in any city, town or village, or in any two or more civil divisions of the state, and every such corporation must comply with the provisions of this article. Any street surface railroad corporation, at any time proposing to extend its road or to construct branches thereof, may, from time to time, make and file in each of the offices in which its certificate of incorporation is filed, a statement of the names and description of the streets, roads, avenues, highways and private property in or upon which it is proposed to construct, maintain or operate such extensions or branches. Upon filing any such statement and upon complying with the conditions set forth in section ninety-one of the railroad law, every such corporation shall have the power and privilege to construct, extend, operate and maintain such road, extensions or branches, upon and along the streets, avenues, roads, highways and private property named and described in its certificate of incorporation or in such statement. Every such corporation, before constructing any part of its road upon or through any private property described in its articles of association or certificate of incorporation or statement, and before instituting any proceeding for the condemnation of any real property, shall make a map and profile of the route adopted by it upon or through any private property, which map and profile shall be certified by the president and engineer of the company, or a majority of its directors, and shall be filed in the office of the clerk of the county in which the road is to be constructed, and all provisions of section six of the act hereby amended so far as applicable shall apply to the route so located. If any such street surface railroad company is unable to agree for the

\* So in original.

purchase of any such real property, or of any right or easement therein required for the purpose of its railroad, or if the owner thereof shall be incapable of selling the same, or if, after diligent search and inquiry, the name and residence of such owner can not be ascertained, it shall have the right to acquire title thereto by condemnation in the manner and by the proceedings provided by the condemnation law. Nothing in this section shall be deemed to authorize a street railroad corporation to acquire real property within a city by condemnation. (*Thus amended by L. 1892, ch. 676; L. 1893, ch. 434, and L. 1895, ch. 933.*)

**§ 91. Consent of property owners and local authorities.** A street surface railroad, or extensions or branches thereof, shall not be built, extended or operated unless the consent in writing acknowledged or proved as are deeds entitled to be recorded, of the owners in cities and villages of one-half in value, and in towns, not within the corporate limits of a city or village, of the owners of two-thirds in value, of the property bounded on and also the consent of the local authorities having control of that portion of a street or highway upon which it is proposed to build or operate such railroad, extension or branch shall have been first obtained. Such consents of property owners in the county of Kings which shall be hereafter executed, may be forfeited unless within sixty days after the execution thereof, the same shall be recorded in the office of the register of such county. Such register is hereby directed upon the payment of the proper fees to record all consents left with him for that purpose in books to be provided by him and paid for out of the funds provided to meet the expenses of said office. Such books shall be indexed according to the names of the consenting property owners and also according to the names of the streets, roads or other highways upon which the property to which the consent relates shall be bounded on. In case the recording of such consents shall be hindered, delayed or prevented by legal proceedings in any court or from any other or different cause not within the control of the corporation upon which such requirement is imposed, the time for the performance of such act is hereby and shall be deemed to be extended for the period covered by such hindrance, delay or prevention. The consents of property owners in one city, village or town, or in any other civil division of the state, shall not be of any effect in any other city, village or town or other civil divisions of the state. Consents of property owners heretofore obtained to the building, extending, operating or change of motive power shall be effectual for the purposes herein mentioned and may be deemed to be sufficiently proved and shall be entitled

to be recorded, wherever such consents shall have been signed, executed or acknowledged before an officer authorized by law to take acknowledgments of deeds, or before or in the presence of a subscribing witness, and without regard to whether or not the subscribing witness shall have affixed his signature in the presence of the subscriber, provided that the proof of such signing, execution or acknowledgment shall have been made by such subscribing witness in the manner prescribed by \*chapter three, part two of the revised statutes. In cities the common council, acting subject to the power now possessed by the mayor to veto ordinances; in villages the board of trustees, and in towns the commissioner or commissioners of highways and the town board shall be the local authorities referred to; except that in villages where the control of the streets is vested in any other board or authorities, such other board or authorities shall be the local authorities referred to, and the consent of such other board or authorities hereafter or heretofore obtained shall be sufficient; if in any city or county the exclusive control of any street, avenue or other property which is to be used or occupied by any such railroad, extension or branch, is vested in any other authority, the consent of such authority shall also be first obtained. The value of the property above specified shall be ascertained and determined by the assessment-roll of the city, village or town in which it is situated, completed last before the local authorities shall have given their consent, except property owned by such city, village or town, or by the state of New York, or the United States of America, the value of which shall be ascertained and determined by making the value thereof to be the same as is shown by such assessment-roll to be the value of the equivalent in size and frontage of the adjacent property on the same street or highway; and the consent of the local authorities shall operate as consent of such city, village or town as the owners of such property. Whenever heretofore or hereafter a railroad has been or shall be constructed and put in operation for one year or the motive power thereof has been or shall be changed and put in operation for a similar length of time, such facts shall be presumptive evidence that the requisite consents of local authorities, property owners and other authority to the construction, maintenance and operation of such railroad or change of motive power have been duly obtained. No consent of local authorities heretofore given shall be deemed invalid because of any portion of the road or route consented to not being connected with an existing road or route of the corporation obtaining or acquiring such consent and all statements of extension filed under section ninety of this article in reference to the route or part thereof described in

\* See L. 1909, ch. 52, § 304.

any consent of local authorities are hereby ratified and confirmed, whether the same were filed before or after the obtaining or acquiring of such consents, provided, however, that nothing herein contained shall be construed to affect any portion of a street surface railroad which is now in or upon any portion of a street which is under the jurisdiction of a park department in any city containing a population of over twelve hundred thousand inhabitants. (*Thus amended by L. 1892, ch. 676; L. 1893, ch. 434; L. 1894, ch. 723; L. 1895, ch. 545; L. 1896, ch. 855; L. 1901, ch. 638; L. 1903, ch. 537; L. 1905, ch. 650, and L. 1907, ch. 156.*)

**§ 92. Consent of local authorities; how procured.**

The application for the consent of the local authorities shall be in writing and before acting thereon such authorities shall give public notice thereof and of the time and place when it will first be considered, which notice shall be published daily in any city for at least fourteen days in two of its daily newspapers if there be two, if not, in one, to be designated by the mayor, and in any village or town for at least fourteen days in a newspaper published therein, if any there shall be, and if none, then daily in two daily newspapers if there be two, if not, one published in the city nearest such village or town. Such consent must be upon the expressed condition that the provisions of this article pertinent thereto shall be complied with, and shall be filed in the office of the clerk of the county in which such railroad is located. Whenever the consent of the common council of a city is applied for, the first consideration, of which notice is hereby required, may be by committee of such common council. Any such notice, publication or consideration heretofore or hereafter given, made or had in substantial conformity with the requirements of this section, is and shall be sufficient notice, publication and consideration for all the purposes hereof notwithstanding any conflicting provision of any local or special act or charter. (*Thus amended by L. 1892, ch. 676, and L. 1893, ch. 434.*)

**§ 93. Condition upon which consent shall be given; sale of franchise at public auction.** The consent of the local authorities in any city of the first class must contain the condition that the right, franchise and privilege of using any street, road, highway, avenue, park or public place shall be sold at public auction to the bidder who will agree to give the city the largest percentage per annum of the gross receipts of such corporation, with a bond or undertaking in such form and amount and with such conditions and sureties as may be required and approved by the comptroller or other chief fiscal officer of the city, for the fulfillment of such

agreement and for the commencement and completion of its railroad within the time designated by law and for the performance of such additional conditions as the local authorities in their discretion may prescribe. Whenever such consent shall provide for the sale at public auction of the right to construct and operate a branch or extension of an existing railroad, such consent shall provide that but one fare shall be exacted for passage over such branch or extension and over the line of road which shall have applied therefor; and further, that if such right shall be purchased by any corporation other than the applicant, that the gross receipts from joint business shall be divided in the proportion that the length of such extension or branch so sold shall bear to the entire length of the road whether owned or leased which shall have applied therefor and of such branch or extension, and that if such right shall be purchased by the applicant, the percentage to be paid shall be calculated on such portion of its gross receipts as shall bear the same proportion to the whole value thereof as the length of such extension or branch shall bear to the entire length of its road, whether owned or leased. The bidder to which such right, franchise and privilege may be sold must be a duly incorporated railroad corporation of this state, organized to construct, maintain and operate a street railroad in the city for which such consent may be given; but no such corporation shall be entitled to bid at such sale unless at least five days prior to the day fixed for such sale, or five days prior to the day to which such sale shall have been duly adjourned, the corporation shall have filed with the comptroller or other chief fiscal officer of the city, a bond in writing and under seal, with sufficient sureties, to be approved by such comptroller or officer, conditioned that if such right, franchise and privilege shall be sold to such corporation, to pay to the city where such railroad is situated the sum of fifty thousand dollars as liquidated damages and not by way of penalty in the event of the failure of such bidder to fulfil the terms of sale, comply with the provisions of this article pertinent thereto, and complete and operate its railroad according to the plan or plans and upon the route or routes fixed for its construction within the time hereinafter designated for the construction and completion of its railroad, and also conditioned to pay to the corporation first applying for the consent, if it shall not be the successful bidder, the necessary expenses incurred by such corporation prior to the sale pursuant to the requirements and direction of the local authorities, within twenty days after such sale and upon the certificate of the comptroller or other officer conducting the same as to the sum or amount to be paid. Notice of the time, place and terms of sale, and of the route or routes to be sold, and of the conditions upon which

the consent of the local authorities to the construction, operation and extension of such street railroad will be given, must be published by such local authorities for at least three successive weeks, at least three times a week in two daily newspapers of the city to be designated by the mayor. The comptroller or other chief fiscal officer of the city shall attend and conduct such sale and may adjourn the same from time to time, but not more than four weeks in all, unless further adjournments should, in his discretion, be necessary by reason of the pendency of legal proceedings, and shall cancel any bid if in excess of the gross receipts, leaving in force the highest bid not in excess, or if the bidder shall not have furnished adequate security entitling such bidder to bid, or shall otherwise fail to comply with the terms and conditions of sale, and shall resell the consent and license in the same manner as hereinbefore provided for the first sale. The bidder who may build and operate such railroad shall at all times keep accurate books of account of the business and earnings of such railroad, which books shall at all times be subject to the inspection of the local authorities. In the event of the failure or refusal of the corporation operating or using such railroad to pay the rental or percentages of gross earnings agreed upon, and after notice of not less than sixty days to pay the same, the local authorities interested therein may apply to any court having jurisdiction upon at least twenty days notice to such corporation, and after it shall have had an opportunity to be heard in its defense, for judgment declaring the consent and right to operate and use such railroad forfeited and authorizing the sale again of the same in the manner hereinbefore prescribed, provided, however, that no such resale of any such consent and right heretofore granted shall be authorized except upon the condition that the same shall be subject to all liens and incumbrances existing on said railroads at the time such forfeiture may have been declared. All consents hereafter given by the local authorities, unless it be otherwise provided in such consent or in some renewal thereof may be forfeited at the expiration of two years thereafter. The board of sinking fund commissioners of any city shall have power to reduce, compromise or release any obligation or liability to the mayor, aldermen and commonalty of such city under the provisions of chapter six hundred and forty-two of the laws of eighteen hundred and eighty-six, or of this chapter whenever, in the opinion of such board, such release or compromise shall be just or equitable, or for the public interest, the reason for any such release or compromise to be stated in the recorded proceedings of such board. No lease by any company organized under section two of the railroad law and owning a right, privilege or franchise



of using any street, avenue, highway or public place for railroad purposes, which has heretofore been sold under the provisions of this section, hereafter made to any street surface railroad company which is not subject to the payment of any percentage pursuant to this section, and which is not organized for the purpose of operating a railroad in a city of the first class, shall be valid until the lessee company shall have filed in the office of the secretary of state and in the office of the clerk of the county where its certificate of incorporation is filed, its acceptance in writing and under its corporate seal of the provisions of this section as now amended; and upon such acceptance being filed, the total percentage amount thereafter to be paid annually under this section and under section ninety-five of this act, shall be at the rate of five per centum of the gross receipts derived from the operation of the roads of the lessor and lessee companies considered as one system. The lessee company, at the time of filing its acceptance aforesaid, shall also file in the same offices a bond to the people of the state, executed in duplicate by it and a surety company authorized by law to act as surety on bonds and undertakings, in the penal sum of fifty thousand dollars, and conditioned for the faithful payment annually of the total percentage aforesaid, and such bond shall be deemed to be a full compliance with the condition for a bond or undertaking required by this section to be provided for in the conditions of the consent of the local authorities and shall supersede any such bond or undertaking theretofore given. Whenever it shall be desired to unite two street surface railroad routes at some point not over one-half mile from such respective lines or routes, and establish by the construction of such connection a new route for public travel, and the corporation or corporations owning or using such railroads shall consent to operate such connection as a part of a continuous route for one fare, and it shall appear to the local authorities that such connection can not be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same should be operated as a continuous line or route with existing railroads, or whenever for the purpose of connecting with any ferry or railroad depot, it shall be desired to construct an extension or branch not more than one-half mile in length, of any street surface railroad corporation, no sale of such franchise shall be made as provided in this section, but any consent of the local authorities for the construction and operation of such connection, extension or branch shall provide that the corporation or corporations operating such connection, extension or branch shall pay into the treasury of said city annually the percentage provided for extensions or branches in section ninety-five of this chapter, for

the purposes, at the times, in the manner and upon the conditions set forth in such section. Nothing herein contained shall be construed as superseding, repeating or modifying any provision of the charter of any city, village or town nor as modifying or affecting the terms of a certain contract bearing date January first, eighteen hundred and ninety-two, entered into by and between the city of Buffalo and the various street surface railroad corporations therein named in said contract, nor as modifying or affecting the terms of a certain contract bearing date the twenty-fifth day of February, eighteen hundred and ninety, entered into by and between the city of Rochester and the street surface railroad corporation therein named nor as modifying or affecting any contract heretofore entered into between a street surface railroad corporation and any city of the third class, town or village regulating the payment of percentages or paving of streets, and any city of the third class, town or village, is hereby authorized to enter into any such form of contract with any street surface railroad corporation, and any such contract heretofore entered into is hereby ratified and confirmed. The local authorities may, in their discretion, make their consent to depend upon any further conditions respecting other or further security, or deposit, suitable to secure the construction, completion and operation of the railroad within any time not exceeding the period prescribed in this article and respecting the character, quality or motive power of the road to be completed and respecting the grouping of streets, avenues and highways into one route, or into several routes, for the purpose of a single sale of the franchise, right or privilege for all the routes collectively, or of the separate sale for each route or street, as said local authorities may think expedient and respecting the payment of the percentage agreed to be paid at the sale upon all the lines operated by the successful bidder within the city and respecting any matter involved in or affecting the computation of percentage payments and respecting the use of the railroads to be constructed under the consent by any other company and respecting the interchange of traffic and division of fares between the company operating such railroads and any other company, and respecting the application of any provision herein contained as to carriage of passengers for single fare and the division of gross receipts and the payment of percentages to the line leased or operated under contract by the applicant for an extension, and also respecting any other matter concerning which, in their judgment, further conditions would be for the public interest. Nothing herein contained shall apply to, or affect any grant hereafter made under the provisions of title one, chapter three of chapter three hundred and seventy-eight of

the laws of eighteen hundred and ninety-seven and the amendments thereto known as the Greater New York charter. (*Thus amended by L. 1892, ch. 306; L. 1892, ch. 676; L. 1893, ch. 434; L. 1901, ch. 494, and L. 1908, ch. 475.*)

**§ 94. Proceedings if property owners do not consent.** If the consent of property owners required by any provision of this article can not be obtained, the corporation failing to obtain such consents may apply to any general term of the supreme court held in the department in which it is proposed to construct its road for the appointment of three commissioners to determine whether such railroad ought to be constructed and operated. Notice of such application must, at least ten days prior thereto, be served, personally, upon each non-consenting property owner by delivering the same to the person to whom such property is assessed upon such assessment-roll or by duly mailing the same, properly folded and directed, to such property owner at his post-office address with the postage prepaid thereon. If the person upon whom service is to be made is unknown, or his residence and post-office address are unknown and can not by reasonable diligence be ascertained, service of such notice may be made by publishing the same in such newspaper of the county as the court may direct, at least once a week for two successive weeks. Upon due proof of service of such notice the court to which the application is made shall appoint three disinterested persons, who shall act as commissioners, and who shall, within ten days after their appointment, cause public notice to be given of their first meeting in the manner directed by the court, and may adjourn from time to time, until all their business is completed. Vacancies may be filled by the court after such notice to parties interested as it may deem proper to be given; and the evidence taken before as well as after the happening of the vacancy shall be deemed to be properly before such commissioners. After a public hearing of all parties interested, the commissioners shall determine whether such railroad ought to be constructed and operated, and shall make a report thereon, together with the evidence taken, to the general term, within sixty days after appointment, unless the court, or a judge thereof, for good cause shown, shall extend such time; and their determination that such road ought to be constructed and operated, confirmed by such court, shall be taken in lieu of the consent of the property owners hereinbefore required. The commissioners shall each receive ten dollars for each day spent in the performance of their duties and their necessary expenses and disbursements, which shall be paid by the corporation applying for their appointment. (*Thus amended by L. 1892, ch. 676.*)

**§ 95. Percentage of gross receipts to be paid in cities or villages; report of officers.** Every corporation building or operating a railroad or branch or extension thereof, under the provisions of this article, or of chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, within any city of the state having a population of twelve hundred thousand or more, shall, for and during the first five years after the commencement of the operation of any portion of its railroad annually, on November first, pay into the treasury of the city in which its road is located, to the credit of the sinking fund thereof, three per cent of its gross receipts for and during the year ending September thirtieth next preceding; and after the expiration of such five years, make a like annual payment into the treasury of the city to the credit of the same fund, of five per cent of its gross receipts. If a street surface railroad corporation existing and operating any such railroad in any such city on May sixth, eighteen hundred and eighty-four, shall have thereafter extended its tracks or constructed branches therefrom, and shall operate such branches or extensions under the provisions of chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, or of this article, such corporation shall pay such percentages only upon such portion of its gross receipts as shall bear the same proportion to its whole gross receipts as the length of such extension or branches shall bear to the entire length of its line. In any other incorporated city or village the local authorities shall have the right to require, as a condition to their consent to the construction, operation or extension of a railroad under the provisions of this article, the payment annually of such percentage of gross receipts, not exceeding three per cent, into the treasury of the city or village as they may deem proper. In case of extension the amount to be paid shall be ascertained in the manner heretofore provided. The corporation failing to pay such percentage of its gross earnings shall, after November first, pay in addition thereto five per cent a month on such percentage until paid. The president and treasurer of any corporation required by the provisions of this article to make a payment annually upon its gross receipts shall, on or before November first in each year make a verified report to the comptroller or chief fiscal officer of the city of the gross amount of its receipts for the year ending September thirtieth, next preceding, and the books of such corporation shall be open to inspection and examination by such comptroller or officer, or his duly appointed agent, for the purpose of ascertaining the correctness of its report as to its gross receipts. The corporate rights, privileges and franchises acquired under this article or such chapter by any corporation, which shall

fail to comply with all the provisions of this section, shall be forfeited to the people of the state, and upon judgment of forfeiture rendered in an action brought in the name of the people by the attorney-general, shall cease and determine. (*Thus amended by L. 1892, ch. 676.*)

**§ 96. Extension of route over rivers; terminus in other counties; when property owners withhold consent; supreme court may appoint commissioners.** Any street railroad in operation in this state, which shall, by a two-thirds vote of its directors, decide to extend the route of its road, so as to cross a river over and by any bridge now or hereafter constructed under the provisions of any law of this state, may so extend their route over and across such bridge upon such terms as may be mutually agreed upon between it and such bridge company, and may locate the terminus of their road in the county adjoining the one in which their road is now located and in operation, upon first obtaining the consent of such bridge company or its lessees, and the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad, or in case the consent of such property owners can not be obtained the appellate division of the supreme court in the district in which it is proposed to be constructed may, upon application, appoint three commissioners, who shall determine after a hearing of all parties interested, whether such railroad ought to be constructed, or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners. Whenever a terminus of any public viaduct, bridge or bridges, or public viaduct connected with any bridge or bridges, heretofore or hereafter constructed in and owned and maintained by any city of the first class, or town adjoining the same, is or shall be located at or adjacent to or within one-half mile of the route of any existing street surface railroad, the corporation owning or operating such railroad may, irrespective of any provisions otherwise applicable thereto contained in any general or local act, upon obtaining the consent of the local authorities and property owners as above provided, and upon complying with the provisions of the railroad law applicable thereto, extend its road or route and construct and operate its railroad, to, upon and across such viaduct, bridge or bridges and approaches thereto for the purpose of connecting with another railroad route not more than one-half mile distant from such bridge or viaduct so as to afford a continuous ride for one fare, subject to the provisions of the railroad law, or for the

purpose of reaching the depot, station or terminus of another railroad not more than one-half mile distant from such bridge or viaduct. This section shall not apply to any bridge over the Hudson or East rivers in the counties of New York and Kings, nor to any bridge or viaduct constructed under the provisions of any so-called grade crossing law. (*Thus amended by L. 1898, ch. 590, and L. 1901, ch. 419.*)

**§ 97. Use of tracks of other roads.** Any railroad corporation in this state, whose cars are run and operated by horses or other motive power, authorized by this article, upon the surface of the street, excepting in the city and county of New York, may, for the purpose of enabling it to connect with and run and operate its cars between its tracks, and a depot or car-house owned by it, run upon, intersect, and use, for not exceeding five hundred feet, the tracks of any other railroad corporation, the cars of which are run and operated in like manner with the necessary connections and switches for the proper working and accommodation of the cars upon such tracks, and in connection with such depot or car-house, upon paying therefor such compensation as it may agree upon with the corporation owning the tracks to be so run upon, intersected, and used; and in case such corporations can not agree upon the amount of such compensation, the same shall be ascertained and determined in the manner prescribed in the condemnation law.

**§ 98. Repair of streets; rate of speed; removal of ice and snow.** Every street surface railroad corporation so long as it shall continue to use any of its tracks in any street, avenue or public place in any city or village shall have and keep in permanent repair that portion of such street, avenue or public place between its tracks, the rails of its tracks, and two feet in width outside of its tracks, under the supervision of the proper local authorities, and whenever required by them to do so, and in such manner as they may prescribe. In case of the neglect of any corporation to make pavements or repairs after the expiration of thirty days notice to do so, the local authorities may make the same at the expense of such corporation, and such authorities may make such reasonable regulations and ordinances as to the rate of speed, mode of use of tracks, and removal of ice and snow, as the interests or convenience of the public may require. A corporation whose agents or servants wilfully or negligently violate such an ordinance or regulation, shall be liable to such city or village for a penalty not exceeding five hundred dollars to be specified in such ordinance or regulation. (*Thus amended by L. 1892, ch. 676.*)

**§ 99. Within what time road to be built.** In case any such corporation shall not commence the construction of its road, or of any extension or branch thereof, within one year after the consent of the local authorities and property owners or the determination of the appellate division of the supreme court as herein required, shall have been given or renewed, and shall not complete the same within three years after such consents, or determination shall have been obtained, its rights, privileges and franchises in respect of such railroad or extension or branch, as the case may be, may be forfeited. If the performance of any act required by the railroad law or any prior acts within the times therein prescribed, is hindered, delayed or prevented by legal proceedings in any court, such court may also extend such time for such period as the court shall deem proper or if the performance of any act required by said article within the times therein prescribed is hindered, delayed or prevented by works of public improvement, or from any other or different cause, not within the control of the corporation upon which such requirement is imposed, the time for the performance of such act is hereby and shall be deemed to be extended for the period covered by such hindrance, delay or prevention. The time for compliance with any requirement in this or any former act, by a street surface railroad corporation incorporated for the purpose of constructing a street surface railroad and which has prior to the passage of this act obtained or shall prior to June thirtieth, nineteen hundred and three obtain such consents or determination is hereby extended until June thirtieth, nineteen hundred and four. (*Thus amended by L. 1892, ch. 676; L. 1893, ch. 434, and L. 1902, ch. 209.*)

**§ 100. Motive power.** Any street surface railroad may operate any portion of its road by animal or horse power, or by cable, electricity, or any power other than locomotive steam power, which said locomotive steam power is primarily generated by the locomotive propelling the cars, and in the use of which either escaping steam or smoke is visible, which may be approved by the state board of railroad commissioners, and consented to by the owners of one-half of the property bounded on that portion of the railroad, with respect to which a change of motive power is proposed; and if the consent of such property owners can not be obtained, the determination of three disinterested commissioners, appointed by the appellate division of the supreme court or the department in which such railroad is located, in favor of such motive power, confirmed by the court, shall be taken in lieu of the consent of the property owners. The consent of the property owners shall be obtained and the proceedings for the appointment and the determination of the commissioners and the confirma-

tion of their report shall be conducted in the manner prescribed in sections ninety-one and ninety-four of this article, so far as the same can properly be made applicable thereto. Any railroad corporation making a change in its motive power under this section, may make any changes in the construction of its road or roadbed or other property rendered necessary by the change in its motive power. Where a street surface railroad in the counties of Herkimer and Hamilton is located wholly outside the limits of an incorporated city or village, such railroad may, with the approval of the state board of railroad commissioners be operated by locomotive steam power, provided that such steam power is generated by oil from and including April fifteenth to and including November thirtieth, and by either oil or coal from and including December first to and including April fourteenth. (*Thus amended by L. 1892, ch. 676; L. 1899, ch. 584; L. 1900, ch. 679, and L. 1901, ch. 553.*)

**§ 101. Rate of fare.** No corporation constructing and operating a railroad under the provisions of this article, or of chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, shall charge any passenger more than five cents for one continuous ride from any point on its road, or on any road, line or branch operated by it, or under its control, to any other point thereof, or any connecting branch thereof, within the limits of any incorporated city or village. Not more than one fare shall be charged within the limits of any such city or village, for passage over the main line of road and any branch or extension thereof if the right to construct such branch or extension shall have been acquired under the provisions of such chapter or of this article; except that in any city of the third class, or incorporated village, it shall be lawful for such corporation to charge and collect as a maximum rate of fare for each passenger, ten cents, where such passenger is carried in a car which overcomes an elevation of at least four hundred and fifty feet within a distance of one and a half miles. This section shall not apply to any part of any road constructed prior to May six, eighteen hundred and eighty-four, and then in operation, unless the corporation owning the same shall have acquired the right to extend such road, or to construct branches thereof under such chapter, or shall acquire such right under the provisions of this article, in which event its rate of fare shall not exceed its authorized rate prior to such extension. The legislature expressly reserves the right to regulate and reduce the rate of fare on any railroad constructed and operated wholly or in part under such chapter or under the provisions of this article. (*Thus amended by L. 1892, ch. 676, and L. 1897, ch. 688.*)



**§ 101-a. Collection of fare.** It shall be unlawful for any corporation, or an employee thereof, operating a street surface railroad, or a branch thereof, on which the motive power is electricity, which road or branch is operated wholly or in part in a city having at least one million inhabitants and which crosses the boundaries of a city of the first class, to collect fare of a passenger more than once for and during one continuous ride on a single car or train; excepting that fare may be once collected separately outside the city limits for passenger service to or from such limits, and once separately within the city for the service therein. A person or corporation violating the provisions of this section shall be liable to a penalty of twenty-five dollars for each violation, recoverable by the passenger aggrieved thereby. (*Added by L. 1907, ch. 229.*)

**§ 102. Construction of road in street where other road is built.** No street surface railroad corporation shall construct, extend or operate its road or tracks in that portion of any street, avenue, road or highway, in which a street surface railroad is or shall be lawfully constructed, except for necessary crossings, or, in cities, villages and towns of less than one million two hundred and fifty thousand inhabitants over any bridges, without first obtaining the consent of the corporation owning and maintaining the same, except that any street surface railroad company may use the tracks of another street surface railroad company for a distance not exceeding one thousand feet, and if in a city having a population of less than thirty-five thousand inhabitants, except Long Island City, for a distance not exceeding fifteen hundred feet, and in cities, villages and towns of less than one million two hundred and fifty thousand inhabitants, shall have the right to lay its tracks upon, and run over and use any bridges used wholly or in part as a foot-bridge, whenever the court upon an application for commissioners shall be satisfied that such use is actually necessary to connect main portions of a line to be constructed or operated as an independent railroad, or to connect said railroad with a ferry, or with another existing railroad, and that the public convenience requires the same, in which event the right to use shall only be given for a compensation to an extent and in a manner to be ascertained and determined by commissioners to be appointed by the courts as is provided in the condemnation law, or by the board of railroad commissioners in cases where the corporations interested shall unite in a request for such board to act. Such commissioners in determining the compensation to be paid for the use by one corporation of the tracks of another shall consider and allow for the use of the tracks for all injury and damage to the corporation whose tracks may be so used. Any street

surface railroad corporation may, in pursuance of a unanimous vote of the stockholders voting at a special meeting called for that purpose by notice in writing, signed by a majority of the directors of such corporation, stating the time, place and object of the meeting, and serving upon each stockholder appearing as such upon the books of the corporation, personally or by mail, at his last known post-office address, at least sixty days prior to such meeting, guarantee the bonds of any other street surface railroad corporation whose road is fully or partly in the same city or town or adjacent cities or towns. (*Thus amended by L. 1892, ch. 306; L. 1892, ch. 676; L. 1893, ch. 434, and L. 1894, ch. 693.*)

**§ 103. Abandonment of part of route.** Any street surface railroad corporation may declare any portion of its route which it may deem no longer necessary for the successful operation of its road and convenience of the public to be relinquished or abandoned. Such declaration of abandonment must be adopted by the board of directors of the corporation under its seal, which shall be submitted to the stockholders thereof at a meeting called and conducted in the same manner as required by law for meetings of stockholders for the approval of leases by railroad corporations for the use of their respective roads. If the stockholders shall, at such meeting, ratify and adopt such declaration of abandonment, the secretary of the company shall so certify under the seal of the corporation, upon such declaration. Such declaration shall then be submitted to the board of railroad commissioners for its approval, and if approved by such board, such approval shall be indorsed therein or annexed thereto and the declaration so certified and indorsed shall be filed and recorded in the office of the secretary of state, and from the time of such filing, such portion of the route designated in the declaration shall be deemed to be abandoned. (*Thus amended by L. 1892, ch. 676, and L. 1900, ch. 478.*)

**§ 104. Contracting corporations to carry for one fare; penalty.** Every such corporation entering into such contract shall carry or permit any other party thereto to carry between any two points on the railroads or portions thereof embraced in such contract any passenger desiring to make one continuous trip between such points for one single fare, not higher than the fare lawfully chargeable by either of such corporations for an adult passenger. Every such corporation shall upon demand, and without extra charge, give to each passenger paying one single fare a transfer, entitling such passenger to one continuous trip to any point or portion of any railroad embraced in such contract, to the end that the public convenience may be promoted by the opera-

tion of the railroads embraced in such contract substantially as a single railroad with a single rate of fare. For every refusal to comply with the requirements of this section the corporation so refusing shall forfeit fifty dollars to the aggrieved party. The provisions of this section shall only apply to railroads wholly within the limits of any one incorporated city or village. (*Thus amended by L. 1892, ch. 676.*)

**§ 105. Effect of dissolution of charter as to consents.** Whenever any street surface railroad corporation shall have been dissolved or annulled, or its charter repealed by an act of the legislature, the consent of owners of property bounded on, and the consent of the local authorities having the control of that portion of a street or highway upon which the railroad of such corporation shall have been theretofore constructed and operated, and the order of the general term confirming the report of any commissioner that such railroad ought to be constructed or operated, shall not, nor shall either thereof, be deemed to be in any way impaired, revoked, terminated or otherwise affected by such act of dissolution, annulment or repeal, but the same and each thereof shall continue in full force, efficacy and being. The right to the further enjoyment and to the use thereof, subsequent to such act of dissolution, annulment or repeal, and of all the powers, privileges and benefits therein or thereby created, shall be sold at public auction by the local authorities within whose jurisdiction such railroad shall be, in the same manner as is provided in section ninety-three of this article. When such sale shall have been so made, the purchaser thereat shall have the right to the further enjoyment and use of such consents and orders, and of each thereof, and of all the powers, privileges and benefits therein or thereby created, in like manner as if such purchaser had been originally named in such consents, reports and orders; if such purchaser shall be otherwise authorized by law to construct, maintain and operate a street surface railroad within the municipality within which such railroad shall be. (*Thus amended by L. 1892, ch. 676.*)

**§ 106. Corporate rights saved in case of failure to complete road; right to operate branches; conditions; former consents ratified; limitations.** The corporate existence of and powers of every street surface railroad corporation, which has completed a railroad upon the greater portion of the route designated in its certificate of incorporation, within ten years from the date of filing such certificate in the office of the secretary of state, and which has operated such completed portion of its railroad continuously for a period of five years last past,

and is now operating the same, shall continue with like force and effect, as though it had in all respects complied with the provisions of law with reference to the time when it should have fully completed its road. Every such corporation shall have the right to operate any extensions and branches of its railroad, now constructed and operated by it, which have been so constructed and operated by it, for a period of ten years last past, with like force and effect, as though the route of such extensions and branches were designated in its certificate of incorporation. But every such street railroad corporation is authorized to operate such railroad and any extensions or branches thereof, upon condition that it has heretofore, or shall hereafter, obtain the consent of the local authorities having the control of that portion of the streets, avenues or highways included in such railroad, or any extension or branch thereof, to the construction and operation of the same, and also upon the condition that it has heretofore or shall hereafter first obtain the consent of the owners of one-half in value of the property bounded on the portion of the streets, avenues or highways included in the route of such railroad, or any extensions or branches thereof, to the construction and operation of the same, or in case the consent of such property owners can not be obtained, the appellate division of the supreme court of the department in which such railroad or any extension or branch thereof is located, may, upon application, appoint three commissioners who shall determine, after a hearing of all the parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners. If any street surface railroad corporation shall have made and filed a statement or statements of proposed extensions or branches embracing a line from the boundary of a city or village to the boundary of another city or village generally parallel with the route specified in its certificate of incorporation and generally distant not more than one-half mile therefrom, and shall have made and filed an agreement of consolidation with some other street surface railroad corporation formed to build a street railroad upon a route continuous or connecting with one or more of the routes described in such statement or statements of proposed extensions or branches, and thereafter there shall have been constructed and operated for a period of four years a street surface railroad from such city or village to such other city or village upon a line embraced in any such proposed extensions or branches, such consolidated corporation may relinquish and abandon any unconstructed route or unconstructed portions of route specified in the certificate of incorporation or in any statements of proposed extensions or branches of such first-

mentioned corporation by filing in the office of the secretary of state a copy of a resolution of the board of directors of such consolidated corporation certified by its president and secretary, declaring such unconstructed route or unconstructed portions of route relinquished and abandoned, and thereupon the corporate rights, powers and franchises of such consolidated corporation shall be and continue the same as though the certificate of incorporation of such constituent corporation had specified the constructed and not the unconstructed portions of such route and proposed extensions and branches. All consents heretofore given, or grants made by local authorities having the control of the portion of any street, avenue, or highway included in the route of such railroad, or any extensions or branches thereof, to any such street surface railroad corporation, are hereby ratified and confirmed and declared valid. This section shall be applicable to any corporations whose lines are wholly within any towns, cities or villages having less than twenty thousand inhabitants. This section shall not apply to or affect any railroad corporation in the city of New York; nor any special grant made to or authority conferred upon any street surface railroad corporation by any law of this state; nor any pending litigation; nor shall it impair existing rights, privileges or franchises of any street surface railroad corporation. (*Thus amended by L. 1892, ch. 676, and L. 1900, ch. 198.*)

**§ 107. [When sand and salt may be used on tracks.]** The owner or operator of any street surface railroad in cities of this state, may place upon the space between the rails, and upon the rails of such road sand in sufficient quantities to prevent the horses traveling thereon from slipping, and to enable cars operated by mechanical, or electrical appliances to be safely and properly operated. The owner or operator of any street surface railroad in cities of this state may use salt in necessary quantities, upon the rails of all the switches, curves, turnouts and crossovers, between the first day of November of each year and the first day of May following, for the removal of snow and ice therefrom and to prevent the same from freezing. The quantity of salt to be used and the manner of applying salt to the rails, to be under the direction of the city officials having charge of the streets of said cities. (*Thus amended by L. 1892, ch. 676, and L. 1899, ch. 491.*)

**§ 108. Road not to be constructed upon ground occupied by public buildings or in public parks.** No street surface railroad shall be constructed or extended upon ground occupied by buildings belonging to any town, city, county

or to the state, or to the United States, or in public parks, except in tunnels to be approved by the local authorities having control of such parks. Provided however that the commissioners of the state reservation at Niagara, by and with the consent of the commissioners of the land office, may construct, without expense to the state, street railroad tracks upon and along that part of the riverway, so called, between Falls and Niagara streets in the city of Niagara Falls, and in their discretion may grant revocable licenses to street surface railroad companies to use such tracks upon such terms as said commissioners may prescribe. (*Thus amended by L. 1892, ch. 460; L. 1892, ch. 676, and L. 1899, ch. 710.*)

**§ 109. Center-bearing rails prohibited.** No street surface railroad corporation shall hereafter lay down in the streets of any incorporated city or village of this state what are known as "center-bearing" rails; but in all cases, whether in laying new track or in replacing old rails, shall lay down "grooved" or some other kind of rail not "center-bearing" approved by the local authorities. Such grooved or other rail shall be of such shape and so laid as to permit the paving-stones to come in close contact with the projection which serves to guide the flange to the car wheel. Where in any city, the duty of repairing and repaving streets, as distinguished from the authorization of such paving, repairing and repaving, is by law vested in any local authority other than the common council of such city, such other local authority shall be the local authority referred to in this section. (*Added by L. 1892, ch. 676.*)

**§ 110. Right to cross bridge substituted for a bridge crossed for five years.** Should any street surface railroad company have crossed any bridge as a part of its route for a period of more than five years and should any other bridge be substituted therefor at any time, such company shall have the right to cross such substituted bridge and to lay and use railway tracks thereon for the transit of its cars and to make all changes and extensions of its route subject to all the provisions of this act, as the convenient operation of its cars and public convenience may require. (*Added by L. 1892, ch. 676.*)

**§ 111. Protection of employees.** Every corporation operating a street surface railroad in this state, except such as operate a railroad or railroads either in the borough of Manhattan or Brooklyn, in the city of New York, shall cause the front and rear platforms of every passenger car propelled by electricity, cable or compressed air, operated on any division of such railroad which extends in or between towns or outside of city limits, dur-

ing the months of December, January, February and March, except cars attached to the rear of other cars, to be enclosed from the fronts of the platforms to the fronts of the hoods, so as to afford protection to any person stationed by such corporation on such platforms to perform duties in connection with the operation of such cars. Every corporation or person using and operating a car in violation of this section shall be liable to a penalty of twenty-five dollars per day for each car so used and operated, to be collected in an action brought by the attorney-general and to be paid to the treasurer of the state of New York, or in a suit by the attorney of the municipality in which the violation of the provision of this act occurs, to be paid in the treasury of such municipality. (*Added by L. 1903, ch. 325.*)

L. 1903, ch. 325, § 2. All street surface railroad passenger cars hereafter purchased, built or rebuilt and operated in the state of New York on and after the passage of this act, except those owned by any company operating either in the borough of Manhattan or Brooklyn, in the city of New York shall be constructed in accordance with the provisions of section one of this act.

L. 1903, ch. 325, § 3. This act shall take effect December first, nineteen hundred and four. Except that where the cars of any corporation affected by section one of this act are operated wholly in cities other than the boroughs of Manhattan or Brooklyn in the city of New York, the cars belonging to the corporations so operated shall be equipped with the enclosures provided for in section one of this act as follows, viz.: One-third thereof before December first, nineteen hundred and four, one-third thereof after December first, nineteen hundred and four, and before December first, nineteen hundred and five, and the remaining one-third thereof after December first, nineteen hundred and five, and before December first, nineteen hundred and six.

(L. 1903, ch. 325, §§ 2, 3. See Railroad Law, § 111.)

**§ 111-a. Protection to employees.** Every corporation operating a street surface railroad in the counties of Albany and Rensselaer shall cause the front and rear platforms of every car propelled by electricity, cable or compressed air, during the months of December, January, February and March, except cars attached to the rear of other cars, to be enclosed from the front and at least one side of the platform to the hood, so as to afford protection to any person stationed by such corporation or person on such platforms to perform duties in connection with the operation of such cars. Platforms on cars on such street surface railroads used more than one mile outside the limits of a city shall be completely enclosed from platform to hood. Every corporation using and operating a car in violation of this section shall be liable to a penalty of twenty-five dollars per day for each car so used and operated to be collected by the people to the use of the poor of the county in which such corporation has its principal office, in an action brought by the attorney-general or the district attorney of such county. The supreme court may, on the application of a citizen, direct the district attorney to bring such action. (*Added by L. 1903, ch. 426.*)

**§ 112. Protection of employees in the counties of Kings and Queens.** Every corporation operating a street surface railroad in the counties of Kings or Queens, shall cause the front and rear platforms of every passenger car propelled by electricity, cable or compressed air, operated on any division of such railroad during the months of December, January, February and March, except cars attached to the rear of other cars, to be enclosed from the fronts of the platforms to the fronts of the hoods so as to afford protection to any person stationed by such corporation on such platforms to perform duties connected with the operation of such cars. Every corporation or person using and operating a car in violation of such section shall be liable to a penalty of twenty-five dollars per day for each car used and operated, to be collected in an action brought by the attorney-general and to be paid to the treasurer of the city of New York, or in a suit by the district attorney of the counties of Kings or Queens to be paid into the treasury of the city of New York. One-third of the cars operated by any corporation in either of the above named counties shall be equipped with the enclosures provided for in section one of this act on or before December first, nineteen hundred and five, one-third thereof after December first, nineteen hundred and five, and before December first, nineteen hundred and six, and the remaining one-third thereof after December first, nineteen hundred and six, and before December first, nineteen hundred and seven. (*Added by L. 1905, ch. 453.*)

**§ \*112. [Payment of license fees and percentages.]** The board of estimate and apportionment, or if such board do not exist, the local authorities which have power to make appropriation of moneys to be raised by taxation, in any city of the first class, shall have the power in their discretion, to enter into a contract or contracts on behalf of the city with any railroad corporation or corporations owning or operating street surface railroads or other railroads in such city, for the purpose of adjusting any or all differences now existing between such corporation or corporations and such city with respect to car license fees, percentages upon gross earnings, rentals and any other payments, other than taxes upon real and personal property and capital stock, payable or claimed to be payable to the city under existing acts of the legislature, municipal ordinances, grants by, or contracts with, the municipal authorities or otherwise; and any such contract may provide for the payment of an annual amount to be ascertained as in such contract provided in lieu of any or all payments of any of the classes hereinbefore mentioned, other than taxes. Any such contract which shall be with a corporation operating lines of railroad by lease may provide for

\* So in original.



an annual payment, to be ascertained as in such contract provided, which shall be in lieu of any or all of the payments of any or all of said classes, other than taxes upon real and personal property and capital stock, which would otherwise be payable in respect of the leased lines so long as the lease or leases thereof shall continue. The annual payments provided for in any contract made under the authority of this act shall, so long as such contract is in force, supersede the payments which would otherwise be payable by the corporation or corporations making such contract and in lieu of which the annual payments provided for in such contract are substituted. Any contract made hereunder may, with the approval of the municipal authorities by whom the contract was made or their successors in office, be modified from time to time by the parties thereto for the purpose of meeting changed conditions. No contract shall be made or modified hereunder without the written consent and approval of the mayor and of the comptroller or other chief financial officer of the city. (*Added by L. 1905, ch. 651.*)

## ARTICLE 5

### Other Railroads in Cities and Counties

- Section 120. Application for railway; commissioners.
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123. Determination of necessity of railroad and route.
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142. Extension of time.

**§ 120. Application for railway; commissioners.**

Upon the application of at least fifty reputable householders and taxpayers of any county or city, verified upon oath before a justice of the supreme court, that there is need in said county or city of a steam railway in the streets, avenues and public places thereof for the transportation of passengers, mails or freight, the board of supervisors of such county may, within thirty days thereafter by resolution, approve of the application, and authorize its presentation to the supreme court, and if the railway is to be built wholly within the limits of a city, upon the application of a like number of householders and taxpayers of the city to the mayor thereof, such mayor may, within thirty days thereafter, indorse upon the application his approval and direction that it may be presented to the supreme court, and if the railway is to be built, partly within the limits of a city and partly without, such application shall be approved, both by the mayor of the city and the board of supervisors of the county, and its presentation to the supreme court authorized by them, and upon the presentation of such application so approved and authorized to a special term of the supreme court, held in the district where such railway is to be built, or some part thereof, the court may appoint five commissioners, residents of the city if the railway is to be built wholly within the city, and of the county, if it is to be built wholly or partly outside of the limits of a city, to determine the necessity of such railroad, the route thereof, the time within which and the conditions upon which it shall be constructed, the damages to the property owners along the line thereof and all the matters lawfully submitted to them, and discharge the duties imposed upon them by law.

**§ 121. Oath and bond of commissioners.** Within ten days after his appointment and before entering upon the discharge of any of the duties of his office, each commissioner shall take and subscribe the constitutional oath of office, which shall be filed in the office of the clerk of the county and shall execute a bond to the people of the state in the penal sum of twenty-five thousand dollars, with two or more sureties, to be approved by a justice of the supreme court of the department in which the railway is to be built and conditioned for the faith-

ful performance of the duties of the office, which bond shall be filed in the office of the clerk of the county.

**§ 122. First meeting of commissioners.** Within fifteen days after their appointment, the commissioners shall meet in some convenient place in the county or city and organize themselves as a board with appropriate officers.

**§ 123. Determination of necessity of railroad and route.** The commissioners shall, within thirty days after such organization, determine upon the necessity of such steam railroad, and if they find it to be necessary, they shall, within sixty days after such organization, fix and determine the route therefor, and shall have the exclusive power to locate such route, over, under, through or across the streets, avenues, places or lands in such county or city, and to provide for the connection or junction with any other railway or bridge, if the consent of the owners of one-half in value of the property bounded on and the consent of the local authorities having control of that portion of a street or highway, upon which it is proposed to construct or operate such railway have been first obtained. If the consent of such property owners can not be obtained, the determination of three commissioners appointed by the general term of the supreme court of the department where the railroad is to be constructed, made after due hearing of all parties interested, and confirmed by the court, that such railway ought to be constructed and operated, may be taken in lieu of the consent of such property owners. No such railway shall be located in or upon such portion of any street, avenue, place or lands in such county as are now occupied by an elevated or underground railway or in which such a railway has already been authorized by law to be so located and constructed, or which are contained in public parks, or occupied by buildings belonging to the county or the state or United States, or in or upon the following streets, avenues and public places, viz.: Broadway, Fifth avenue, Fourth avenue above Forty-second street, in the city of New York; Debevoise place, Irving place, Lefferts place, those portions of Grand, Classon and Franklin avenues and Dowling street lying between the southerly line of Lexington avenue and the northerly line of Atlantic avenue, that portion of Classon avenue lying between the northerly line of Lexington avenue and the southerly line of Park avenue, and that portion of Washington avenue lying between Park and Atlantic avenues in the city of Brooklyn; and that portion of the city of Buffalo lying between Michigan and Main streets, but such railway may be located and constructed across such excepted streets, avenues and places at their intersection only with other streets, avenues and places. (*Thus amended by L. 1892, ch. 676.*)

**§ 124. Adoption of plans, and terms upon which road shall be built.** The commissioners by such public notice, and under such conditions, and with such inducements as they may prescribe, shall invite a submission of plans for the construction and operation of such railway, and shall meet at a time and place in such notice named, not more than ninety days after their organization, and decide upon the plans for the construction thereof, with the necessary supports, turnouts, switches, sidings, connections, landing-places, stations, buildings, platforms, stairways, elevators, telegraph and signal devices, or other requisite appliances, upon the route or location determined upon by them. They shall, upon notice to the local authorities and after hearing all parties interested, fix and determine what compensation, if any, in a gross sum, or in a certain percentage of receipts, shall annually be paid to the local authorities by the corporation formed for the purpose of constructing, maintaining and operating such railway for public use in the conveyance of persons and property, for the use and occupation by the corporation of the streets, avenues and highways in and upon which its railway is to be constructed, and the time when such railway, or a portion thereof, shall be constructed and ready for operation, and the maximum rates to be paid for transportation and conveyance thereon, and the hours during which special cars or trains shall be run at reduced rates of fare; and the amount of the capital stock of such corporation, and the number of shares into which it shall be divided, and the percentage thereof to be paid in cash on subscribing for such shares.

The commissioners may select two or more routes, upon one of which such railway may be constructed and operated; and the local authorities may consent to the construction and operation of such railway upon one or more of such routes, or parts thereof; and the commissioners shall have power to change and re-adopt routes and plans for the construction and operation of such railway, after they have been submitted to the local authorities, in cases where such authorities may recommend such changes, or may not be willing to consent to the construction or operation of the railway, upon the routes and plans adopted, unless such changes are made therein. (*Thus amended by L. 1892, ch. 676.*)

**§ 125. Appraisal of damages and deposit of money as security.** The commissioners shall, within one hundred and ten days after their organization, ascertain and determine the aggregate pecuniary damage arising from the diminution in the value of the property bounded on that portion of such street or streets, highway or highways, upon which it is proposed to construct and operate such railway to be caused by the

construction and operation thereof. For that purpose they shall view the several parcels of real property so bounded, and shall appraise separately the pecuniary damages arising from such diminution in value of each parcel thereof, and for the purposes of such appraisal they shall give notice of the time and place, when and where they will meet to hear the owners, or persons interested in such real property, which notice shall be published for at least ten days consecutively in at least two newspapers in the county where such railway is to be constructed, and shall take such material testimony upon the probable diminution in value of any or all such parcels to be so caused as may be offered by or in behalf of any person or party interested therein, and the aggregate sum of the amounts so appraised and determined by them shall be the aggregate pecuniary damage required to be ascertained and determined as above provided. No corporation which shall hereafter be organized under this article shall enter upon any street, highway or lane therein, until it shall first have deposited with some trust company, to be designated by the mayor of the city within which it is proposed to construct the railway or any part thereof, and by the board of supervisors, when the road does not lie wholly within a city, a sum of money equal to the amount so ascertained and determined by the commissioners to be the aggregate pecuniary damage to such property within the city, or within the county outside of any city, or shall have secured the payment of such amount by depositing with such trust company negotiable securities, equivalent at their par and actual value to such aggregate amount, and approved by the mayor of the city in which such road is wholly or in part located, and by the county treasurer of the county if the road is located wholly or in part outside of the limits of such city. The court may accept in lieu of the deposit of money or securities herein required the bond of the corporation, with two or more sureties, to be approved by the court, to the effect that the corporation before constructing or operating its railway in front of any premises, shall pay to the owner of the real property all the damages sustained, or which will be sustained by him, as fixed and determined by such commissioners, and the costs allowed, if any. Such bond shall be in a sum double the amount of such damages, and the sureties shall justify in the aggregate to an amount equal to the amount of such bond. Such corporation shall also, at the same time, deposit with such trust company or with the county treasurer, as the commissioners may direct, the sum of five thousand dollars in cash, for the payment of the expense of apportioning and distributing such fund. Unless such moneys or securities shall be deposited by

such corporation within one year after it shall have obtained the consent of the local authorities, and of the property owners, or the confirmation by the general term of the supreme court, of the determination of three commissioners in lieu thereof, and in the case of a corporation heretofore organized within one year after it shall have obtained the confirmation by the general term of the supreme court of the report of three commissioners in lieu of the consent of property owners, or within one year after the commissioners appointed to ascertain and determine the aggregate pecuniary damages as provided in this article, shall have made their report, then such corporation shall be deemed not to have accepted the franchises granted. Where the commissioners shall fix and determine different periods of time within which different sections of such railway shall be constructed and ready for operation, they shall ascertain, determine, and report separately the aggregate pecuniary damage to property bounded upon that portion of such street or streets upon which each of such sections is located. Upon the deposit by the corporation as above provided of moneys or securities equivalent to the aggregate pecuniary damage to be sustained by any one of such sections, or of any bond given in lieu thereof, it shall immediately be vested with the right and privilege to construct its railway through such section. (*Thus amended by L. 1892, ch. 676.*)

**§ 126. Shall prepare certificate of incorporation; proviso as to forfeiture.** The commissioners shall prepare an appropriate certificate of incorporation for the corporation in the last section mentioned in which shall be set forth and embodied, as component parts thereof, the several conditions, requirements and particulars by such commissioners determined pursuant to the provisions of this article, and which shall also provide for the release and forfeiture to the supervisors of the county, or if the road is to be constructed wholly or partly within a city, to such city, of all rights and franchises acquired by such corporation in case such railway or railways shall not be completed within the time and upon the conditions therein provided; and the commissioners shall thereupon and within one hundred and twenty days after their organization cause a suitable book of subscription to the capital stock of such corporation, to be opened pursuant to due public notice at a banking office in such county or city. A failure by any corporation heretofore or hereafter organized under this article to complete its railway within the time limited in and by its certificate of incorporation shall only work a forfeiture of the franchises of such corporation with respect to that portion of its route which such corporation shall have failed to complete, and shall not affect the rights and fran-

chises of such corporation to construct and operate such part of its railway which it shall have completed within the term prescribed by its certificate of incorporation, or as to which the time for completion shall not have expired, notwithstanding any thing to the contrary in its certificate of incorporation.

**§ 127. Organization.** Whenever the whole capital stock of such corporation or an amount of such capital stock proportioned to the part of such railway directed by the commissioners to be constructed, shall have been subscribed by not less than fifteen persons, and the fixed percentage of such subscriptions shall have been paid, in cash, the commissioners shall, by written or printed notice of ten days, served personally or by mail, call a meeting of such subscribers for organization, and appoint the inspectors of election to serve thereat. At such meeting, or at any subsequent one to which the same may be adjourned a majority in number and amount of such subscribers may elect persons, of a number to be theretofore determined by the commissioners not less than nine, who shall be directors for one year of the corporation formed for the purposes of constructing and operating such railway.

**§ 128. Commissioners to deliver certificate; affidavit of directors.** Within ten days after the election of such directors the commissioners shall deliver to them a certificate in duplicate, verified by the oath of three commissioners, before a justice of the supreme court, setting forth the certificate of incorporation and the organization of the corporation for the purposes therein mentioned, and within five days after the reception by them of such certificates, three of the directors so elected shall make affidavit in duplicate that the full amount of stock has been subscribed in good faith to construct, maintain and operate the railway or railways in such certificate of incorporation mentioned, and such directors shall file such affidavits and certificate in the office of the secretary of state, and a duplicate of the same in the office of the clerk of the county wherein such railway shall be located; and thereupon the persons who have so subscribed such certificate of incorporation and all persons who shall become stockholders in such corporation shall be a corporation by the name specified in such certificate, and be subject to the duties, liabilities and restrictions of such corporations.

**§ 129. Powers.** Every such corporation shall have power, in addition to the powers conferred by the general and stock corporation laws and by subdivisions two, five and seven of section eight of this chapter:

1. To take and convey persons and property on their railroad by the power or force of steam or by any motor other than animal power, and to receive compensation therefor.

2. To enter upon and underneath the several streets, avenues and public places and lands designated by the commissioners, and enter into and upon the soil of the same, to construct, maintain, operate and use in accordance with the plan adopted by the commissioners, a railway upon the route or routes and to the points decided upon and to secure the necessary foundations and erect the columns, piers and other structures which may be required to secure safety and stability in the construction and maintenance of the railways constructed upon such plan and for operating the same; and to make such excavations and openings along the route through which such railways shall be constructed as shall be necessary from time to time. In all cases the surface of the streets around such foundations, piers and columns shall be restored to the condition in which they were before such excavations were made, as near as may be, and any interference with or change in the water mains, or in the sewers or lamp posts, except such changes as may be made with the concurrence of the proper department or authority shall be avoided; and the use of the streets, avenues, places and lands designated by the commissioners and the right of way through the same for the purpose of a railway, as herein authorized, shall be considered and is hereby declared to be a public use, consistent with the uses for which the roads, streets, avenues and public places are publicly held. No such corporation shall have the right to acquire the use or occupancy of public parks or squares in any such city or county, or the use or occupancy of any of the streets or avenues, except such as may have been designated for the route or routes of such railway, and except such temporary privileges as the proper authorities may grant to such corporations to facilitate such construction, and no such railway shall be constructed across the track of any steam railway now in actual operation at the grade thereof, nor shall any piers or supports for any elevated railway be erected upon a railway track now actually in use in any street or avenue; and no such corporation shall construct a street surface railroad to run in whole or in part upon the surface of any street or highway under the provisions of this article.

**§ 130. Crossing of horse railroad track.** Whenever the route selected by the commissioners for the construction of such railway shall intersect, cross or coincide with any horse railway track occupying the surface of the street or avenues,



such railway corporation is hereby authorized to remove, for the purpose of constructing its road, the tracks of such horse railway; but the same shall be done in such manner as to interfere as little as possible with their practical operation or working, and upon the construction of such railway, where such removals or changes have been made, the same shall be restored as near as may be to the condition in which they were previous to the construction of such railroad. All such removals and restorations shall be made at the proper cost and charges of such corporation, but no authority is herein given to any such corporation to use the tracks of any horse railway.

**§ 131. Where route coincides with another route.**

Whenever the route or routes determined upon by the commissioners coincide with the route or routes covered by the charter of an existing corporation, formed for the purpose of constructing and operating such a railway, and it has not forfeited its charter or failed to comply with the provisions thereof, requiring the construction of a road or roads within the time therein prescribed, such corporation shall have the like power to construct and operate such railway upon the fulfillment of the like requirements and conditions imposed by the commissioners as a corporation specially formed under this article, and the commissioners may fix and determine the route or routes by which any elevated steam railway now in actual operation may connect with other steam railways or the depots thereof, or with steam ferries, upon making compensation therefor, and in case such corporations can not agree with the owners of such steam railways, depots or ferries upon the amount of such compensation, and such owners may be entitled to compensation therefor, the amount of such compensation shall be ascertained and paid in the manner prescribed in the condemnation law, and upon fulfillment by such elevated railway corporation, so far as it relates to such connection, of the requirements and conditions imposed by this article, it shall possess all the powers conferred by section 129 of this article, and when any connecting route or routes shall be so designated, such elevated railway corporation may construct such connection with all the rights and with like effect as though the same had been part of the original route of such railway. (*Thus amended by L. 1892, ch. 676.*)

**§ 132. Commissioners to transfer plans, etc.** Within one month after such corporation shall have been formed and organized in the manner hereinbefore provided, the commissioners shall transfer and deliver to the corporation all plans, specifica-

tions, drawings, maps, books and papers in their possession, and they shall, within the like period of one month after the organization of such corporation, cause to be paid to the treasurer thereof all money collected under the provisions of this article, after deducting therefrom the necessary expenses incurred by the commissioners and the amounts due to them for their salaries.

**§ 133. Commissioners to file report; confirmation thereof.** The commissioners shall within one hundred and forty days after their appointment, make a report to a special term of the supreme court of the department in which such railway may be located, of the amount of the pecuniary damage arising from the diminution of value of each parcel of property bounded on that portion of the street or streets, highway or highways, upon which it is proposed to construct such railway or railways, which will be caused by the construction, maintenance and operation thereof. The name and place of residence of the owner or owners of each parcel shall be stated if the same are known, or can be ascertained, and if not known the name of the person or persons appearing by the certificate of the clerk or register of the county, to have the title thereto from the records in his office, and a specific description of each parcel of property with reasonable certainty. The testimony, if any, taken by the commissioners as to the amount of such damage, shall accompany their report. Within thirty days after filing and recording its certificate of incorporation, the corporation authorized to construct and operate such railway or railways shall move to confirm such report by giving notice of such motion to the property owners in the manner in which notice of the time and place of hearing before the commissioners is required by section 125 to be given, and if the corporation fails to so move, any property owner may take the motion; and thereafter the proceedings shall be conducted in the manner prescribed in the condemnation law. Before constructing and operating its railway in front of any real property bounded upon any street, avenue or public place wherein the corporation is authorized by the certificate and report of the commissioners to construct and operate its road, such corporation shall pay to the owner of the real property the damages sustained or which will be sustained by him in consequence thereof, as finally fixed and ascertained, and the costs allowed him, if any, and the court may direct that such damages be paid out of the moneys deposited pursuant to the provisions of section 125, or in case negotiable securities shall have been deposited in lieu of money, that so much of such securities shall be sold as may be necessary to

raise the amount required to be paid to such owner for damages and costs if any. If a bond shall have been executed in lieu of such deposit, the court may order the sureties in such bond to pay the damages so fixed and ascertained, and in default thereof may cause them to be proceeded against and punished as for a contempt of court. (*Thus amended by L. 1892, ch. 676.*)

**§ 134. Pay of commissioners.** Each of the commissioners shall be paid for his services at the rate of ten dollars per day for each day of actual service as such commissioner, and all expenses necessarily incurred by him in the discharge of his duties, to be paid by such corporation, but if a sufficient amount of capital stock shall not be subscribed within one year after the appointment of such commissioners to authorize the formation of such corporation, the commissioners shall receive no salary, and shall cause to be returned to the subscribers for such stock the amounts paid in by them, after deducting therefrom the necessary expenses incurred by the commissioners, but the time, if any, unavoidably consumed by the pendency of legal proceedings shall not be deemed a part of any period of time limited by this article.

**§ 135. Quorum; term of office; removal; vacancies in board of commissioners.** A majority of the members of any board of commissioners appointed under this article shall be a quorum for the transaction of any business or the performance of any duty or function, or the exercise of any power, conferred or enjoined upon them. Any commissioner may be removed for cause at any time by the power appointing him, but no commissioner shall be removed without due notice and an opportunity to be heard in defense; and no commissioner thus removed is, or shall be eligible to be again appointed to the office of commissioner. In case of the death, resignation or removal from office of any commissioner the vacancy shall be filled by the power appointing him, within thirty days after such removal, or within thirty days after notice in writing to such appointing power given by some member of the board, or by the corporation hereinafter mentioned, of such death or resignation, and a certificate of every such appointment shall be filed as hereinbefore required. Except as otherwise provided by law, the terms of office of the commissioners shall determine and expire with the performance of their functions as herein above prescribed.

**§ 136. Abandonment or change of route; new commissioners; their powers and proceedings.** Any corporation heretofore organized or hereafter to be organized under this article, its successor or assigns, which shall have constructed

or put in operation a railway upon a part and not upon the whole of the route fixed, determined and located for such railway by a board of commissioners, may at any time apply for authority to abandon any portion of the route upon which the railway shall not have been theretofore constructed or shall not then be in operation, with or without a change and relocation of such portion, and with or without extension of the portion not abandoned, or of any part thereof. Such application shall be made by petition in writing, addressed by such corporation to the board of supervisors of the county in which such portion of the route so desired to be changed or abandoned shall be situated, which is not within the limits of any city, or if such route, or any part thereof, shall be within the limits of a city, to the mayor of the city, for the route or portion thereof within such city. Five commissioners may be appointed pursuant to such an application as hereinafter provided, who shall be residents of the county or city and who shall have full power as herein provided. When such application is made by a corporation heretofore organized such commissioners may be appointed within thirty days after presentation of the same by such board of supervisors, or, as the case may be, by such mayor. When such application is made by a corporation hereafter to be organized under this article, such board of supervisors, or, as the case may be, such mayor, may within thirty days after presentation of such application, indorse thereon their or his approval and direction that it may be presented to the supreme court in the manner provided in section 120 of this article, and such court may thereupon appoint such commissioners. Within ten days after his appointment each commissioner so appointed shall take, subscribe and file the oath and give and file the bond prescribed by section 121 of this article; and if any one so appointed shall not comply with this requirement, he shall be deemed to have declined to accept such appointment, and to have made a vacancy wick\* the appointing power shall fill by another appointment as herin\* provided. Within fifteen days after such appointments shall have been so made, the commissioners shall meet at some convenient place in such county and complete their organization as a board with appropriate officers. Such board shall have all the authority conferred by law upon commissioners appointed, or authorized to be appointed under this article. Before proceeding to hear the application of the corporation, the board shall give such public notice as it may deem most proper and effective of the time and place of the hearing. Within thirty days after completing their or

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\* So in original.

ganization such board shall hear the application of the corporation, and all parties who may be interested therein, and within sixty days after their organization they shall determine whether any part of such route should be authorized to be abandoned, or should be changed and relocated with or without extension or extensions. If the board shall determine that no abandonment of any part of the route should be allowed, and that no change and relocation of any part thereof should be effected, and that no extension should be made, the board shall dismiss the application. If the board shall determine that an abandonment of any portion of the route should be allowed, or that any change in or extension thereof should be made, the board shall proceed to authorize and require the same upon such conditions as to the board shall seem proper, and with or without extension of the remainder of the route or of any part thereof, by fixing, determining and locating the route or routes of the extension or extensions, if any, and by directing the abandonment of the part of the route theretofore located, but by the board allowed to be abandoned, if any, and by fixing, determining and relocating the part of the route theretofore located, but by the board changed, if any; and the board shall cause to be made in duplicate a survey and map of the route as so changed and fixed, determined and located. Neither such corporation nor any assign or successor thereof shall thereafter have any authority, by reason of anything done under this article to operate or construct any railway upon any portion of the route by the board so required to be abandoned. The board shall also fix and determine the time within which the railway by it authorized and required upon any portion of the route so changed, shall be reconstructed and ready for operation. If the railway on any portion of the route not by the board changed or allowed to be abandoned, shall not have been theretofore constructed and made ready for operation, the board may extend, and fix and determine anew the time within which such railway shall be completed, but such extension of time shall not be for a longer period than that originally allowed by law for the completion thereof. If the board shall have determined that any portion of the route theretofore located should be allowed to be abandoned, with or without a change or relocation thereof or any part thereof, and with or without extension, or if the board shall have extended the time within which such railway shall be completed, the board shall make a report in writing in accordance with the determination so made, describing the portion of the route, if any there be, as so fixed, determined and located anew, and the part, if any there be, of the route allowed to be abandoned, and stating the period of time, if any, by the board fixed and determined within which

such corporation shall construct and complete the railway theretofore authorized or by it authorized to be constructed, and prescribing that a failure by the corporation, its successors or assigns, to complete it within the time, if any so limited, shall work a forfeiture to the supervisors of the county if no part of the road is within a city, or in any city, to such city, of the rights and franchises of such corporation with respect to that portion of the route so fixed, determined and located anew, and with respect to the then authorized extension or extensions, if any there be of said route, upon which a railway shall not be constructed within the time so limited; but the time, if any, unavoidably consumed by the pendency of legal proceedings, shall not be deemed a part of any period of time limited in this article, and any recital of any forfeiture of any of the rights or franchises prescribed by any commissioners heretofore appointed, to be to the mayor, aldermen and commonalty of the city of New York, shall be as effectual for any and all purposes as if such forfeiture had been in terms recited to be to the board of supervisors of the county of New York. Such report shall be signed in duplicate by at least a majority of the then members of the board, and there shall be thereto annexed the survey and map as hereinabove directed, showing the line and location of each and all the routes, with or without the extension or extensions, as fixed, determined and located, and showing also the parts or part, if any there shall be, of the route or routes as theretofore fixed, determined and located, but by the board allowed to be abandoned. Within ten days after so signing such report the board shall cause the same to be filed in the office of the secretary of state, and the duplicate thereof in the office of the clerk of the county wherein such railway shall be located; and thereupon the corporation making such application, its successors or assigns, is and shall be authorized to construct, maintain and operate a steam railway for the transportation of passengers, mail and freight, upon the route or routes so fixed, determined and located, and in said report described, but the construction or operation of a railway upon any new location or selection of route is not and shall not be thus authorized except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having control of that portion of a street or highway upon which it is proposed to construct or operate such railway be first obtained, or in case the consent of such property owners can not be obtained, that the determination of three commissioners, to be upon application appointed by the general term of the supreme court, in the district in which such railroad is proposed to be constructed, be given after a hearing of all parties

interested that such railway ought to be constructed or operated, which determination, confirmed by the court, may be taken in lieu of the consent of the property owners. Such corporation is and the successors and assigns thereof shall be authorized to maintain and operate all the railroads and the appurtenances thereof by it or them theretofore constructed upon any portion of a route or routes which shall have been located by commissioners under this article, and to complete within the time in and by such report so extended, fixed and determined anew, and thereafter to maintain and operate, the railway and the appurtenances, upon so much of the route or routes theretofore fixed, determined and located as shall not have been so authorized and required to be abandoned, and with the same rights and effect, in all respects, as if such extended period of time had been originally fixed and determined, and in the original certificate of incorporation of such corporation recited, for completing such railway and putting it in operation. The other terms and conditions in and by such certificate mentioned and prescribed, except as the same are hereinbefore modified or may be modified by the board as hereinabove authorized, shall apply to the railway herein authorized to be constructed and operated upon the route or routes as so changed, fixed, determined and located, with the same force and effect as if such route or routes, as finally so changed and located, had been in and by such articles or certificates themselves prescribed. If a new location or extension of routes shall be fixed and determined by commissioners who shall have been appointed by the court pursuant to this section, they shall also ascertain and determine the aggregate pecuniary damages arising from the diminution of value of the property bounded on that portion of the street or highway upon the line of such new location or extension and of each parcel of real property so bounded, and their proceedings thereupon shall be conducted in the same manner and upon the like notice as the proceedings for that purpose before the commissioners specified in section 125 and shall make to the supreme court the report required by section 133, and thereupon the same proceedings shall be had as are provided for in such last named section. Each commissioner shall be paid for his services at the rate of ten dollars per day for each day of actual services as such commissioner, and all reasonable expenses incurred by him in or about any of the matters referred to such board, to be paid by the corporation making the application so heard and determined. No corporation shall be authorized under this section to extend, abandon or change the location of its route, or any part thereof, where the greater portion of the route

or routes is or shall be in that portion of the city of New York south or west of Harlem river, or of any route or part thereof in the city of Brooklyn or county of Kings, or to construct, extend, abandon or change the location of any railway or route for a railway over, under, through or across any street, avenues, place or lands south of One Hundred and Twenty-eighth street or west of Third avenue in that portion of the city of New York south or west of Harlem river, or where a railway might not by law be constructed, or was not by law authorized to be by a board of commissioners located on the 5th day of June, 1888. (*Thus amended by L. 1892, ch. 676.*)

**§ 137. Increased deposit, when and how required.**

In case any of the securities deposited in lieu of money as provided in section one hundred and twenty-five, shall in the opinion of the county treasurer or trust company with whom they may be deposited, fall below their actual value at the time of deposit, the county treasurer or trust company shall call upon such railway corporation to substitute therefor other securities equivalent at their par or market value to the amount in lieu of which the securities for which they are to be substituted were deposited, and in case such other securities shall not be furnished, the county treasurer or trust company shall call upon such corporation to furnish as a substitute, and it shall so furnish an amount of money equal to the amount in lieu of which the securities first above referred to were deposited.

**§ 138. Trains to come to full stop, etc.** All trains upon elevated railroads shall come to a full stop before any passenger shall be permitted to leave such trains; and no train on such railroad shall be permitted to start until every passenger desiring to depart therefrom shall have left the train, provided such passenger has manifested his or her intention to so depart by moving toward or upon the platform of any car; nor until every passenger upon the platform or station at which such train has stopped, and desiring to board or enter such cars, shall have actually boarded or entered the same, but no person shall be permitted to enter or board any train after due notice from an authorized employee of such corporation that such train is full and that no more passengers can be then received.

**§ 139. Gates or vestibule doors.** Every car used for passengers upon elevated railroads shall have gates at the outer edge of its platforms so constructed that they shall, when opened, be caught and held open by such catch or spring as will prevent their swinging and obstructing passengers in their egress.



from or ingress to such cars, or vestibule doors so constructed as to slide into the body of the car; and every such gate or door shall be kept closed while the car is in motion; and when the car has stopped and a gate or door has been opened, the car shall not start until such gate or door is again firmly closed. (*Thus amended by L. 1903, ch. 273.*)

**§ 140. Penalty for violation of this article.** Any elevated railroad corporation that shall fail or neglect to comply with or enforce the provisions of this article, shall upon the petition of any citizen to any court of record, and upon due notice to such corporation, and proof of such failure or neglect, pay to the clerk of the court wherein such petition was made, a sum not less than two hundred and fifty nor more than one thousand dollars, as such court may direct by its order. The sum so ordered to be paid shall be paid by such clerk of the court to the county treasurer, and shall be distributed by such treasurer equally among the public hospitals of the county in which the proceeding is had, at such time, as the board of supervisors or board of aldermen in any such county shall direct. Nothing in this section shall relieve elevated railroad corporations from any liability under which they may now be held by existing laws for damages to persons or property. (*Thus amended by L. 1892, ch. 676.*)

**§ 141. Sections to be printed and posted.** The officers and board of directors of such railroad corporations shall cause copies of sections one hundred and thirty-eight, one hundred and thirty-nine and one hundred and forty to be printed conspicuously and posted in the depots or stations and in each car belonging to them.

**§ 142. Extension of time.** The time within which any act is required to be done under this article may be extended by the supreme court for good cause shown, for one year, and but one extension will be granted. Any company that has heretofore constructed or is now operating an elevated railroad shall be deemed to have been duly incorporated notwithstanding any failure on the part of commissioners to insert in its articles of association provisions complying with statutory requirements relative to such articles. (*Added by L. 1892, ch. 676.*)

Sections 150-172, repealed by L. 1907, ch. 429, § 87.

Sections 180-183 repealed by L. 1892, ch. 676.

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\* So in original.

## SUPPLEMENTAL ACTS RELATING TO RAILROADS

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### (2) Amended Certificate

L. 1893, Ch. 238. "An act in relation to filing amended affidavits to certificates of incorporation of railroad companies."

§ 1. Where it does not appear by the affidavit endorsed on or annexed to any certificate of incorporation, or articles of association of any railroad company, filed under the laws of this state, that the amount of capital stock required by the provisions of said laws to be paid in good faith and in cash to the directors named in such certificate has been so paid, or where the affidavit required by law is omitted and where such payment has been made to the directors named in said certificate or articles, or any of them, for the use of the company prior to the passage of this act, an affidavit of at least three of the directors named in said certificate, stating that at least the amount of capital stock of such corporation required by the law in force at the time of filing said certificate or articles to be subscribed thereto, has been heretofore subscribed for in good faith and that the amount required by the law in force at the time of filing said certificate to be paid on subscriptions in good faith and in cash to the directors named in the certificate of incorporation has been paid heretofore in cash and in good faith to the directors named in said articles of association, or any of them, for the use of said corporation and that it is intended in good faith to build, construct, maintain and operate the road mentioned in said certificate may be filed in the office of the secretary of state, which affidavit shall be annexed to said certificate of incorporation and upon such filing said certificate, or articles shall for all purposes have the same force and effect as if an affidavit in all respects regular and in conformity with law had been annexed to said certificate or articles when said certificate was filed and as if a subscription and payment in all respects sufficient and in conformity with law had been made to the directors named in the articles of association or certificate, prior to the original filing of said articles or certificate, and said certificate of incorporation and the original filing thereof shall be and be deemed valid from the time of such original filing and such corporation shall be and be deemed a valid corporation from said time of original filing and shall now and hereafter have all the rights, privileges, powers and franchises to which if a valid corporation it would have been

entitled by law at the time of such original filing together with such other rights, privileges, powers and franchises as have been since or may hereafter be granted by law to such valid corporations, provided that nothing herein contained shall affect or impair any vested right; and provided that the word "heretofore" and the words "prior to the passage of this act" shall be taken to refer to the time of passage of the amendatory act under which this section as herein framed is enacted. A copy of said certificate or articles of association with a copy of said affidavit hereinabove authorized, certified to be a copy by the secretary of state or his deputy shall in all courts and places and for all purposes be presumptive evidence of the incorporation of such corporation and of the facts stated in said certificate and affidavit. This act as here amended shall not apply to nor affect any street surface railroad company the route of which in whole or in part lies within any city of the first or second class in this state, and shall not apply to nor affect any railroad corporation incorporated under any private or local bill or act. (*Thus amended by L. 1903, ch. 627.*)

§ 2. This act shall take effect immediately.

### (3) Time for Construction

**L. 1895, Ch. 700. "An Act to extend the time of commencement or construction or completion of railroads other than street surface railroads."**

§ 1. The time or times prescribed for the commencement of the construction or the completion of its \*railroads, or any other portions thereof, by any railroad company existing at the time herein mentioned, which has at said time acquired at least one-third of its right of way or begun the construction of any portion of its railroads or shall have heretofore obtained a certificate from the board of railroad commissioners that public convenience required the construction of said railroads, is hereby extended three years from the first day of January, nineteen hundred and four. (*Thus amended by L. 1899, ch. 647; L. 1901, ch. 617; L. 1902, ch. 487, and L. 1903, ch. 597.*)

§ 2. This act shall take effect immediately.

**L. 1898, Ch. 263. "An Act for the relief of certain railroad corporations."**

**Application of act.** § 1. Any railroad corporation that was duly incorporated after the year eighteen hundred and eighty-five, under the provisions of chapter one hundred and forty, of the laws of eighteen hundred and fifty, and the acts amendatory thereof, and that within two years after its certificate of incorporation was filed, began the construction of

\* So in original.

its road and expended five hundred thousand dollars thereon, but failed to finish its road and put it in operation within ten years from the time of filing such certificate, shall be entitled to, and have all the rights and be subject to all the obligations intended or provided by the next section of this act.

**Certain railroads may be completed.** § 2. Any such company or corporation may finish its road and put it in operation; and the rights, powers, privileges, franchises, obligations, duties, restrictions and limitations of any such corporation shall be as though the time heretofore provided by law to finish its road and put it in operation, had been fifteen years from the date of filing its certificate of incorporation; and all rights or franchises acquired by any such corporation to construct its road in, upon, along or across any street or highway, and all proceedings to locate or extend its route or change its termini, or acquire any franchise, and all liens or obligations against any such corporation are hereby expressly conferred, imposed and continued to the same effect as though the time for finishing its road had been fifteen years as aforesaid. This act shall not apply to any street railroad, whether surface, elevated or depressed, nor to any railroad more than twenty miles in length.

§ 3. This act shall take effect immediately.

**L. 1898, Ch. 495. "An Act to extend the time for the commencement of construction or the completion of railroads that have been placed in the hands of receivers by the supreme court.**

§ 1. All railroad corporations that have been organized under the laws of this state, and have been placed in the hands of a receiver or receivers by the supreme court of this state, and that are now in the hands of such receiver or receivers, are hereby granted five years from and after the passage of this act within which to complete their said roads, and the charter or charters of such companies shall not be deemed or taken as forfeited by their failure to complete their said roads within the time originally limited in the general laws of this state for the completion of such roads. And the said companies are hereby authorized to proceed and build their said roads and complete the same within five years after the passage of this act, and the corporate powers and rights shall not be deemed or held to have ceased by reason of lapse of time or by reason of the appointment of such a receiver or receivers.

§ 2. This act shall take effect immediately.

**L. 1903, Ch. 626. "An Act to suspend the limitation of time for commencement of construction or the completion of railroads while in the hands of receivers."**

§ 1. In every case where a receiver of the property or franchises of a domestic railroad corporation has been heretofore appointed by a court of this state or by a court of the United States having jurisdiction within the limits of this state, the time intervening between the entry of the order, judgment or decree appointing a receiver in the first instance and the entry of the order, judgment or decree finally terminating the receivership, shall not be nor be taken to be part of the time limited by law for beginning the construction of its road by such railroad corporation, or for the expenditure by it of ten per centum on the amount of its capital stock on such construction, or for finishing its road or putting it in operation, and the expiration heretofore or hereafter during such receivership of the time so limited shall not be taken to have terminated or in any way to have affected the existence, franchises, rights or privileges of said corporation; but such corporation shall have all rights, privileges, powers and franchises to which if a valid corporation it would have been entitled by law at the time of filing its certificate of incorporation, together with such rights, privileges, powers and franchises as have since been or may hereafter be granted by law to such corporations; provided that nothing herein contained shall in any way alter, affect or impair any vested right or interest. And such corporation, or in case of a sale of its franchise by the court, then the successor corporation acquiring the franchise, shall be entitled to the same period of time for the performance of said acts and things after the termination of receivership, as remained to said corporation at the time of entry of the order, judgment or decree appointing the receiver in the first instance. This act as here amended shall not apply to nor affect any street surface railroad company the route of which in whole or in part lies within any city of the first or second class in this state, and shall not apply to nor affect any railroad corporation incorporated under any private or local bill or act.

§ 2. This act shall take effect immediately.

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**(4) Elections**

**L. 1881, Ch. 317. "An Act to authorize a change, in certain cases, of the time for holding elections in railroad companies."**

**Change of time for holding elections.** § 1. Any railroad company, the time for the annual election of directors in which is now fixed for any day in the month of June, may by a vote of a majority of the stock, either in person or by proxy,

thereof to that effect, and filing in the office of the secretary of state a copy of such proceedings, certified by the secretary of the company under its corporate seal, change the time for holding such annual election to any day in the month of April; provided, however, that the first election held under such resolution shall be held in the month of April which shall precede the time at which such election would otherwise have been held.

§ 2. This act shall take effect immediately.

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### (5) Consolidations

**L. 1897, Ch. 193. "An Act in relation to the consolidation of domestic and foreign railroad corporations."**

§ 1. The consolidation heretofore effected of a domestic railroad corporation with a foreign railroad corporation, shall not be deemed invalid because such roads at the time of the consolidation did not form a connected and continuous line, if, when the consolidation was effected, an intermediate line, by purchase or by a lease, of not less than ninety-nine years became, with the consolidated roads, a continuous and connecting line of railroad, and such consolidation is hereby ratified and confirmed.

§ 2. This act shall take effect immediately.

**L. 1903, Ch. 30. "An Act in relation to the consolidation of domestic and foreign railroad corporations."**

§ 1. The consolidation heretofore effected of a domestic railroad corporation with a foreign railroad corporation, shall not be deemed invalid because such roads at the time of the consolidation did not form a connected and continuous line, if, when the consolidation was effected, or thereafter, an intermediate line, by purchase or by a lease, of not less than ninety-nine years became, with the consolidated roads, a continuous and connecting line of railroad.

§ 2. This act shall take effect immediately.

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### (6) Change of Gauge

**L. 1891, Ch. 267. "An Act to authorize change of gauge on railroads and to provide for an increase of floating and bonded indebtedness."**

§ 1. Any railroad company incorporated under chapter one hundred and forty of the laws of eighteen hundred and fifty, entitled "An act to authorize the formation of railroad corporations and to regulate the same," and acts amendatory thereof and supplementary thereto, may change the gauge of its road on consent of the board of railroad commissioners and approval of the stockholders of said railroad company owning

three-fourths in amount of the capital stock, said approval of said stockholders to be made at a special meeting of the stockholders of said company called for that purpose; and upon like consent of said board of railroad commissioners, and upon like approval of the stockholders of said railroad company owning three-fourths in amount of the said capital stock of said company, the floating and bonded indebtedness of said railroad company may be increased to an amount necessary to make such change of gauge and to provide for the operating expenses of said railroad, notwithstanding restrictions or limitations contained in the original certificate of incorporation of said railroad company.

§ 2. This act shall take effect immediately.

### (7) Corporations Owning Canals.

L. 1881, Ch. 452. "An Act to authorize corporations owning canals to construct and operate railroads along side of or in lieu thereof."

**Canal corporation may construct railroad.** § 1. It shall be lawful for any corporation of this state owning and operating a canal to construct and operate along or in lieu of such canal a railroad, and the exercise of the authority hereby conferred shall not be deemed to forfeit or impair its corporate rights under its charter or act of incorporation.

**Corporate powers.** § 2. Such company in the construction and maintenance of any such railroad under the authority of this act shall have, possess and enjoy all the powers and privileges contained in an act entitled "An act to authorize the formation of railroad corporations and to regulate the same," passed April second, eighteen hundred and fifty, and the several acts amending the same, and be subject to all the duties, liabilities and provisions so far as relates to any powers or privileges by this act upon said company conferred and hereafter exercised.

**Saving clause.** § 3. Nothing in this act contained shall authorize the construction of any railroad except upon or along such canal owned and operated by any such company, and not in any other locality.

§ 4. This act shall take effect immediately.

### (8) Intersections

L. 1835, Ch. 300. "An Act to enlarge the powers of commissioners of highways."

L. 1853, Ch. 62. "Act to regulate the construction of roads and streets across railroad tracks."

The above acts seem to be obsolete, or superseded by Railroad Law, sections 60-69.

**L. 1893, Ch. 239. "An Act in relation to the intersections and crossings of the tracks and roadbeds of certain railroads laid in, across or upon the highways, streets, avenues or roads of the cities, towns and villages of the state."**

§ 1. Whenever the railroad or route of any street surface railroad corporation shall intersect and cross, or shall cross the tracks and roadbed of any railroad, operated by locomotive, steam or other power, which are laid in, across or upon the surface of any street, avenue, road or highway in any city, town or village of the state, having less than five hundred thousand inhabitants, and such street surface railroad corporation having been unable to agree with the corporation owning the tracks and roadbed so intersected or to be intersected and crossed, as to the line or lines, grade or grades, points or manner of such intersection and crossing, or upon the compensation to be made therefor, shall have applied to the court by petition to appoint commissioners to determine the same, the court shall upon application made by such street surface railroad corporation, at, or after, the time of the appointment of such commissioners, or if an answer to the petition of such street surface railroad corporation has been interposed, at any time thereafter, direct that such street surface railroad corporation, be permitted to lay its tracks across and to intersect, upon the surface of the street, avenue, road or highway, the tracks and roadbed of such railroad operated by locomotive, steam, or other power, provided, such street surface railroad corporation shall at the time of obtaining such order make and file with the clerk of said court, its bond or undertaking in writing, in an amount and with surety or sureties to be approved by the court, conditioned for the full and faithful performance by such street surface railroad corporation of any and all conditions and requirements which may be imposed by said commissioners and be affirmed by the court, in determining the line or lines, grade or grades, points or manner of such intersection and crossing and as to the amount of compensation to be paid therefor, and also conditioned to conform such crossing and intersection made by virtue of such order of the court to the requirements made by said commissioners as affirmed by the court.

§ 2. No street surface railroad shall be allowed to lay its tracks at grade across the tracks or roadbed of any railroad operated by locomotive steam power at any point where there are three or more tracks of the steam road proposed to be crossed, which tracks have been constructed and in operation at least two years, unless the written consent of the state railroad commissioners be first obtained for such crossing at grade. But this section shall not affect the operation of section one of this act in any



suit or proceeding now pending nor any renewals of said pending suit or proceeding brought for any cause.

§ 3. This act shall take effect immediately.

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### (9) Tunnels

**L. 1891, Ch. 360. "An Act to confer upon the board of railroad commissioners of the state of New York authority to compel the lighting and ventilation of all tunnels within this state which are used by steam railroads."**

**Ventilation.** § 1. The board of railroad commissioners of the state of New York are hereby authorized, empowered and given full and complete authority to require and compel all tunnels used or to be used by railroads operated by steam in this state to be properly ventilated, in such manner and by such means and mechanical appliances as said board of railroad commissioners, or a majority of the same, may direct.

**Lighting.** § 2. The board of railroad commissioners of this state are also hereby authorized, empowered and given full and complete authority to require and compel all tunnels used, or to be used by railroads operated by steam in this state, to be properly lighted by electricity or otherwise, or by such means or in such manner as said board of railroad commissioners, or a majority of the same, may direct.

**Compliance with orders of commissioners.** § 3. Whenever said board of railroad commissioners of this state, or a majority thereof, shall cause to be personally served upon any railroad corporation controlling any tunnel, or part of a tunnel, in this state for the purpose of operating a railroad or moving, hauling or propelling cars therein by steam by delivering a copy personally to the president, general manager or any director of said corporation of a notice or order, signed by a majority of said board of railroad commissioners, stating and specifying the structures to be erected, the manner, means, mechanical appliance and apparatus to be used in lighting or ventilating any tunnel or tunnels used by said corporation for the purpose of moving, hauling or propelling cars by steam therein as aforesaid, said corporation shall, within thirty days from and after the service of said notice or order as aforesaid, cause said tunnel or tunnels so used by it as aforesaid to be lighted or ventilated, or both, in

the manner and by the means and use of the mechanical apparatus and appliances specified and pointed out in said notice or order.

**Mandamus.** § 4. After the expiration of thirty days from the service of said order or notice specified in the preceding section, as therein directed, if said corporation shall not have fully complied with the provisions and requirements of said notice or order as aforesaid and as therein directed and required, said board of railroad commissioners, or a majority of said board, may apply to the supreme court of this state for a writ of mandamus to compel said corporation or corporations so neglecting or refusing to obey and comply with the provisions of said order or notice to comply with and obey the provisions and requirements of said notice or order, and said court shall have full power and authority to hear and determine said matter, and, after giving the corporation or corporations proceeded against an opportunity to be heard in its or their defense, to compel said corporation or corporations so proceeded against to obey said order or notice, and forthwith comply with and carry out the provisions and requirements therein contained.

**Violation of act.** § 5. Every corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and may be indicted therefor, and may be compelled to appear and plead to an indictment therefor in the person of its president, secretary, treasurer or any director thereof, and a bench warrant may issue out of any competent court to compel such attendance and pleading, and, upon conviction thereof, punished by a fine of one thousand dollars, and an additional fine of five hundred dollars a day for each and every day or part of a day after thirty days from the due service of said notice or order that said corporation shall refuse or neglect to obey and carry out the requirements and provisions of the same, and duly sentenced to pay the same.

**Judgment-roll.** § 6. It shall be the duty of the district attorney prosecuting any corporation for a violation of any of the provisions of this act, that shall be convicted thereof and sentenced to pay a fine therefor, to cause a judgment-roll to be made up, consisting of the indictment orders and sentence of the court and a formal judgment, to be prepared by him, which judgment shall be duly signed by the clerk of the county in which said trial took place; said judgment-roll shall be filed by said county clerk and said judgment shall be duly recorded in the book of judgments in said county and duly entered and docketed by said county clerk in said county the same as if said judgment had been obtained in a civil action, and said judgment so duly entered

and docketed shall become and be a lien upon all of the real estate of said corporation against which the same is obtained, and the collection thereof may be enforced by execution to be issued and signed by the district attorney of the county where the trial of said indictment took place, in the same manner and to the same extent as executions are collected in civil actions.

**Approval of appliances in New York city.** § 7. In cities in this state having a population of one million inhabitants or over, where tunnels are or may hereafter be operated or controlled by any railroad corporation such portions of any mechanical or other devices or appliances as may be required under the provisions of this act to be constructed on or above the surface of any streets, avenues or other places under which such tunnels may be built, shall be subject as to form, material and construction, to the approval of the local authorities of such cities, except that in the city of New York such approval shall be by a majority vote of the mayor, the comptroller, the commissioner of public works and the president of the department of public parks of said city.

§ 8. This act shall take effect immediately.

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## (10) Air Brakes

L. 1893, Ch. 543. "An Act to promote the safety of railway employees by compelling the equipment of freight cars with continuous power or air brakes, and locomotives with driving wheel brakes."

**Equipment of engines.** § 1. That from and after the first day of January, eighteen hundred and ninety-five, it shall be unlawful for any railroad company to use within the state on its line or lines any locomotive engine not equipped with a power driving wheel brake and appliances for operating the train brake system.

**Coal jimmies.** § 2. That on and after the first day of January, eighteen hundred and ninety-eight, the use of cars known and designated as "coal jimmies" in any form shall be unlawful within the state, except upon any railroad whose main line is less than fifteen miles in length and whose average grade exceeds two hundred feet to the mile, under a penalty of one hundred dollars for each offense, said penalty to be recovered in an action to be brought by the attorney-general in the name of

the people and in the judicial district where the principal office of the company within the state is located. This section shall not be construed to authorize the interchange of such "coal jimmies" with, and the use thereof upon, railroads of more than fifteen miles in length or whose average grade is less than two hundred feet to the mile. (*Thus amended by L. 1896, ch. 486, and L. 1900, ch. 549.*)

**Air-brakes.** § 3. That on and after the first day of January, nineteen hundred and one, it shall be unlawful for any railroad or other company to haul or permit to be hauled or used on its line or lines within this state any freight train that has not a sufficient number of cars in it so equipped with continuous power or air brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose. (*Thus amended by L. 1900, ch. 549.*)

**Statement of number of cars to be filed.** § 4. That within sixty days from the passage of this act every railroad or other company operating a line of railroad within the state shall file with the board of railroad commissioners at its office in Albany a verified statement of the total number of freight cars owned or operated by it, the number of such cars equipped with such continuous power or air brakes and the number unequipped, and shall thereafter annually and in the month of January, for the ensuing ten years, file with said board a verified report of the number of cars so equipped in each year and the number of cars, if any, remaining unequipped.

**Penalty.** § 5. That on and after January first, nineteen hundred and one, any railroad or other company hauling or permitting to be hauled on its line or lines any freight train in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every violation, to be recovered in any action to be brought by the attorney-general in the name of the people and in the judicial district wherein the principal office of the company within the state is located, and it shall be the duty of the board of railroad commissioners of the state to notify the attorney-general of all such violations coming to its notice. (*Thus amended by L. 1900, ch. 549.*)

**Extension of time for compliance with act.** § 6. That the board of railroad commissioners may, from time to time, after full hearing given and for good cause shown, extend the time within which any company shall comply with the require-

ment of this act, not exceeding, however, four years from the first day of January, eighteen hundred and ninety-eight. (*Thus amended by L. 1900, ch. 549.*)

**Repeals.** § 7. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 8. This act shall take effect immediately.

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### (11) Couplers

**L. 1893, Ch. 544.** "An Act to promote the safety of railway employees by compelling the equipment of freight cars with automatic couplers."

**Equipment of new cars.** § 1. That from and after the passage of this act, every new freight car which is to be used in this state shall be equipped with couplers of the master car builders' type, which can be coupled automatically by impact, and which may, except in cases of accident, be uncoupled without the necessity of a person going between the cars.

**Equipment of old cars.** § 2. That from and after the passage of this act, in addition to such new freight cars, there shall be equipped each year with such couplers, by every company operating a line or lines of railroad within the state, at least twenty per centum of all freight cars owned or operated by such companies, and used within the state, which are not so equipped, except certain cars known and designated as "coal jimmies," and that on and after the first day of January, eighteen hundred and ninety-eight, the use of said "coal jimmies" in any form, and that on and after the first day of September, nineteen hundred and eight, the use of any car as a caboose unless it shall have a suitable and safe platform at each end thereof, and the usual railing for the protection of persons using such platform shall be unlawful within this state, except upon any railroad whose main line is less than fifteen miles in length and whose average grade exceeds two hundred feet to the mile, under penalty of one hundred dollars for each offense, said penalty to be recovered in an action to be brought by the attorney-general, in the name of the people, and in the judicial district where the principal office of the company within the state is located. This section shall not be construed to authorize the interchange of such "coal jimmies" with, and the use therefor upon railroads of more than fifteen miles in length or whose average grade is less than two hundred feet to the mile. (*Thus amended by L. 1896, ch. 485, and L. 1908, ch. 448.*)

**Date of compliance.** § 3. That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any railroad or other company to haul, or permit to be hauled or used, on its line or lines within the state, any freight car not equipped with couplers of the master car builders' type, and coupling automatically by impact, and which can be uncoupled, except in cases of accident, without the necessity of men going between the ends of the cars.

**Statement of number of cars to be filed.** § 4. That within sixty days from the passage of this act, every railroad or other company operating a line of railroad within the state, shall file with the board of railroad commissioners, at its office in Albany, a verified statement of the total number of freight cars owned or operated by it, the number of such cars equipped with the automatic couplers, and the number unequipped; and shall thereafter annually, and in the month of January, for the ensuing five years, file with said board a verified report of the number of cars so equipped in each year, and the number of cars, if any, remaining unequipped.

**Penalty.** § 5. That on and after January first, eighteen hundred and ninety-eight, any railroad or other company using, or permitting to be used, on its line or lines, any freight car not equipped with couplers as provided for in this act, shall be liable to a penalty of one hundred dollars for each and every violation, to be recovered in an action to be brought by the attorney-general, in the name of the people, and in the judicial district wherein the principal office of the company within the state is located; and it shall be the duty of the board of railroad commissioners of the state to notify the attorney-general of all such violations coming to its notice.

**Extension of time for compliance with act.** § 6. That the board of railroad commissioners may, from time to time, after full hearing given and for good cause shown, exempt any company from the provisions of this act, as to the equipment of twenty per cent of its cars in any particular year or years, and may extend the time within which any company shall comply with the requirements of this act, not exceeding, however, five years from the first day of January, eighteen hundred and ninety-eight.

**Repeals.** § 7. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 8. This act shall take effect immediately.

**(12) Fares and Mileage Books****L. 1889, Ch. 38. "An Act to regulate the payment of fares upon railroads."**

**Additional fare when fare paid on cars.** § 1. It shall be lawful for any company owning or operating a steam railroad in this state, to demand and collect an excess charge of ten cents over the regular or established rate of fare, from any passenger who pays fare in the car in which he or she may have taken passage, except where such passage is wholly within the limits of any incorporated city in this state, provided, however, that it shall be the duty of such company to give to any passenger paying such excess, a receipt or other evidence of such payment, and which shall legibly state that it entitles the holder thereof to have such excess charge refunded, upon the delivery of the same at any ticket office of said company, upon the line of their railroad, and said company shall refund the same upon demand; and provided further that this act shall not apply to any passenger taking passage from a station or stopping place when tickets can not be purchased during half an hour previous to the schedule time for the departure of said train, on which such passenger takes passage.

§ 2. This act shall take effect immediately.

**L. 1895, Ch. 1027. "An Act in relation to the issue of mileage books by railroad corporations."**

**Issue and use of mileage books.** § 1. Every railroad corporation operating a railroad in this state, the line or lines of which are more than one hundred miles in length, and which is authorized by law to charge a maximum fare of more than two cents per mile, and not more than three cents per mile, and which does charge a maximum fare of more than two cents per mile, shall issue mileage books having either five hundred or one thousand coupons attached thereto, entitling the holder thereof, upon complying with the conditions hereof, to travel either five hundred or one thousand miles on the line or lines of such railroad, for which the corporation may charge a sum not to exceed two cents per mile. Such mileage books shall be kept for sale by such corporation at every ticket office of such corporation in an incorporated village or city, and any of such books shall be issued immediately upon application therefor. Upon presentation of such mileage book to a conductor on any train on any line of railroad owned or operated by said railroad corporation, the holder thereof, or any member of his family or firm, or any salesman of his

firm, shall be entitled to travel for a number of miles equal to the number of coupons detached by such conductor. Such mileage book shall entitle the holder thereof to the same rights and privileges in respect to the transportation of person and property to which the highest class ticket issued by such corporation would entitle him. Such mileage books shall be good until all coupons attached thereto have been used. Any railroad corporation which shall refuse to issue a mileage book, as provided by this section, or in violation hereof, to accept such mileage book for transportation, shall forfeit fifty dollars, to be recovered by the party to whom such refusal is made; but no action can be maintained therefor unless commenced within one year after the cause of action accrues. (*Thus amended by L. 1896, ch. 835; L. 1897, ch. 484, and L. 1898, ch. 577.*)

§ 2. This act shall take effect immediately.

**L. 1857, Ch. 228. "An Act in relation to the payment of fares upon the New York Central Railroad."**

§ 1. The New York Central Railroad Company, at every station on its road, where a ticket office is now or may hereafter be established, shall keep the same open for the sale of tickets at least one hour prior to the departure of each passenger train from such station; but nothing herein contained shall require said company to keep such office open between nine o'clock p. m. and five o'clock a. m., except at Albany, Schenectady, Utica, Syracuse, Rochester, Buffalo and Suspension Bridge, which shall be kept open as hereinbefore required between five o'clock a. m. and eleven o'clock p. m.

§§ 2-3 superseded.

**L. 1894, Ch. 743. "An Act to facilitate travel upon elevated railroads in the city of New York."**

§ 1. Any passenger upon the Manhattan elevated railway who has paid the fare required for passage from any point on said railway east of Broadway, between the Battery and One Hundred and Twenty-ninth street, not exceeding five cents, shall be entitled to a continuous passage, without change of cars, on the suburban rapid transit railway or on any railway owned or operated by the Manhattan Railway Company, within the city of New York, in connection with said Manhattan elevated railway from One Hundred and Twenty-ninth street, or other termini of the lines of said Manhattan elevated railway south of the Harlem river, to any station on the route of said suburban rapid transit railroad, or such other elevated railroad as may be operated by the Manhattan Railway Company north of the Harlem river, without the payment



of additional fare; and any passenger on the suburban rapid transit railroad, or any elevated railway owned or operated by the Manhattan Railway Company in connection with the Manhattan elevated railroad, within the city of New York, running southward to One Hundred and Twenty-ninth street, or other termini of the Manhattan railroad, who has paid the fare required on said suburban rapid transit railroad to One Hundred and Twenty-ninth street in the city of New York, not exceeding five cents, shall be entitled to a continuous passage, without change of cars, over the Manhattan elevated railway to any station on its route east of Broadway, between One Hundred and Twenty-ninth street and the Battery, without the payment of additional fare.

§ 2. This act shall take effect immediately.

### (13) Street Railroads

**L. 1896, Ch. 649. "An Act to validate and confirm certain consents heretofore given by the local authorities of cities of the first and second class in the construction, operation and maintenance of street surface railroads therein."**

**Certain consents of local authorities confirmed.**

§ 1. All consents given since December first, eighteen hundred and ninety-five, and prior to February first, eighteen hundred and ninety-six, by the local authorities of any city of the first or second class, to the construction, operation and maintenance of a street surface railroad in any such city by a railroad corporation which has not complied with the provisions of section fifty-nine of the railroad law or has failed to obtain the certificate therein provided for, are hereby validated and confirmed, and any such corporation may construct, operate and maintain a street surface railroad over, along and upon the streets, avenues, highways and public places described in such consent upon obtaining the consent of the owners of property bounded on such streets, avenues, highways or public places as provided by law.

§ 2. This act shall take effect immediately.

**L. 1893, Ch. 679. "An Act for the relief of street surface railroad companies."**

**Extensions and franchises confirmed.** § 1. Any street surface railroad corporation which shall have heretofore constructed and is now operating any extension or branch of its railroad along any streets or highways or portion thereof in a city having less than fifty thousand inhabitants, or in any town

adjoining such city, and which shall heretofore have obtained consent of the owners of one-half in value of the property bounded on, and the consents also of the local authorities having control of that portion of the streets, roads or highways upon which such extension or branch is constructed and is being operated to the construction and operation of the same, is hereby authorized to operate and maintain any such branch or extension, upon filing in the office of the secretary of state a certificate, signed by its board of directors, which certificate shall contain a statement of the names of the cities, towns, villages and counties, and the names or description of the streets, avenues and highways in which such extensions or branches have been constructed, the places from and to which the same have been constructed and are to be maintained and operated and the length thereof as near as may be; thereupon said extensions and branches shall be deemed and considered a part of the lines of said railway from the date of the filing thereof, and all corporate action relating to the construction, maintenance and operation of such extensions or branches, or creating liens upon the same by said corporation are hereby validated and confirmed.

This act supersedes L. 1892, ch. 604, to similar effect.

§ 2. Nothing in this act contained shall affect or impair any vested right or any pending litigation, nor shall any corporation which shall avail itself of the provisions of this act be deemed thereby to have waived any rights which it theretofore had to maintain and operate any branch or extension named in any certificate filed by it hereunder.

§ 3. This act shall take effect immediately.

**L. 1901, Ch. 637. "An Act relating to the payment of a percentage of the gross receipts due to a city or village from a corporation building or operating a street surface railroad, or a branch or extension thereof."**

§ 1. Every corporation building or operating a street surface railroad, or a branch or extension thereof, under the provisions of article four of the railroad law, or chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, which, at any time during the period of six years prior to January first, nineteen hundred and one, became liable to pay any percentage based upon the gross receipts of said corporation, under the provisions of section ninety-five of the railroad law, and which heretofore has paid or hereafter shall pay, separately

or together, the amount of such percentage and, in addition thereto, interest thereon at the rate of seven per centum per annum, computed from the time such percentage became due by such section ninety-five up to the time such percentage was or shall be paid, by virtue of such payment or payments, shall be discharged of liability with the same force and effect as if the amount of such percentage had been paid upon the date when it first became due under the provisions of the said section of the said railroad law.

§ 2. All acts and parts of acts inconsistent herewith are hereby repealed.

§ 3. This act shall take effect immediately.

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#### **(14) Sale of Property Found in Street Cars**

L. 1899, Ch. 488. "An Act authorizing the sale of property left in street surface railroad cars, and the disposition of the proceeds thereof."

**Sale of unclaimed property.** § 1. It shall be the duty of every street surface railway corporation doing business in this state, and of every corporation engaged in this state in the business of carrying passengers for hire in cabs, coaches, or other similar vehicles or of letting such vehicles for hire, or in the business of operating a line of stages or omnibuses, which shall have unclaimed property left in its cars, cabs, coaches, stages or other similar vehicles, to ascertain if possible, the owner or owners of such property, and to notify such owner or owners of the fact by mail as soon as possible, after such property comes into its possession. Every such corporation which shall have such property not perishable, in its possession for the period of three months, may sell the same at public auction, after giving notice to that effect, by one publication, at least ten days prior to the sale, in a daily newspaper published in the city or village in which such sale is to take place, of the time and place at which such sale will be held, and such sale may be adjourned from time to time until all the articles offered for sale are sold. All perishable property so left, may be sold by any such corporation without notice, as soon as it can be, upon the best terms that can be obtained. (*Thus amended by L. 1907, ch. 463.*)

**Disposition of proceeds.** § 2. All moneys arising from the sale of any such unclaimed property, after deducting charges for storage and expenses of sale, shall be paid by any such corporation to the treasurer of any association, composed of the employees of such corporation, having for its object the pecuniary assistance of its members in case of disability caused by sickness or accident, for the use and benefit of such association and its members; and where no such association of the employees of any such corporation is in existence at the time of any such sale, such moneys shall be paid over to the county treasurer of the county or if in a city, to the chief fiscal officer thereof, in which such sale took place for the benefit of such city or county. (*Thus amended by L. 1907, ch. 463.*)

§ 3. This act shall take effect immediately.

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### (15) Park Railroads in New York City

L. 1892, Ch. 532. "An Act relative to railways in and near public parks in the cities of the state of New York."

**Construction.** § 1. For the purpose of providing for the more speedy transportation of persons across public parks in the cities within the state of New York having a population of one million five hundred thousand or upwards it shall be lawful for the municipal authorities, officers, departments, or boards having control of such parks to construct railways in and upon tunnels or roads or ways depressed below the surface of said parks in such cities in this state, and to extend the same east or west to connect with any surface railways in such cities, now in existence, and with railways which hereafter may be built by companies now chartered and existing, and to contract in the name of such cities with any person or corporations for the construction thereof, and for the equipment and running of the same either with or without public advertisement upon such terms and conditions, including the rates of fare to be charged to persons using such railways, for such compensation to be paid to such cities, and subject to such rules, regulations and requirements as may be determined upon in said contract, and as the department or board, or officer having charge of said parks may, from time to time, thereafter establish or impose.

**Consents of property owners.** § 2. No railroads shall be constructed, equipped, or operated by virtue of this act except upon the condition that the consent of the owners of one-half in value of the property outside of said public parks bounded on and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct, operate or extend the said railroads to connect with any surface railroads in such cities be first obtained, or in case the consent of such property owners can not be obtained, the general term of the supreme court in the district in which it is proposed to be constructed may, upon application, appoint three commissioners, who shall determine, after hearing of all parties interested, whether the portion of such railroad outside of said public parks ought to be constructed or operated, and their determination confirmed by the court may be taken in lieu of the consent of the property owners.

**Expense of construction and operation.** § 3. Whenever any railroad shall be constructed, equipped or operated under this act, the expense of such construction, equipment and operation shall be paid by the municipal corporation within which such railroads are situate, in the same manner as the other expenses of such municipal corporation are paid and provided for.

**Agreements for payment of cost by instalments.** § 4. The department, board or officer having control of such public parks may agree with the person or corporation with whom any contract may be made for the construction, equipment and operation of said railroad that the cost of such construction shall be paid by such cities in instalments out of the compensation which such person or corporation shall agree to pay to such cities under any such contract from time to time and such compensation shall be received.

**Disposition of income.** § 5. The compensation or income which shall be received by such cities from such railroad, except as the same may be otherwise applied pursuant to the provisions of this act, shall be paid into the treasury thereof.

**Motive power.** § 6. Any railroad constructed, equipped and operated under this act may operate any portion of its road by animal or horse power, or by cable.

**Railroads, in New York city, by whom constructed.**

§ 7. Whenever any railroads shall be constructed in the city of New York under the provisions of this act such railroads shall be constructed by the department of public parks of said city with the concurrence of the sinking fund commissioners of said city.

**Issue of bonds by comptroller.** § 8. Whenever any such railroad shall be constructed, equipped and operated under the provisions of this act in the city of New York, should no such agreement be made as is provided in the fourth section of this act, it shall be the duty of the comptroller of said city from time to time upon the request of the sinking fund commissioners to issue bonds or stock of the city in the aggregate sufficient to pay the expense of such construction, equipment or operation which said bonds or stock shall be paid out of taxation in not more than ten years from the date of their issue and shall bear interest not exceeding four per centum per annum and shall be sold at not less than par, and the cost of constructing, equipping and operating such railroads shall be paid out of the proceeds of such bonds or stocks.

§ 9. This act shall take effect immediately.

**L. 1898, Ch. 597. "An Act to provide for a change of motive power in the operation of certain railways in and near public parks in the cities of the state of New York."**

§ 1. Any railroad company having the right to use any railway now constructed in any public tunnel, road or way depressed below the surface of and wholly within any public park in any city within the state of New York having a population of one million five hundred thousand or upwards, may change the motive power and operate any such railway by cable power, underground current of electricity, compressed air, or any other motive power other than locomotive steam power, that may be consented to by the authorities having control of such park or parks, and by the board of railroad commissioners of the state of New York, and may make changes in the construction of the road or roadbed or other property made necessary by the change of motive power. Such reconstruction shall be at the sole cost and expense of the railroad company making such change, and when completed such improved railway shall be the property of the municipal corporation having control of such public tunnel, road or depressed way.

§ 2. This act shall take effect immediately.

**(16) Elevated Railroads**

**L. 1896, Ch. 388. "An Act to provide for a better system of lighting passenger cars on elevated railroads in cities of over twelve hundred thousand inhabitants."**

**Equipment of cars with approved lighting system.**

§ 1. Within one year from the passage of this act every corporation operating an elevated railroad in any city of over twelve hundred thousand inhabitants in this state computed according to the last census, shall equip two-fifths of all cars used for the transportation of passengers with the most approved system of lighting passenger cars now in use upon railroads, either by electricity or gas of not less than eighteen candle power, and shall likewise equip an additional two-fifths of all such cars within two years from the passage of this act, and shall likewise equip all remaining such cars within three years from the passage of this act, and every such corporation is hereby prohibited from using after one year from the passage of this act, kerosene or coal oils as a means of lighting more than three-fifths in number of all such cars, and after two years from the passage of this act, no more than one-fifth in number of all such cars, and after three years from the passage of this act such corporation is prohibited from using kerosene or coal oils as a means of lighting any of its passenger cars.

**Penalty.** § 2. Any violation of the provisions of this act shall render any such corporation liable to pay a fine or penalty of fifty dollars for each and every day, for each and every passenger car run over its railroad which is not equipped and lighted as provided in the first section of this act; and such fine may be recovered by any passenger on such railroad who may sue therefor; and any violation of the provisions of this act on the part of any such railroad corporation shall also be a misdemeanor.

§ 3. This act shall take effect immediately.

**L. 1891, Ch. 294. "An Act in relation to elevated railways in cities."**

**Abandonment of portion of route.** § 1. Any company operating an elevated railway or railways in any city of this state for the transportation of passengers, mails or

freight, and which, prior to the passage of this act shall have built and operated six-tenths of its route as set forth and embodied in its articles of incorporation, may declare relinquished\* and abandoned any portion of its said route, which it may deem no longer necessary for the successful operation of its road and the convenience of the public. Such declaration of abandonment to be valid, shall be adopted by the board of directors, under the seal of such company, and shall be submitted to the stockholders thereof at a meeting called for the purpose of taking the same into consideration. Due notice of the time and place of holding said meeting, and stating the object thereof shall be given by the company to its stockholders by written or printed notices addressed to each of the persons in whose name the capital stock of the company stands on the books thereof, at the address of such persons as stated on the books, or as known to the secretary of the company, and delivered or mailed to such persons, or the legal representatives of such persons, respectively, at least thirty days before the time of holding the meeting of such company, and also by a general notice published daily for at least four weeks in some newspaper last designated for the publication of the session laws or of judicial proceedings and legal notices in the county where the route of such company is located; and at the said meeting of stockholders the declaration of the said directors shall be considered and a vote by ballot taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy, and if two-thirds of all the votes of the stockholders cast in person or by proxy at said meeting shall be for the adoption of said declaration of abandonment, then that fact shall be certified thereon by the secretary of the company under the seal thereof, and the declaration so adopted shall be submitted for approval to the state board of railroad commissioners, and if approved by them, such approval shall be indorsed thereon, and the said declaration so certified and indorsed shall be filed and recorded in the office of the secretary of state, and from the time of such filing such portion of said route designated, in such declaration of such company shall be deemed to be abandoned. A copy of such declaration of abandonment, duly certified by the secretary of state, under his official seal, shall be presumptive evidence in all courts and places of the facts which it recites, and of the regularity of the proceedings resulting in such abandonment.

§ 2. This act shall take effect immediately.

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\* So in original.



**(17) Powers of Certain Bridge Corporations**

**L. 1893, Ch. 225. "An Act to authorize bridge companies to lay tracks and operate a railway upon any bridge connecting any city in the state of New York, of more than one million inhabitants, with any other city in said state."**

§ 1. Any company incorporated for the purpose of constructing and maintaining a bridge or bridges over any river, bay, arm of the sea or other body of water, connecting any city in the state of New York, containing more than one million inhabitants, with any other city in said state, is hereby empowered to lay tracks and operate a railway upon said bridge or bridges.

§ 2. This act shall take effect immediately.

# REAL PROPERTY LAW

## Laws 1909, Chap. 52

AN ACT relating to real property, constituting chapter fifty of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

## CHAPTER 50 OF THE CONSOLIDATED LAWS

### REAL PROPERTY LAW

- Article
1. Short title; definitions (§§ 1, 2).
  2. Tenure of real property (§§ 10-18).
  3. Creation and division of estates (§§ 30-72).
  4. Uses and trusts (§§ 90-117).
  5. Powers (§§ 130-182).
  6. Dower (§§ 190-207).
  7. Landlord and tenant (§§ 220-232).
  8. Conveyances and mortgages (§§ 240-274).
  9. Recording instruments affecting real property (§§ 290-332).
  10. Discharge of ancient mortgages (§§ 340-344).
  11. Quieting title to real property (§§ 360-366).
  12. Registering title to real property (§§ 370-435).
  13. Cemetery lands (§§ 450, 451).
  14. Laws repealed; construction; when to take effect (§§ 460-462).

### ARTICLE 1

#### Short Title; Definitions

- Section
1. Short title.
  2. Definitions.

**§ 1. Short title.** This chapter shall be known as the "Real Property Law."

**§ 2. Definitions.** The terms "real property" and "lands" as used in the first eight articles of this chapter are co-extensive in meaning with lands, tenements and hereditaments.

## ARTICLE 2

### Tenure of Real Property

- Section 10. Capacity to hold real property.
11. Capacity to transfer real property.
  12. Deposition of resident alien.
  13. When and how alien may acquire and transfer real property.
  14. Effect of woman's marriage with alien.
  15. Title through alien.
  16. Liabilities of alien holders of real property.
  17. Heirs of patriotic Indian.
  18. Mines in Saint Lawrence county.

**§ 10. Capacity to hold real property.** 1. A citizen of the United States is capable of holding real property within this state, and of taking the same by descent, devise or purchase.

2. Any citizen of a state or nation which, by its laws, confers similar privileges on citizens of the United States, may take, acquire, hold and convey lands or real estate within this state, in the same manner and with like effect as if such person were, at the time, a citizen of the United States; provided, however, that nothing herein contained shall affect the rights of this state in any action or proceedings for escheat instituted before May nineteenth, eighteen hundred and ninety-seven.

**§ 11. Capacity to transfer real property.** A person other than a minor, an idiot, or person of unsound mind, seized of or entitled to an estate or interest in real property, may transfer such estate or interest.

**§ 12. Deposition of resident alien.** An alien who, pursuant to the laws of the United States, has declared his intention of becoming a citizen, and who is, and intends to remain, a resident thereof, may make a written deposition to such facts, before any officer authorized to take the acknowledgment or proof of deeds to entitle them to be recorded within the state. Such deposition must be certified by the officer before whom it is made, and may be filed in the office of the secretary of state, and when so filed, must be recorded by him in a book kept for that purpose. Such deposition shall be presumptive evidence of the facts therein contained.

**§ 13. When and how alien may acquire and transfer real property.** An alien may, for a term of six years after filing the deposition described in the last preceding section, take, hold, convey and devise real property. If such deposition be filed, or such alien be admitted to citizenship, a grant, devise, contract or mortgage theretofore made to or by him is as valid and effectual as if made thereafter; provided, however, that a devise to an alien shall not be valid unless a deposition be filed by him, or he be admitted to citizenship, within one year after the death of the testator, or if the devisee is a minor, within one year after his majority. If a person who has filed such a deposition dies within six years thereafter, and before he is admitted to citizenship, his widow is entitled to dower in his real property, and if he dies intestate, his heirs or the persons who would otherwise answer to the description of heirs, inherit his real property, upon such persons being admitted to citizenship, or filing a deposition in their own behalf, within one year after such death, or if minors, within one year after their majority. If an action or proceeding is commenced by the state to recover real property held by an alien, such action or proceeding shall be suspended upon the filing of such deposition, and the service of a certified copy thereof upon the attorney-general, and the payment of the costs to the time of such service.

**§ 14. Effect of woman's marriage with alien.** Any woman born a citizen of the United States, who shall have married or shall marry an alien, and the foreign-born children and descendants of any such woman, shall, notwithstanding her or their residence or birth in a foreign country, be entitled to take, hold, convey and devise real property situated within this state in like manner, and with like effect, as if such woman and such foreign-born children and descendants were citizens of the United States; and the title to any such real property shall not be impaired or affected by reason of such marriage, or residence, or foreign birth; provided, that the title to such real property shall have been or shall be derived from or through a citizen of the United States.

**§ 15. Title through alien.** The right, title or interest in or to real property in this state now held or hereafter acquired by any person entitled to hold the same can not be questioned or impeached by reason of the alienage of any person through whom such title may have been derived. Nothing in this section affects or impairs the right of any heir, devisee, mortgagee, or creditor by judgment or otherwise.

**§ 16. Liabilities of alien holders of real property.**

Every alien holding real property in this state is subject to duties, assessments, taxes and burdens as if he were a citizen of the state.

**§ 17. Heirs of patriotic Indian.** The heirs of an Indian to whom real property was granted for military services rendered during the war of the Revolution may take and hold such real property by descent as if they were citizens of the state at the time of the death of their ancestors. A conveyance of such real property to a citizen of this state, executed by such Indian or his heirs after March seventh, eighteen hundred and nine, is valid, if executed with the approval of the surveyor-general or state engineer and surveyor indorsed thereupon.

**§ 18. Mines in Saint Lawrence county.** The proprietors of any mines or veins of lead or copper in the county of Saint Lawrence, may demise, lease, or rent the same for a period not to exceed twenty-one years from the date of any such lease, to any foreign individual or company, and such lessee may take, hold, work, use or convey the same during the said term, in the same manner and subject to the same liabilities as if such lessee were a natural born citizen.

**ARTICLE 3****Creation and Division of Estates**

- Section 30. Enumeration of estates.
31. Estates in fee simple and fee simple absolute.
  32. Estates tail abolished; remainders thereon.
  33. Freehold; chattels real; chattel interests.
  34. When estate for life of third person is freehold; when chattel real.
  35. Estates in possession and expectancy.
  36. Enumeration of estates in expectancy.
  37. Definition of future estates.
  38. Definition of remainder.
  39. Definition of reversion.
  40. When future estates are vested; when contingent.
  41. Power of appointment not to prevent vesting.
  42. Suspension of power of alienation.
  43. Limitation of successive estates for life.
  44. Remainders on estates for life of third person.
  45. When remainder to take effect if estate be for lives of more than two persons.
  46. Contingent remainder on term of years.
  47. Estate for life as remainder on term of years.

- Section 48. Meaning of heirs and issue in certain remainders.
49. Limitations of chattels real.
50. Creation of future and contingent estates.
51. Future estates in the alternative.
52. Future estate valid though contingency improbable.
53. Conditional limitations.
54. When heirs of life tenant take as purchasers.
55. When remainder not limited on contingency defeating precedent estate takes effect.
56. Posthumous children.
57. When expectant estates are defeated.
58. Effect on valid remainders of determination of precedent estate before contingency.
59. Qualities of expectant estates.
60. Disposition of rents and profits.
61. Accumulations.
62. Anticipation of directed accumulation.
63. Undisposed profits.
64. When expectant estates are deemed created.
65. Estates in severalty, joint tenancy and in common.
66. When estate in common; when in joint tenancy.
67. Sale of real property held by tenant for life <sup>\*</sup>contingent with remainder or remainders over to persons whose identity is unknown.
68. Application, how made.
69. Sale, how conducted.
70. Conveyances upon sale.
71. Disposition of proceeds of sale.
72. Release of rents reserved by leases in perpetuity.

**§ 30. Enumeration of estates.** Estates in real property are divided into estates of inheritance, estates for life, estates for years, estates at will, and by sufferance.

**§ 31. Estates in fee simple and fee simple absolute.** An estate of inheritance continues to be termed a fee simple, or fee, and when not defeasible or conditional, a fee simple absolute, or an absolute fee.

**§ 32. Estates tail abolished; remainders thereon.** Estates tail have been abolished; and every estate which would be adjudged a fee tail, according to the law of this state, as it existed before the twelfth day of July, seventeen hundred and eighty-two, shall be deemed a fee simple; and if no valid remainder be limited thereon, a fee simple absolute. Where a remainder in fee shall be limited on any estate which would be a

\* So in original. See page 3386.

fee tail, according to the law of this state, as it existed previous to such date, such remainder shall be valid, as a contingent limitation on a fee, and shall vest in possession on the death of the first taker, without issue living at the time of such death.

**§ 33. Freehold; chattels real; chattel interests.** Estates of inheritance and for life shall continue to be termed estates of freehold; estates for years are chattels real; and estates at will or by sufferance continue to be chattel interests, but not liable as such to sale on execution.

**§ 34. When estate for life of third person is freehold; when chattel real.** An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee; after his death it shall be deemed a chattel real.

**§ 35. Estates in possession and expectancy.** Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy. An estate which entitles the owner to immediate possession of the property, is an estate in possession. An estate, in which the right of possession is postponed to a future time, is an estate in expectancy.

**§ 36. Enumeration of estates in expectancy.** All expectant estates, except such as are enumerated and defined in this article, have been abolished. Estates in expectancy are divided into,

1. Future estates; and
2. Reversions.

**§ 37. Definition of future estates.** A future estate is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate created at the same time.

**§ 38. Definition of remainder.** Where a future estate is dependent on a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

**§ 39. Definition of reversion.** A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of one or more particular estates granted or devised.

**§ 40. When future estates are vested; when contingent.** A future estate is either vested or contingent. It is vested, when there is a person in being, who would have an im-

mediate right to the possession of the property, on the determination of all the intermediate or precedent estates. It is contingent while the person to whom or the event on which it is limited to take effect remains uncertain.

**§ 41. Power of appointment not to prevent vesting.**

The existence of an unexecuted power of appointment does not prevent the vesting of a future estate, limited in default of the execution of the power.

**§ 42. Suspension of power of alienation.** The absolute power of alienation is suspended, when there are no persons in being by whom an absolute fee in possession can be conveyed. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation, by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate; except that a contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, die under the age of twenty-one years, or on any other contingency by which the estate of such persons may be determined before they attain full age. For the purposes of this section, a minority is deemed a part of a life, and not an absolute term equal to the possible duration of such minority.

**§ 43. Limitation of successive estates for life.**

Successive estates for life shall not be limited, except to persons in being at the creation thereof; and where a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto shall be void, and on the death of those persons, the remainder shall take effect, in the same manner as if no other life estates had been created.

**§ 44. Remainders on estates for life of third person.** A remainder shall not be created on an estate for the life of any other person than the grantee or devisee of such estate, unless such remainder be in fee; nor shall a remainder be created on such an estate in a term of years, unless it be for the whole residue of such term.

**§ 45. When remainder to take effect if estate be for lives of more than two persons.** When a remainder is created on any such life estate, and more than two persons are named as the persons during whose lives the life estate shall continue, the remainder shall take effect on the death of the two persons first named, as if no other lives had been introduced.



**§ 46. Contingent remainder on term of years.** A contingent remainder shall not be created on a term of years, unless the nature of the contingency on which it is limited be such that the remainder must vest in interest, during the continuance of not more than two lives in being at the creation of such remainder, or on the termination thereof.

**§ 47. Estate for life as remainder on term of years.** No estate for life shall be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

**§ 48. Meaning of heirs and issue in certain remainders.** Where a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

**§ 49. Limitations of chattels real.** All the provisions contained in this article, relative to future estates, apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years shall not be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

**§ 50. Creation of future and contingent estates.** Subject to the provisions of this article, a freehold estate as well as a chattel real may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created expectant on the determination of a term of years; and a fee or other less estate may be limited on a fee, on a contingency which, if it should occur, must happen within the period prescribed in this article.

**§ 51. Future estates in the alternative.** Two or more future estates may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

**§ 52. Future estate valid though contingency improbable.** A future estate, otherwise valid, shall not be void on the ground of the improbability of the contingency on which it is limited to take effect.

**§ 53. Conditional limitations.** A remainder may be limited on a contingency, which, if it happens, will operate to abridge or determine the precedent estate; and every such remainder shall be a conditional limitation.

**§ 54. When heirs of life tenant take as purchasers.**

Where a remainder shall be limited to the heirs, or heirs of the body, of a person to whom a life estate in the same premises is given, the persons who, on the termination of the life estate, are the heirs, or heirs of the body, of such tenant for life, shall take as purchasers, by virtue of the remainder so limited to them.

**§ 55. When remainder not limited on contingency defeating precedent estate takes effect.**

When a remainder on an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it shall be construed as intended to take effect, only on the death of the first taker, or the expiration by lapse of time of such term of years.

**§ 56. Posthumous children.** Where a future estate is limited to heirs, or issue, or children, posthumous children shall be entitled to take in the same manner as if living at the death of their parents; and a future estate, dependent on the contingency of the death of any person without heirs, or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

**§ 57. When expectant estates are defeated.** An expectant estate can not be defeated or barred by any transfer or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate by disseizin, forfeiture, surrender, merger or otherwise; but an expectant estate may be defeated in any manner, or by any act or means which the party creating such estate, in the creation thereof, has provided for or authorized. An expectant estate thus liable to be defeated shall not, on that ground, be adjudged void in its creation.

**§ 58. Effect on valid remainders of determination of precedent estate before contingency.**

A remainder valid in its creation shall not be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder was limited to take effect; should such contingency afterwards happen the remainder shall take effect in the same manner and to the same extent as if the precedent estate had continued to the same period.

**§ 59. Qualities of expectant estates.** An expectant estate is descendible, devisable and alienable, in the same manner as an estate in possession.

**§ 60. Disposition of rents and profits.** A disposition of the rents and profits of real property to accrue and be received

at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this article for future estates in real property.

**§ 61. Accumulations.** All directions for the accumulation of the rents and profits of real property, except such as are allowed by statute, shall be void. An accumulation of rents and profits of real property, for the benefit of one or more persons, may be directed by any will or deed sufficient to pass real property, as follows:

1. If such accumulation be directed to commence on the creation of the estate out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at or before the expiration of their minority.

2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it must commence within the time permitted, by the provisions of this article, for the vesting of future estates, and during the minority of the beneficiaries, and shall terminate at or before the expiration of such minority.

3. If in either case, hereinbefore provided for, such direction be for a longer term than during the minority of the beneficiaries, it shall be void only as to the time beyond such minority.

Provided, that the income arising from any real property granted, conveyed, or devised in trust to any incorporated college or other incorporated literary institution for any of the purposes specified in section one hundred and fourteen of this chapter, or for the purpose of providing for the support of any teacher in a grammar school or institute, may be permitted to accumulate until the same shall amount to a sum sufficient, in the opinion of the regents of the university, to carry into effect any of the charitable uses and trusts mentioned either in section one hundred and fourteen of this chapter or in this paragraph of this section.

Provided, if any of the principal of any trust fund actually received by any incorporated college, or other incorporated literary institution, or by the corporation of any city or village, or by the commissioners of common schools of any town, or by the trustees of any school district, under any grant, conveyance, or devise, for any of the purposes for which trusts are authorized under section one hundred and fourteen of this chapter, shall subsequently become diminished from any cause, such diminution may be made up by the accumulation of the interest or income of the principal of such trust fund, in accordance with the directions, if any contained in the grant, conveyance or devise of any such trust fund; and if no directions for that purpose are contained in such grant, conveyance or devise, then such diminution may be made

up in whole or in part by such accumulation, in the discretion of the trustees of such trust fund; but in no case shall such accumulation be allowed to increase the trust fund, beyond the true amount or value thereof, actually received by the trustees, to be estimated after the deduction of all liens and incumbrances on such trust fund, and of all expenses incurred or paid by the trustees in the collection or obtaining the possession of the same.

**§ 62. Anticipation of directed accumulation.** Where such rents and profits are directed to be accumulated for the benefit of a minor entitled to the expectant estate, and such minor is destitute of other sufficient means of support and education, the supreme court, at a special term, or, if such accumulation has been directed by will, the surrogate's court of the county in which such will has been admitted to probate, may, on the application of his general or testamentary guardian, direct a suitable sum out of such rents and profits to be applied to his maintenance or education.

**§ 63. Undisposed profits.** When, in consequence of a valid limitation of an expectant estate, there is a suspension of the power of alienation, or of the ownership, during the continuance of which the rents and profits are undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the persons presumptively entitled to the next eventual estate.

**§ 64. When expectant estates are deemed created.** Where an expectant estate is created by grant, the delivery of the grant, and where it is created by devise, the death of the testator, shall be deemed the time of the creation of the estate.

**§ 65. Estates in severalty, joint tenancy and in common.** Estates, in respect to the number and connection of their owners, are divided into estates in severalty, in joint tenancy and in common; the nature and properties of which, respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter.

**§ 66. When estate in common; when in joint tenancy.** Every estate granted or devised to two or more persons in their own right shall be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate, vested in executors or trustees as such, shall be held by them in joint tenancy. This section shall apply as well to estates already created or vested as to estates hereafter granted or devised.

**§ 67. Sale of real property held by tenant for life with contingent remainder or remainders over to persons whose identity is unknown.** In any case where real property is devised by will or conveyed by deed to a person for life, with contingent remainder or remainders over, to persons the identity of whom can not be definitely ascertained until the death of the person entitled to the life estate, the supreme court may, by order, on such terms and conditions as seem just and proper, authorize the sale of such real property, or any part thereof, whenever it appears to the satisfaction of the court that said real property, or some portion thereof, has become so unproductive or such circumstances or conditions have arisen subsequent to the devise or deed that it is for the best interest of the life tenant and of the remaindermen that a sale should be had, or that for other peculiar reasons, or on account of other peculiar circumstances, it is for the best interest of the life tenant and the remaindermen that a sale should be had. The supreme court shall not grant such an order, unless it appears to the satisfaction of such court, that a written notice, stating the time and place of the application therefor, has been served upon the life tenant, and upon every other person in being having an estate, vested or contingent, in reversion or remainder in said real property at least eight days before the making thereof. If such beneficiary or other person is an adult without the state, or is a minor, lunatic, person of unsound mind, habitual drunkard or absentee, notice shall be served on such beneficiary or other person in such manner as the court or a justice thereof may prescribe. Upon the return day of the notice the court shall, upon its own motion, appoint a special guardian for any minor and for any lunatic, person of unsound mind or habitual drunkard who shall not be represented by a committee duly appointed.

**§ 68. Application, how made.** The application must be made by petition duly verified, which shall set forth the provisions of the will or the deed creating the estate, the condition of the estate and the particular facts which make it necessary or proper that the application should be granted. After taking proof of the facts either before the court or by a referee and hearing the parties and fully examining into the matter, the court must make an order upon the application. In case the application is granted, the order must authorize the real property described in the petition to be sold upon such terms and conditions as the court may prescribe.

**§ 69. Sale, how conducted.** The sale shall be made by a referee appointed by the court for that purpose and such sales

may be either at public auction or by private contract, but subject in all respects to confirmation by the court before the deed is delivered and the sale consummated. In case a sale of any portion of such real property is authorized, the final order must direct the disposition of the proceeds of such sale and must direct that the proceeds of such sale be paid into the hands of some trust company authorized by law to act as trustee or to some person or persons who shall thereby become trustee or trustees for such life tenant and remaindermen, and must require the trustee to give a bond in such an amount and with such sureties as the court directs, conditioned for the faithful discharge of his trust and for the due accounting of all moneys received by him pursuant to said order. Upon the confirmation of the referee's report of sale by order of the court, the referee must execute, as directed by the court, a deed of said real property so sold.

**§ 70. Conveyances upon sale.** A deed made pursuant to a final order granted as provided in the foregoing sections sixty-seven and sixty-eight shall be valid and effectual against all minors, lunatics, persons of unsound mind, habitual drunkards and persons not in being, interested in the real property aforesaid, or having estates, vested or contingent, in reversion or remainder in said real property, but before the order directing the sale can be made, all adult persons not under disability having an interest in said real estate, vested or contingent, in reversion or remainder, must make and file with the clerk of the court in which the proceedings have been instituted, a written instrument, duly executed and acknowledged, consenting that such an order of sale may be made, and in no event shall such order be made without the like written consent of the life tenant if not suffering from disability.

**§ 71. Disposition of proceeds of sale.** The trustees appointed by the court of funds realized from the sale of real property under these provisions shall, unless otherwise ordered by the court, invest such funds in the manner and form prescribed and regulated by law, relative to investment of trust funds by trustees, and shall pay and apply the net income, after deducting all lawful expenses and commissions, to the use of the life tenant during life and upon the death of the life tenant pay over and distribute the principal to and among the remaindermen entitled thereto in accordance with the order of the court upon an accounting.

**§ 72. Release of rents reserved by leases in perpetuity.** 1. Any person interested in lands held under a lease in perpetuity, upon which no rent has been paid for at least

twenty years, may present his petition to the courts mentioned in this section asking that it be declared that the rents and reversion have been released to the owner of the fee. Such petition shall be verified, shall describe the lease and allege that the rents and reversion have been released, and shall state such facts as the petitioner can ascertain relative to the execution of a release and the identity of the persons who would otherwise be the present owners of the rents and reversion and the last known owner thereof.

2. Such petition may be presented to the supreme court or to the county court of the county where the lands are situated. The court may thereupon order all persons interested to show cause at a certain time and place why the rents and reversion should not be declared to have been released. A description of the lease and lands affected thereby and the name of the last known owner of the rents and reversion shall be specified in such order, and the order shall be published in such newspaper or newspapers and for such time as the court shall direct. The court may also direct the order to be personally served upon such persons as it shall designate.

3. The court may issue commissions to take the testimony of witnesses and may refer it to a referee to take and report proofs of the facts stated in the petition. Upon being satisfied that the matters alleged in the petition are true, the court may make an order declaring that the rents and reversion have been released to the owner of the fee. The nonpayment of rent under any such lease for twenty years shall be presumptive evidence of such a release. The entry of such order in the office of the clerk of the county where such lands are situated shall have the same effect as a release of such rents and reversion to such owner then duly executed and recorded. The county clerk shall note on the margin of the record of the original lease a minute of the entry of such order.

## ARTICLE 4

### Uses and Trusts

- Section 90. Executed uses existing.
- 91. Certain uses and trusts abolished.
  - 92. When right to possession creates legal ownership
  - 93. Trustee of passive trust not to take.
  - 94. Grant to one where consideration paid by another.
  - 95. Bona fide purchasers protected.
  - 96. Purposes for which express trusts may be created.
  - 97. Certain devises to be deemed powers.
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- Section 99. When an authorized trust is valid as a power.
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- 114-a. Trusts for care of cemetery lots, et cetera.
115. Certain grants for charitable uses regulated.
- \*166. Executors', fiduciaries' and trustees' investments in certain stocks regulated.
117. Commissions of trustees.

**§ 90. Executed uses existing.** Every estate which is now held as a use, executed under any former statute of the state, is confirmed as a legal estate.

**§ 91. Certain uses and trusts abolished.** Uses and trusts concerning real property, except as authorized and modified by this article, have been abolished; every estate or interest in real property is deemed a legal right, cognizable as such in the courts, except as otherwise prescribed in this chapter.

**§ 92. When right to possession creates legal ownership.** Every person, who, by virtue of any grant, assignment or devise, is entitled both to the actual possession of real property, and to the receipt of the rents and profits thereof, in law or equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest; but this section does not divest the estate of the trustee in any trust existing on the first day of January, eighteen hundred and thirty, where the title of such trustee is not

\*So in original.



merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust.

**§ 93. Trustee of passive trust not to take.** Every disposition of real property, whether by deed or by devise, shall be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to another to the use of, or in trust for, such person; and if made to any person to the use of, or in trust for another, no estate or interest, legal or equitable, vests in the trustee. But neither this section nor the preceding sections of this article shall extend to the trusts arising, or resulting by implication of law, nor prevent or affect the creation of such express trusts as are authorized and defined in this chapter.

**§ 94. Grant to one where consideration paid by another.** A grant of real property for a valuable consideration, to one person, the consideration being paid by another, is presumed fraudulent as against the creditors, at that time, of the person paying the consideration, and, unless a fraudulent intent is disproved, a trust results in favor of such creditors, to an extent necessary to satisfy their just demands; but the title vests in the grantee, and no use or trust results from the payment to the person paying the consideration, or in his favor, unless the grantee either,

1. Takes the same as an absolute conveyance, in his own name, without the consent or knowledge of the person paying the consideration; or,

2. In violation of some trust, purchases the property so conveyed with money or property belonging to another.

**§ 95. Bona fide purchasers protected.** An implied or resulting trust shall not be alleged or established, to defeat or prejudice the title of a purchaser for a valuable consideration without notice of the trust.

**§ 96. Purposes for which express trusts may be created.** An express trust may be created for one or more of the following purposes:

1. To sell real property for the benefit of creditors;

2. To sell, mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon;

3. To receive the rents and profits of real property, and apply them to the use of any person, during the life of that person, or for any shorter term, subject to the provisions of law relating thereto;

4. To receive the rents and profits of real property, and to accumulate the same for the purposes, and within the limits, prescribed by law.

**§ 97. Certain devises to be deemed powers.** A devise of real property to an executor or other trustee, for the purpose of sale or mortgage, where the trustee is not also empowered to receive the rents and profits, shall not vest any estate in him; but the trust shall be valid as a power, and the real property shall descend to the heirs, or pass to the devisees of the testator, subject to the execution of the power.

**§ 98. Surplus income of trust property liable to creditors.** Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum necessary for the education and support of the beneficiary, shall be liable to the claims of his creditors in the same manner as other personal property, which can not be reached by execution.

**§ 99. When an authorized trust is valid as a power.** Where an express trust relating to real property is created for any purpose not specified in the preceding sections of this article, no estate shall vest in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions of this chapter. Where a trust is valid as a power, the real property to which the trust relates shall remain in or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

**§ 100. Trustee of express trust to have whole estate.** Except as otherwise prescribed in this chapter, an express trust, valid as such in its creation, shall vest in the trustee the legal estate, subject only to the execution of the trust, and the beneficiary shall not take any legal estate or interest in the property, but may enforce the performance of the trust.

**§ 101. Qualification of last section.** The last section shall not prevent any person, creating a trust, from declaring to whom the real property, to which the trust relates, shall belong, in the event of the failure or termination of the trust, or from granting or devising the property, subject to the execution of the trust. Such a grantee or devisee shall have a legal estate in the property, as against all persons, except the trustees, and those lawfully claiming under them.

**§ 102. Interest remaining in grantor of express trust.** Where an express trust is created, every legal estate

and interest not embraced in the trust, and not otherwise disposed of, shall remain in or revert to, the person creating the trust or his heirs.

**§ 103. What trust interest may be alienated. 1.**

The right of a beneficiary of an express trust to receive rents and profits of real property and apply them to the use of any person, can not be transferred by assignment or otherwise, but the right and interest of the beneficiary of any other trust in real property may be transferred.

2. The provisions of this section as here amended shall not impair or affect any rights existing on March twenty-fifth, nineteen hundred and three.

**§ 104. Transferee of trust property protected.**

Where an express trust is created, but is not contained or declared in the conveyance to the trustee, the conveyance shall be deemed absolute as to the subsequent creditors of the trustee not having notice of the trust, and as to subsequent purchasers from the trustee, without notice and for a valuable consideration.

**§ 105. When trustee may convey or exchange trust property. 1.**

If the trust is expressed in the instrument creating the estate, every sale, conveyance or other act of the trustee, in contravention of the trust, except as provided in this section, shall be absolutely void. The supreme court may, by order, on such terms and conditions as seem just and proper, authorize any such trustee to mortgage or sell such real property, or any part thereof, whenever it appears to the satisfaction of the court that said real property, or some portion thereof, has become so unproductive that it is for the best interest of such estate or that it is necessary or for the benefit of the estate to raise funds for the purpose of preserving it by paying off incumbrances or of improving it by erecting buildings or making other improvements, or that for other peculiar reasons, or on account of other peculiar circumstances, it is for the best interest of said estate, and whenever the interest of the trust estate in any real property is an undivided part or share thereof, the same may be sold if it shall appear to the court to be for the best interest of such estate.

2. Whenever, by the provisions of a will, or of a deed of trust, a power of sale is given to one or more executors or trustees, it shall be lawful for any such executor or trustee, subject to the approval of the supreme court, to acquire or exchange lands adjacent to the land or lands subject to such power of sale, as may be deemed desirable for the straightening or improvement of the boundary lines thereof, upon such terms and conditions as may be approved by the supreme court; and the supreme court may,

by order, on such terms and conditions as seem just and proper, authorize any such executor or trustee to acquire or exchange lands adjacent to the land or lands subject to such power of sale for the purposes mentioned.

**§ 106. When trustee may lease trust property.**

A trustee appointed to hold real property during the life of a beneficiary, and to pay or apply the rents, income and profits thereof to, or for, the use of such beneficiary, may execute and deliver a lease of such real property for a term not exceeding five years, without application to the court. The supreme court may, by order, on such terms and conditions as seem just and proper, in respect to rental and renewals, authorize such a trustee to lease such real property for a term exceeding five years, if it appears to the satisfaction of the court that it is for the best interest of the trust estate, and may authorize such trustee to covenant in the lease to pay at the end of the term, or renewed term, to the lessee the then fair and reasonable value of any building which may have been erected on the premises during such term. If any such trustee has leased any such trust property before June fourth, eighteen hundred and ninety-five, for a longer term than five years, the supreme court, on the application of such trustee, may, by order, confirm such lease, and such order, on the entry thereof, shall be binding on all persons interested in the trust estate.

**§ 107. Notice to beneficiary and other persons interested where real property affected by a trust is conveyed, mortgaged or leased, and procedure thereupon.**

The supreme court shall not grant an order under either of the last two preceding sections unless it appears to the satisfaction of such court that a written notice stating the time and place of the application therefor has been served upon the beneficiary of such trust, and every other person in being having an estate vested or contingent in reversion or remainder in said real property at least eight days before the making thereof, if such beneficiary or other person is an adult within the state, or if a minor, lunatic, person of unsound mind, habitual drunkard or absentee, until proof of the service on such beneficiary or other person of such notice as the court or a justice thereof prescribes. The court shall appoint a guardian ad litem for any minor and for any lunatic, person of unsound mind or habitual drunkard who shall not be represented by a committee duly appointed. The application must be by petition duly verified which shall set forth the condition of the trust estate and the particular facts which make it necessary or proper that the application should be granted.

After taking proof of the facts, either before the court or a referee, and hearing the parties and fully examining into the matter, the court must make a final order upon the application. In case the application is granted, the final order must authorize the real property affected by the trust or some portion thereof, to be mortgaged, sold or leased, upon such terms and conditions as the court may prescribe. In case a mortgage or sale of any portion of such real property is authorized, the final order must direct the disposition of the proceeds of such mortgage or sale and must require the trustee to give bond in such amount and with such sureties as the court directs, conditioned for the faithful discharge of his trust and for the due accounting for all moneys received by him pursuant to said order. If the trustee elects not to give such bond, the final order must require the proceeds of such mortgage or sale to be paid into court to be disposed of or invested as the court shall specially direct. Before a mortgage, sale or lease can be made pursuant to the final order, the trustee must enter into an agreement therefor, subject to the approval of the court and must report the agreement to the court under oath. Upon the confirmation thereof, by order of the court he must execute as directed by the court a mortgage, deed or lease. A mortgage, conveyance or lease made pursuant to a final order granted as provided in this and the last two preceding sections shall be valid and effectual against all minors, lunatics, persons of unsound mind, habitual drunkards and persons not in being interested in the trust or having estates vested or contingent in reversion or remainder in said real property, and against all other persons so interested or having such estates who shall consent to such order, or who have been made parties to such proceeding as herein provided.

**§ 108. Person paying money to trustee protected.**

A person who shall actually and in good faith pay a sum of money to a trustee, which the trustee as such is authorized to receive, shall not be responsible for the proper application of the money, according to the trust; and any right or title derived by him from the trustee in consideration of the payments shall not be impeached or called in question in consequence of a misapplication by the trustee of the money paid.

**§ 109. When estate of trustee ceases.** When the purpose for which an express trust is created ceases, the estate of the trustee shall also cease.

**§ 110. Termination of trusts for the benefit of creditors.** Where an estate or interest in real property has heretofore vested or shall hereafter vest in the assignee or other

trustee for the benefit of creditors, it shall cease at the expiration of twenty-five years from the time when the trust was created, except where a different limitation is contained in the instrument creating the trust, or is especially prescribed by law. The estate or interest remaining in the trustee or trustees shall thereupon revert to the assignor, his heirs, devisee or assignee, as if the trust had not been created.

**§ 111. Trust estate not to descend.** On the death of the last surviving or sole surviving trustee of an express trust, the trust estate shall not descend to his heirs nor pass to his next of kin or personal representatives; but in the absence of a contrary direction on the part of the person creating the same, such trust, if unexecuted, shall vest in the supreme court, with all the powers and duties of the original trustee or trustees, and shall be executed by some person appointed for that purpose under the direction of the court, but who shall not be appointed until the beneficiary or beneficiaries shall have been brought into court by such notice and in such manner as the court or a justice thereof may direct; and the person so appointed shall give such security as the court may require, and shall be subject to the same requirements of law as to accounting and the administration of the trust as are testamentary trustees; and shall be entitled to such compensation for his services by way of commissions as the court appointing him shall determine, which shall in no case exceed that now allowed by law to executors and administrators, besides his just and reasonable expenses in the matter in which he is appointed.

**§ 112. Resignation or removal of trustee and appointment of successor.** The supreme court has power, subject to the regulations established for the purpose in the general rules of practice:

1. On his application by petition or action, to accept the resignation of a trustee, and to discharge him from the trust on such terms as are just.

2. In an action brought, or on a petition presented, by any person interested in the trust, to remove a trustee who has violated or threatens to violate his trust, or who is insolvent, or whose insolvency is apprehended, or who for any other cause shall be deemed to be an unsuitable person to execute the trust.

3. In case of the resignation or removal of a trustee, to appoint a new trustee in his place, and in the meantime, if there is no acting trustee, to cause the trust to be executed by a receiver or other officer under its direction. This section shall not apply to a trust arising or resulting by implication of law, nor where other pro-

vision is specially made by law, for the resignation or removal of a trustee or the appointment of a new trustee.

**§ 113. Grants and devises of real property for charitable purposes.**

1. No gift, grant, or devise to religious, educational, charitable or benevolent uses, which shall in other respects be valid under the laws of this state, shall be deemed invalid by reason of the indefiniteness or uncertainty of the persons designated as the beneficiaries thereunder in the instrument creating the same. If in the instrument creating such a gift, grant, or devise there is a trustee named to execute the same, the legal title to the lands or property given, granted, or devised for such purposes shall vest in such trustee. If no person be named as trustee then the title to such lands or property shall vest in the supreme court.

2. The supreme court shall have control over gifts, grants and devises in all cases provided for by subdivision one of this section, and whenever it shall appear to the court that circumstances have so changed since the execution of an instrument containing a gift, grant or devise to religious, educational, charitable or benevolent uses as to render impracticable or impossible a literal compliance with the terms of such instrument, the court may, upon the application of the trustee or of the person or corporation having the custody of the property, and upon such notice as the court shall direct, make an order directing that such gift, grant or devise shall be administered or expended in such manner as in the judgment of the court will most effectually accomplish the general purpose of the instrument, without regard to and free from any specific restriction, limitation or direction contained therein; provided, however, that no such order shall be made without the consent of the donor or grantor of the property, if he be living. (*Subd. 2 thus amended by L. 1909, ch. 144, in effect April 3, 1909.*)

Amendment of 1909 struck out the words "until the expiration of at least twenty-five years after the execution of the instrument or" preceding the words "without the consent" near the end of the subdivision.

3. The attorney-general shall represent the beneficiaries in all such cases, and it shall be his duty to enforce such trusts by proper proceedings in the courts.

**§ 114. Certain educational and other charitable uses authorized.**

1. Real property may be granted, devised, and conveyed to any incorporated college or other literary incorporated institution in this state, to be held in trust for any one or more of the following purposes:

- (1) To establish and maintain an observatory;
- (2) To found and maintain professorships and scholarships;
- (3) To provide and keep in repair a place for the burial of the dead; or

(4) For any other specific purposes comprehended in the general objects authorized by their respective charters.

The said trusts may be created, subject to such conditions and visitations as may be prescribed by the grantor or donor, and agreed to by said trustee, and all property which shall hereafter be granted to any incorporated college or other literary incorporated institution in trust for any of the aforesaid purposes, may be held by such college or institution upon such trusts, and subject to such conditions and visitations as may be prescribed and agreed to as aforesaid.

2. Real estate may be granted, devised, and conveyed to the corporation of any city or village of this state, to be held in trust for any purpose of education, or the diffusion of knowledge, or for the relief of distress, or for parks, gardens, or other ornamental grounds, or grounds for the purposes of military parades and exercise, or health and recreation, within or near such incorporated city or village, upon such conditions as may be prescribed by the grantor or donor, and agreed to by such corporation; and all real estate so granted or conveyed to such corporation may be held by the same, subject to such conditions as may be prescribed and agreed to as aforesaid.

3. Real estate may be granted or devised, to commissioners of common schools of any town, and to trustees of any school district, in trust for the benefit of the common schools of such town, or for the benefit of the schools of such district.

4. The trusts authorized by this section may continue for such time as may be necessary to accomplish the purposes for which they may be created.

**§ 114-a. Trusts for care of cemetery lots, et cetera.**

Gifts, grants and devises of real property, in trust for the purpose of applying the proceeds or income thereof to the perpetual care and maintenance, improvement or embellishment of private burial lots in cemeteries, and the walks, fences, monuments, structures and tombs thereon, are permitted and shall be deemed to be for charitable and benevolent uses; and shall not be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instrument creating the same, nor shall they be deemed invalid as violating any existing laws against perpetuities or suspension of the power of alienation of title to property. But nothing herein contained shall affect any existing authority of the courts to pass upon the reasonableness of the amount of such gift, grant or devise. (*Added by L. 1909, ch. 218, in effect April 20, 1909.*)

**§ 115. Certain grants for charitable uses regulated.** 1. Any person desiring, in his lifetime, to promote the public welfare by founding, endowing and having maintained a public library, museum or other educational institutions, or a



chapel and crematory, within this state, may to that end and for such purposes by grant, in writing, convey to a trustee, or any number of trustees, named in such grant, and to their successors, any real property, belonging to such person, and situated or being within this state.

2. The person making such grant may therein designate:

(1) The nature, object and purposes of the institution to be founded, endowed and maintained.

(2) The name by which it shall be known.

(3) The powers and duties of the trustee or trustees and the manner in which he or they shall account, and to whom, if accounting be required; but such powers and duties shall not be held to be exclusive of other powers which may be necessary to enable such trustee or trustees to fully carry out the object of such grant.

(4) The mode and manner, and by whom, the successors to the trustee or trustees named in the grant are to be appointed.

(5) Such rules and regulations for the management of the property conveyed as the grantor may elect to prescribe; but such rules shall, unless the grantor otherwise prescribe, be deemed advisory only, and shall not preclude such trustee or trustees from making such changes as new conditions may from time to time require.

(6) The place or places where, and the time when, the building or buildings necessary and proper for the institution shall be erected, and the character and extent thereof. The person making such grant may therein provide for all other things necessary and proper to carry out the purposes thereof, and especially may such person provide for such lectures, exhibitions, instruction or amusement in connection with such institution as he may deem desirable.

3. The trustee or trustees named in such grant and their successors, may in the name of the institution, as designated in such grant, sue and defend, in relation to the trust property and in relation to all matters affecting the institution endowed and established by such grant.

4. The person making such grant, by a provision therein, may elect, in relation to the property conveyed and in relation to the erection, maintenance and management of such institution, to perform, during his life, all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named. If the person making such grant, and making the election aforesaid, be a married person, such person may further provide that if the wife of such person survive him, then such wife, during her life, may, in relation to the property conveyed, and in relation to the erection, maintenance and management of such institution, perform all the duties and exercise all the powers, which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named, and in all such cases the powers and duties conferred and imposed by

such grant upon the trustee or trustees therein named, shall be exercised and performed by the person making such grant, or by his wife during his or her life, as the case may be; provided, however, that upon the death of such person, or his surviving wife, as the case may be, such powers and duties shall devolve upon and shall be exercised by the trustee or trustees named in the grant and their successors.

5. The person making such grant may therein reserve the right to alter, amend or modify the terms and conditions thereof and the trusts therein created, in respect to any of the matters mentioned or referred to in paragraphs numbered one to six inclusive of subdivision two herof; and may also therein reserve the right, during the life of such person, of absolute dominion over the rents, issues and profits of the real property conveyed, without liability to account therefor in any manner whatever, and without any liability over against the estate of such person; and if any such person be married, such person may, in said grant, further provide that if his wife survive him, then such wife, during her life, may have the same dominion over such rents, issues and profits, without liability to account therefor in any manner whatever, and without liability over against the estate of either of the spouses.

6. Any such grant may be executed, acknowledged and recorded in the same manner as is now provided by law for the execution, acknowledging and recording of grants of real property.

7. No suit, action or proceeding shall be commenced or maintained by any person to set aside, annul or affect said conveyance, or to affect the title to the property conveyed, or the right to the possession, or to the rents, issues and profits thereof, unless the same be commenced within two years after the date of filing such grant for record; nor shall any defense be made to any suit, action or proceeding commenced by the trustee or trustees named in said grant or their successors, privies or persons holding under them, which defense involves the legality of said grant, or affects the title to the property thereby conveyed, or the right to the possession or the rents, issues and profits thereof, unless such defense is made in a suit, action or proceeding commenced within two years after such grant shall have been filed for record.

**§ 116. Executors', fiduciaries' and trustees' investments in certain stocks regulated.** Whenever an executor, trustee, guardian of an infant, committee of a lunatic, or other person or persons acting in a fiduciary capacity, or a life tenant, is entitled to receive the proceeds of the sale of any real property sold or to be sold pursuant to the provisions of this article, or pursuant to a judgment in partition, or pursuant to a power of sale contained in a deed or will, and the said property has been or is about to be purchased by a corporation

formed or to be formed for such purpose, and all adult beneficiaries and also all adult persons having a vested interest or estate in possession, reversion or remainder in the proceeds of such sale have agreed, or desire to agree that their share of such proceeds shall be invested in the stock and bonds or in either the stock or bonds of such corporation, then the said executor, trustee, guardian, committee or other person or persons acting in a fiduciary capacity, or the life tenant or tenants, may, with the approval of the supreme court, invest his share of the proceeds of such sale in the stock or bonds of such corporation, provided, however, that such corporation shall be prohibited by its certificate of incorporation from investing in any stocks, bonds or other securities other than real estate which are not under the laws of this state a proper subject for the investment of trust funds. The supreme court shall not grant an order permitting such an investment, unless it appears to the satisfaction of such court that a written notice stating the time and place of the application for such leave has been served upon every beneficiary and also upon every person in being having a vested interest or estate in possession, reversion or remainder, in such proceeds at least eight days before the making thereof, if such beneficiary or other person is an adult within the state; or if a minor, lunatic, person of unsound mind, habitual drunkard or absentee, until proof of the service on such beneficiary or other person of such notice as the court or a justice thereof prescribes. The court shall appoint a special guardian for any minor and for any lunatic, person of unsound mind, or habitual drunkard, who shall not be represented by a committee duly appointed. The application must be by petition duly verified, must be made by the executor, trustee, guardian of an infant, committee of a lunatic, or such other person or persons acting in a fiduciary capacity, or a life tenant, entitled to receive the proceeds of such sale, and shall set forth the reasons for such investment and the nature thereof and the peculiar facts which make it proper that the application shall be granted. After taking proof of the facts either before the court or a referee, and hearing the parties and fully examining into the matter, the court must make a final order upon the application. In case the application is granted, the final order must authorize the said executor, trustee, guardian of an infant, committee of a lunatic, or other person or persons acting in a fiduciary capacity, or life tenant, so entitled to receive the proceeds of such sale, to make such investment upon such terms and conditions as the court may therein prescribe.

**§ 117. Commissions of trustees.** Any trustee, under a deed of trust to sell real property for the benefit of creditors, shall be entitled to and allowed upon an accounting hereafter had, the same commissions as an assignee for the benefit of creditors.

**ARTICLE 5**  
**Powers**

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**§ 130. Effect of article.** Powers, as they existed by law on the thirty-first day of December, eighteen hundred and twenty-nine, are abolished. Hereafter the creation, construction and execution of powers, affecting real property, shall be subject to the provisions of this article; but this article does not extend to a simple power of attorney to convey real property in the name and for the benefit of the owner.

**§ 131. Definition of a power.** A power is an authority to do an act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner, granting or reserving the power, might himself lawfully perform.

**§ 132. Definitions of grantor, grantee.** The word "grantor" is used in this article, in connection with a power, as designating the person by whom the power is created, whether by grant or by devise; and the word "grantee" is so used as designating the person in whom the power is vested, whether by grant, devise or reservation.

**§ 133. Division of powers.** A power, as authorized in this article, is either general or special, and either beneficial or in trust.

**§ 134. General power.** A power is general, where it authorizes the transfer or incumbrance of a fee, by either a conveyance or a will of, or a charge on, the property embraced in the power, to any grantee whatever.

**§ 135. Special power.** A power is special where either:

1. The persons or class of persons to whom the disposition of the property under the power is to be made are designated; or,
2. The power authorizes the transfer or incumbrance, by a conveyance, will or charge, of any estate less than a fee.

**§ 136. Beneficial power.** A general or special power is beneficial, where no person, other than the grantee, has, by the term of its creation, any interest in its execution. A beneficial power, general or special, other than one of those specified and defined in this article, is void.

**§ 137. General power in trust.** A general power is in trust, where any person or class of persons, other than the grantee of the power, is designated as entitled to the proceeds, or any portion of the proceeds, or other benefits to result from its execution.

**§ 138. Special power in trust.** A special power is in trust, where either,

1. The disposition or charge which it authorizes is limited to be made to a person or class of persons, other than the grantee of the power; or,

2. A person or class of persons, other than the grantee, is designated as entitled to any benefit, from the disposition or charge authorized by the power.

**§ 139. Capacity to grant a power.** A person is not capable of granting a power, who is not, at the same time, capable of transferring an interest in the property to which the power relates.

**§ 140. How power may be granted.** A power may be granted either:

1. By a suitable clause, contained in an instrument sufficient to pass an estate in the real property, to which the power relates;

2. By a devise contained in a will.

**§ 141. Capacity to take and execute a power.** A power may be vested in any person capable in law of holding, but can not be exercised by a person not capable of transferring real property.

**§ 142. Capacity of married woman to take power.** A general and beneficial power may be given to a married woman, to dispose, during her marriage, and without concurrence of her husband, of real property conveyed or devised to her in fee.

**§ 143. Capacity to take a special and beneficial power.** A special and beneficial power may be granted,

1. To a married woman, to dispose, during the marriage, and without the concurrence of her husband, of any estate less than a fee, belonging to her, in the property to which the power relates; or,

2. To a tenant for life, of the real property embraced in the power, to make leases for not more than twenty-one years, and to commence in possession during his life; and such a power is valid to authorize a lease for that period but is void as to the excess.

**§ 144. Reservation of a power.** The grantor in a conveyance may reserve to himself any power, beneficial or in

trust, which he might lawfully grant to another; and a power thus reserved shall be subject to the provisions of this article, in the same manner as if granted to another.

**§ 145. Effect of power to revoke.** Where the grantor in a conveyance reserves to himself for his own benefit, an absolute power of revocation, he is to be still deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

**§ 146. Power to sell in a mortgage.** Where a power to sell real property is given to a mortgagee, or to the grantee in any other conveyance intended to secure the payment of money, the power is deemed a part of the security, and vests in, and may be executed by any person who, by assignment or otherwise, becomes entitled to the money so secured to be paid.

**§ 147. When power is a lien.** A power is a lien or charge on the real property which it embraces, as against creditors, purchasers and incumbrancers in good faith and without notice, of or from a person having an estate in the property, only from the time the instrument containing the power is duly recorded. As against all other persons, the power is a lien from the time the instrument in which it is contained takes effect.

**§ 148. When power is irrevocable.** A power, whether beneficial or in trust, is irrevocable, unless an authority to revoke it is granted or reserved in the instrument creating the power.

**§ 149. When estate for life or years is changed into a fee.** Where an absolute power of disposition, not accompanied by a trust, is given to the owner of a particular estate for life or for years, such estate is changed into a fee absolute in respect to the rights of creditors, purchasers and incumbrancers, but subject to any future estates limited thereon, in case the power of absolute disposition is not executed, and the property is not sold for the satisfaction of debts.

**§ 150. Certain powers create a fee.** Where a like power of disposition is given to a person to whom no particular estate is limited, such person also takes a fee, subject to any future estates that may be limited thereon, but absolute in respect to creditors, purchasers and incumbrancers.

**§ 151. When grantee of power has absolute fee.** Where such a power of disposition is given, and no remainder is limited on the estate of the grantee of the power, such grantee is entitled to an absolute fee.

**§ 152. Effect of power to devise in certain cases.**

Where a general and beneficial power to devise the inheritance is given to a tenant for life, or for years, such tenant is deemed to possess an absolute power of disposition within the meaning of and subject to the provisions of the last three sections.

**§ 153. When power of disposition absolute.** Every power of disposition by means of which the grantee is enabled, in his lifetime, to dispose of the entire fee for his own benefit, is deemed absolute.

**§ 154. Power subject to condition.** A general and beneficial power may be created subject to a condition precedent or subsequent, and until the power becomes absolutely vested it is not subject to any provisions of the last four sections.

**§ 155. Power of life tenant to make leases.** The power of a tenant for life to make leases is not assignable as a separate interest, but is annexed to his estate, and passes by a grant of such estate unless specially excepted. If so excepted, it is extinguished. Such a power may be released by the tenant to a person entitled to an expectant estate in the property, and shall thereupon be extinguished.

**§ 156. Effect of mortgage by grantee.** A mortgage executed by a tenant for life, having a power to make leases, does not extinguish or suspend the power; but the power is bound by the mortgage in the same manner as the real property embraced therein, and the effects on the power of such lien by mortgage are:

1. That the mortgagee is entitled to an execution of the power so far as the satisfaction of his debt requires; and,
2. That any subsequent estate, created by the owner, in execution of the power, becomes subject to the mortgage as if in terms embraced therein.

**§ 157. When a trust power is imperative.** A trust power, unless its execution or non-execution is made expressly to depend on the will of the grantee, is imperative, and imposes a duty on the grantee, the performance of which may be compelled for the benefit of the person interested. A trust power does not cease to be imperative where the grantee has the right to select any, and exclude others, of the persons designated as the beneficiaries of the trust.

**§ 158. Distribution when more than one beneficiary.** Where a disposition under a power is directed to be made to, among, or between, two or more persons, without any



specification of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion; but when the terms of the power import that the estate or fund is to be distributed among the persons so designated, in such manner or proportions as the grantee of the power thinks proper, the grantee may allot the whole to any one or more of such persons in exclusion of the others.

**§ 159. Beneficial power subject to creditors.** A special and beneficial power is liable to the claims of creditors in the same manner as other interests that can not be reached by execution; and the execution of the power may be adjudged for the benefit of the creditors entitled.

**§ 160. Execution of power on death of trustee.** If the trustee of a power, with the right of selection, dies leaving the power unexecuted, its execution must be adjudged for the benefit, equally, of all the persons designated as beneficiaries of the trust.

**§ 161. When power devolves on court.** Where a power in trust is created by will, and the testator has omitted to designate by whom the power is to be executed, its execution devolves on the supreme court.

**§ 162. When creditors may compel execution of trust power.** The execution, wholly or partly, of a trust power may be adjudged for the benefit of the creditors or assignees of a person entitled as a beneficiary of the trust, to compel its execution, where his interest is assignable.

**§ 163. Defective execution of trust power.** Where the execution of a power in trust is defective, wholly or partly, under the provisions of this article, its proper execution may be adjudged in favor of the person designated as the beneficiary of the trust.

**§ 164. Effect of insolvent assignment.** A beneficial power, and the interest of every person entitled to compel the execution of a trust power, shall pass, respectively, to a trustee or committee of the estate of the person in whom the power or interest is vested, or an assignee for the benefit of creditors.

**§ 165. How power must be executed.** A power can be executed only by a written instrument, which would be sufficient to pass the estate, or interest, intended to pass under the power, if the person executing the power were the actual owner.

**§ 166. Execution by survivors.** Where a power is vested in two or more persons, all must unite in its execution;

but if before its execution, one or more of such persons dies, the power may be executed by the survivor or survivors.

**§ 167. Execution of power to dispose by devise.**

Where a power to dispose of real property is confined to a disposition by devise or will, the instrument must be a written will, executed as required by law.

**§ 168. Execution of power to dispose by grant.**

Where a power is confined to a disposition by grant, it can not be executed by will, although the disposition is not intended to take effect until after the death of the person executing the power.

**§ 169. When direction by grantor does not render power void.** Where the grantor of a power has directed or authorized it to be executed by an instrument not sufficient in law to pass the estate, the power is not void, but its execution is to be governed by the provisions of this article.

**§ 170. When directions by grantor need not be followed.** Where the grantor of a power has directed any formality to be observed in its execution, in addition to those which would be sufficient by law to pass the estate, the observance of such additional formality is not necessary to the valid execution of the power.

**§ 171. Nominal conditions may be disregarded.** Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power.

**§ 172. Intent of grantor to be observed.** Except as provided in this article, the intentions of the grantor of a power as to the manner, time and conditions of its execution must be observed; subject to the power of the supreme court to supply a defective execution as provided in this article.

**§ 173. Consent of grantor or third person to execution of power.** Where the consent of the grantor or a third person to the execution of a power is requisite, such consent shall be expressed in the instrument by which the power is executed, or in a written certificate. In the first case, the instrument of execution, in the second, the certificate, must be subscribed by the person whose consent is necessary; and to entitle the instrument to be recorded, such signature must be acknowledged or proved and certified in like manner as a deed to be recorded.

**§ 174. When all must consent.** Where the consent of two or more persons to the execution of a power is re-

quisite, all must consent thereto; but if, before its execution, one or more of them die, the consent of the survivor or survivors is sufficient, unless otherwise prescribed by the terms of the power.

**§ 175. Omission to recite power.** An instrument executed by the grantee of a power, conveying an estate or creating a charge, which he would have no right to convey or create, except by virtue of the power, shall be deemed a valid execution of the power, although the power be not recited or referred to therein.

**§ 176. When devise operates as an execution of the power.** Real property embraced in a power to devise passes by a will purporting to convey all the real property of the testator, unless the intent that the will is not to operate as an execution of the power, appears, either expressly or by necessary implication.

**§ 177. Disposition not void because too extensive.** A disposition or charge by virtue of a power is not void on the ground that it is more extensive than was authorized by the power; but an estate or interest so created, so far as embraced by the terms of the power, is valid.

**§ 178. Computation of term of suspension.** The period during which the absolute right of alienation may be suspended, by an instrument in execution of a power, must be computed, not from the date of such instrument, but from the time of the creation of the power.

**§ 179. Capacity to take under a power.** An estate or interest can not be given or limited to any person, by an instrument in execution of a power, unless it would have been valid, if given or limited at the time of the creation of the power.

**§ 180. Purchaser under defective execution.** A purchaser for a valuable consideration, claiming under a defective execution of a power, is entitled to the same relief as a similar purchaser, claiming under a defective conveyance from an actual owner.

**§ 181. Instrument affected by fraud.** An instrument in execution of a power is affected by fraud, in the same manner as a conveyance or will, executed by an owner or by a trustee.

**§ 182. Sections applicable to trust powers.** Sections one hundred and eleven to one hundred and thirteen of this chapter, both inclusive, in relation to express trust estates, and the trustee thereof, apply equally to trust powers, however created, and to the grantees of such powers.

**ARTICLE 6****Dower****Section 190. Dower.**

191. Dower in lands exchanged.
192. Dower in lands mortgaged before marriage.
193. Dower in lands mortgaged for purchase-money.
194. Surplus proceeds of sale under purchase-money mortgages.
195. Widow of mortgagee not endowed.
196. When dower barred by misconduct.
197. When dower barred by jointure.
198. When dower barred by pecuniary provisions.
199. When widow to elect between jointure and dower.
200. Election between devise and dower.
201. When deemed to have elected.
202. When provision in lieu of dower is forfeited.
203. Effect of acts of husband.
204. Widow's quarantine.
205. Widow may bequeath a crop.
206. Divorced woman may release dower.
207. Married woman may release dower by attorney.

§ 190. **Dower.** A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage.

§ 191. **Dower in lands exchanged.** If a husband seized of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but she must make her election, to be endowed of the lands given, or of those taken, in exchange; and if her election be not evinced by the commencement of an action to recover her dower of the lands given in exchange, within one year after the death of her husband, she is deemed to have elected to take her dower of the lands received in exchange.

§ 192. **Dower in lands mortgaged before marriage.** Where a person seized of an estate of inheritance in lands, executes a mortgage thereof, before marriage, his widow is, nevertheless, entitled to dower of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

§ 193. **Dower in lands mortgaged for purchase-money.** Where a husband purchases lands during the marriage, and at the same time mortgages his estate in those lands to secure the payment of the purchase-money, his widow is not en-

titled to dower of those lands, as against the mortgagee or those claiming under him, although she did not unite in the mortgage. She is entitled to her dower as against every other person.

**§ 194. Surplus proceeds of sale under purchase-money mortgages.** Where, in a case specified in the last section, the mortgagee, or a person claiming under him, causes the land mortgaged to be sold, after the death of the husband, either under a power of sale contained in the mortgage, or by virtue of a judgment in an action to foreclose the mortgage, and any surplus remains, after payment of the money due on the mortgage and the costs and charges of the sale, the widow is nevertheless entitled to the interest or income of one-third part of the surplus for her life, as her dower.

**§ 195. Widow of mortgagee not endowed.** A widow shall not be endowed of the lands conveyed to her husband by way of mortgage, unless he acquires an absolute estate therein, during the marriage.

**§ 196. When dower barred by misconduct.** In case of a divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

**§ 197. When dower barred by jointure.** Where an estate in real property is conveyed to a person and his intended wife, or to the intended wife alone, or to a person in trust for them or for the intended wife alone, for the purpose of creating a jointure for her, and with her assent, the jointure bars her right or claim of dower in all the lands of the husband. The assent of the wife to such a jointure is evidenced, if she be of full age, by her becoming a party to the conveyance by which it is settled; if she be a minor, by her joining with her father or guardian in that conveyance.

**§ 198. When dower barred by pecuniary provisions.** Any pecuniary provision, made for the benefit of an intended wife and in lieu of dower, if assented to by her as prescribed in the last section, bars her right or claim of dower in all the lands of her husband.

**§ 199. When widow to elect between jointure and dower.** If, before the marriage, but without her assent, or, if after the marriage, real property is given or assured for the jointure of a wife, or a pecuniary provision is made for her, in lieu of dower, she must make her election whether she will take the jointure or pecuniary provision, or be endowed of the lands of her husband; but she is not entitled to both.

**§ 200. Election between devise and dower.** If real property is devised to a woman, or a pecuniary or other provision is made for her by will in lieu of her dower, she must make her election whether she will take the property so devised, or the provision so made, or be endowed of the lands of her husband; but she is not entitled to both.

**§ 201. When deemed to have elected.** Where a woman is entitled to an election, as prescribed in either of the last two sections, she is deemed to have elected to take the jointure, devise or pecuniary provision, unless within one year after the death of her husband she enters upon the lands assigned to her for her dower, or commences an action for her dower. But, during such period of one year after the death of her said husband, her time to make such election may be enlarged by the order of any court competent to pass on the accounts of executors, administrators or testamentary trustees, or to admeasure dower, on an affidavit showing the pendency of a proceeding to contest the probate of the will containing such jointure, devise or pecuniary provision, or of an action to construe or set aside such will, or that the amount of claims against the estate of the testator can not be ascertained within the period so limited, or other reasonable cause, and on notice given to such persons, and in such manner, as such court may direct. Such order shall be indexed and recorded in the same manner as a notice of pendency of action in the office of the clerk of each county wherein the real property or a portion thereof affected thereby is situated.

**§ 202. When provision in lieu of dower is forfeited.** Every jointure, devise and pecuniary provision in lieu of dower is forfeited by the woman for whose benefit it is made in a case in which she would forfeit her dower; and on such forfeiture, an estate so conveyed for jointure, or devised, or a pecuniary provision so made, immediately vests in the person or legal representatives of the person in whom they would have vested on the determination of her interest therein, by her death.

**§ 203. Effect of acts of husband.** An act, deed or conveyance, executed or performed by the husband without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the contingent right of dower of a married woman, or a judgment or decree confessed by or recovered against him, or any laches, default, covin, or crime of a husband, does not prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof.

**§ 204. Widow's quarantine.** A widow may remain in the chief house of her husband forty days after his death,

whether her dower is sooner assigned to her or not, without being liable to any rent for the same; and in the meantime she may have her reasonable sustenance out of the estate of her husband.

**§ 205. Widow may bequeath a crop.** A widow may bequeath a crop in the ground of land held by her in dower.

**§ 206. Divorced woman may release dower.** A woman who is divorced from her husband, whether such divorce be absolute or limited, or granted in his or her favor, by any court of competent jurisdiction, may release to him, by an instrument in writing, sufficient to pass title to real estate, her inchoate right of dower in any specific real property theretofore owned by him, or generally in all such real property, and such as he shall thereafter acquire.

**§ 207. Married woman may release dower by attorney.** A married woman of full age may release her inchoate right of dower in real property by attorney in fact in any case where she can personally release the same.

## ARTICLE 7

### Landlord and Tenant

- Section 220. Action for use and occupation.  
 221. Rent due on life leases recoverable.  
 222. When rent is apportionable.  
 223. Rights where property or lease is transferred.  
 224. Attornment by tenant.  
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 228. Termination of tenancies at will or by sufferance, by notice.  
 229. Liability of tenant holding over after giving notice of intention to quit.  
 230. Liability of tenant holding over after receiving notice to quit.  
 231. Lease, when void; liability of landlord where premises are occupied for unlawful purpose.  
 232. Duration of certain agreements in New York.

**§ 220. Action for use and occupation.** The landlord may recover a reasonable compensation for the use and occupation of real property, by any person, under an agreement, not made by deed; and a parol lease or other agreement may be used as evidence of the amount to which he is entitled.

**§ 221. Rent due on life leases recoverable.** Rent due on a lease for life or lives is recoverable by action, as well after as before the death of the person on whose life the rent depends, and in the same manner as rent due on a lease for years.

**§ 222. When rent is apportionable.** Where a tenant for life, who shall have demised the real property, dies before the first rent day, or between two rent days, his executor or administrator may recover the proportion of rent which accrued to him before his death.

**§ 223. Rights where property or lease is transferred.** The grantee of leased real property, or of a reversion thereof, or of any rent, the devisee or assignee of the lessor of such a lease, or the heir or personal representative of either of them, has the same remedies, by entry, action or otherwise, for the nonperformance of any agreement contained in the assigned lease for the recovery of rent, for the doing of any waste, or for other cause of forfeiture as his grantor or lessor had, or would have had, if the reversion had remained in him. A lessee of real property, his assignee or personal representative, has the same remedy against the lessor, his grantee or assignee, or the representative of either, for the breach of an agreement contained in the lease, that the lessee might have had against his immediate lessor, except a covenant against incumbrances or relating to the title or possession of the premises leased. This section applies as well to a grant or lease in fee, reserving rent, as to a lease for life or for years; but not to a deed of conveyance in fee, made before the ninth day of April, eighteen hundred and five, or after the fourteenth day of April, eighteen hundred and sixty.

**§ 224. Attornment by tenant.** The attornment of a tenant to a stranger is absolutely void, and does not in any way affect the possession of the landlord unless made either:

1. With the consent of the landlord; or,
2. Pursuant to or in consequence of a judgment, order, or decree of a court of competent jurisdiction; or,
3. To a mortgagee, after the mortgage has become forfeited.

**§ 225. Notice of action adverse to possession of tenant.** Where a process or summons in an action to recover the real property occupied by him, or the possession thereof, is served upon a tenant, he must forthwith give notice thereof to his landlord; otherwise he forfeits the value of three years' rent of such property, to the landlord or other person of whom he holds.

**§ 226. Effect of renewal on sub-lease.** The surrender of an under-lease is not requisite to the validity of the sur-



render of the original lease, where a new lease is given by the chief landlord. Such a surrender and renewal do not impair any right or interest of the chief landlord, his lessee or the holder of an under-lease, under the original lease; including the chief landlord's remedy by entry, for the rent or duties secured by the new lease, not exceeding the rent and duties reserved in the original lease surrendered.

**§ 227. When tenant may surrender premises.** Where any building, which is leased or occupied, is destroyed or so injured by the elements, or any other cause as to be untenable, and unfit for occupancy, and no express agreement to the contrary has been made in writing, the lessee or occupant may, if the destruction or injury occurred without his fault or neglect, quit and surrender possession of the leasehold premises, and of the land so leased or occupied; and he is not liable to pay to the lessor or owner, rent for the time subsequent to the surrender.

**§ 228. Termination of tenancies at will or by sufferance, by notice.** A tenancy at will or by sufferance, however created, may be terminated by a written notice of not less than thirty days given in behalf of the landlord, to the tenant, requiring him to remove from the premises; which notice must be served, either by delivering to the tenant or to a person of suitable age and discretion, residing upon the premises, or if neither the tenant nor such a person can be found, by affixing it upon a conspicuous part of the premises, where it may be conveniently read. At the expiration of thirty days after the service of such notice, the landlord may re-enter, maintain ejectment, or proceed, in the manner prescribed by law, to remove the tenant, without further or other notice to quit.

**§ 229. Liability of tenant holding over after giving notice of intention to quit.** If a tenant gives notice of his intention to quit the premises held by him, and does not accordingly deliver up the possession thereof, at the time specified in such notice, he or his personal representatives must, so long as he continue in possession, pay to the landlord, his heirs or assigns, double the rent which he should otherwise have paid, to be recovered at the same time, and in the same manner, as the single rent.

**§ 230. Liability of tenant holding over after receiving notice to quit.** Where, on the termination of an estate for life, or for years, the person entitled to the possession demands the same, and serves, in the same manner as for the termination of a tenancy at will, a written notice to quit,

if the tenant, or any person in possession under him, or by collusion with him, wilfully holds over, after the expiration of thirty days from such service, he must pay to the person so kept out of possession, or his representatives, at the rate of double the yearly value of the property detained, for the time while he so detains the same, together with all damages incurred by the person so kept out by reason of such detention. There is no equitable defense or relief against a demand accrued, or a recovery had, under this section.

**§ 231. Lease, when void; liability of landlord where premises are occupied for unlawful purpose.**

1. Whenever the lessee or occupant other than the owner of any building or premises, shall use or occupy the same, or any part thereof, for any illegal trade, manufacture or other business, the lease or agreement for the letting or occupancy of such building or premises shall thereupon become void, and the landlord of such lessee or occupant may enter upon the premises so let or occupied.

2. The owner of real property, knowingly leasing or giving possession of the same to be used or occupied, wholly or partly, for any unlawful trade, manufacture or business, or knowingly permitting the same to be so used, is liable severally, and also jointly with one or more of the tenants or occupants thereof, for any damage resulting from such unlawful use, occupancy, trade, manufacture or business.

**§ 232. Duration of certain agreements in New York.** An agreement for the occupation of real property in the city of New York, which shall not particularly specify the duration of the occupation, shall be deemed to continue until the first day of May next after the possession commences under the agreement; and rent thereunder is payable at the usual quarter days, for the payment of rent in that city, unless otherwise expressed in the agreement.

## ARTICLE 8

### Conveyances and Mortgages

- Section 240. Definitions and use of terms.  
 241. Ancient conveyances abolished.  
 242. When written conveyance necessary.  
 243. Grant of fee or freehold.  
 244. When grant takes effect.  
 245. Estate which passes by grant or devise.  
 246. Certain deeds declared grants.

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- Section 247. Conveyance by tenant for life or years of greater estate than possessed.
248. Effect of conveyance where property is leased.
249. Covenants in mortgages.
250. Mortgages on real property inherited or devised.
251. Covenants not implied.
252. Lineal and collateral warranties abolished.
253. Construction of covenants in grants of freehold interests.
254. Construction of covenants in mortgages and bonds.
255. Construction of grant of appurtenances and of all the rights and estate of grantor.
256. Construction of grant in executor's or trustee's deed of appurtenances, and of the estate of testator and grantor.
257. Covenants bind representatives of grantor and mortgagor and inure to the benefit of whom.
258. Short forms of deeds and mortgages.
259. When contract to lease or sell void.
260. Effect of grant or mortgage of real property adversely possessed.
261. Maintenance of telegraph or other electric wires raises no presumption of grant.
262. Conveyances with intent to defraud purchasers and incumbrancers void.
263. Conveyances with intent to defraud creditors void.
264. Conveyances void as to creditors, purchasers and incumbrancers, void as to heirs and assigns.
265. Fraudulent intent, question of fact.
266. Rights of purchaser or incumbrancer for valuable consideration protected.
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268. Disaffirmance of fraudulent act by executor and others.
269. When remainderman may pay interest owed by life tenant.
270. Powers of courts of equity not abridged.
271. Construction of covenants in mortgages on leases of real property and bonds.
272. Construction of grant of appurtenances, and all of the rights and estate of the mortgagor.
273. What form of mortgage on lease of real property.
274. Transfers and mortgages of interests in decedents' estates.

**§ 240. Definitions and use of terms.** 1. The term "heirs," or other words of inheritance, are not requisite to create or convey an estate in fee.

2. The term "conveyance," as used in this article, includes every instrument, in writing, except a will, by which any estate or interest in real property is created, transferred, assigned or surrendered.

3. Every instrument creating, transferring, assigning or surrendering an estate or interest in real property must be construed according to the intent of the parties, so far as such intent can be gathered from the whole instrument, and is consistent with the rules of law.

4. The terms "estate" and "interest in real property" include every such estate and interest, freehold or chattel, legal or equitable, present or future, vested or contingent.

**§ 241. Ancient conveyances abolished.** The conveyance of real property by feoffment, with livery of seizin, or by fines, or common recoveries, is abolished.

**§ 242. When written conveyance necessary.** An estate or interest in real property, other than a lease for a term not exceeding one year, or any trust or power, over or concerning real property, or in any manner relating thereto, can not be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing. But this section does not affect the power of a testator in the disposition of his real property by will; nor prevent any trust from arising or being extinguished by implication or operation of law, nor any declaration of trust from being proved by a writing subscribed by the person declaring the same.

**§ 243. Grant of fee or freehold.** A grant in fee or of a freehold estate, must be subscribed by the person from whom the estate or interest conveyed is intended to pass, or by his lawful agent. If not duly acknowledged before its delivery, according to the provisions of this chapter, its execution and delivery must be attested by at least one witness, or, if not so attested, it does not take effect as against a subsequent purchaser or incumbrancer until so acknowledged.

**§ 244. When grant takes effect.** A grant takes effect, so as to vest the estate or interest intended to be conveyed, only from its delivery; and all the rules of law, now in force, in respect to the delivery of deeds, apply to grants hereafter executed.

**§ 245. Estate which passes by grant or devise.** A grant or devise of real property passes all the estate or interest of the grantor or testator unless the intent to pass a less estate or interest appears by the express terms of such grant or devise or by necessary implication therefrom. A greater estate or interest does not pass by any grant or conveyance, than the grantor possessed or could lawfully convey, at the time of the delivery of the deed; except that every grant is conclusive against the grantor and his heirs claiming from him by descent, and as against a subsequent purchaser or incumbrancer from such grantor, or from such heirs claiming as such, other than a subsequent purchaser or incumbrancer in good faith and for a valuable consideration, who acquires a superior title by a conveyance that has been first duly recorded.

**§ 246. Certain deeds declared grants.** Deeds of bargain and sale, and of lease and release, may continue to be used; and are to be deemed grants, subject to all the provisions of law in relation thereto.

**§ 247. Conveyance by tenant for life or years of greater estate than possessed.** A conveyance made by a tenant for life or years, of a greater estate than he possesses, or can lawfully convey, does not work a forfeiture of his estate, but passes to the grantee all the title, estate or interest which such tenant can lawfully convey.

**§ 248. Effect of conveyance where property is leased.** An attornment to a grantee is not requisite to the validity of a conveyance of real property occupied by a tenant, or of the rents or profits thereof, or any other interest therein. But the payment of rent to a grantor, by his tenant, before notice of the conveyance, binds the grantee; and the tenant is not liable to such grantee, before such notice, for the breach of any condition of the lease.

**§ 249. Covenants in mortgages.** A mortgage of real property does not imply a covenant for the payment of the sum intended to be secured; and where such covenant is not expressed in the mortgage, or a bond or other separate instrument to secure such payment has not been given, the remedies of the mortgage are confined to the property mentioned in the mortgage.

**§ 250. Mortgages on real property inherited or devised.** Where real property, subject to a mortgage executed by any ancestor or testator, descends to an heir, or passes to a devisee, such heir or devisee must satisfy and discharge the

mortgage out of his own property, without resorting to the executor or administrator of his ancestor or testator, unless there be an express direction in the will of such testator, that such mortgage be otherwise paid.

**§ 251. Covenants not implied.** A covenant is not implied in a conveyance of real property, whether the conveyance contains any special covenant or not.

**§ 252. Lineal and collateral warranties abolished.** Lineal and collateral warranties, with all their incidents, have been abolished; but the heirs and devisees of a person, who has made a covenant or agreement, are answerable thereon, to the extent of the real property descended or devised to them, in the cases and in the manner prescribed by law.

**§ 253. Construction of covenants in grants of freehold interests.** In grants of freehold interests in real property, the following or similar covenants must be construed as follows:

1. Seizin.—A covenant that the grantor “is seized of the said premises (described) in fee simple, and has good right to convey the same,” must be construed as meaning that such grantor, at the time of the execution and delivery of the conveyance, is lawfully seized of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the premises thereby conveyed, with the tenements, hereditaments and appurtenances thereto belonging, and has good right, full power and lawful authority to grant and convey the same by the said conveyance.

2. Quiet enjoyment.—A covenant that the grantee “shall quietly enjoy the said premises,” must be construed as meaning that such grantee, his heirs, successors and assigns, shall and may, at all times thereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the grantor, his heirs, successors or assigns, or any person or persons lawfully claiming or to claim the same.

3. Freedom from incumbrances.—A covenant “that the said premises are free from incumbrances,” must be construed as meaning that such premises are free, clear, discharged and unincumbered of and from all former and other gifts, grants, titles, charges, estates, judgments, taxes, assessments, liens and incumbrances, of what nature or kind soever.

4. Further assurance.—A covenant that the grantor will “execute or procure any further necessary assurance of the title to

said premises," must be construed as meaning that the grantor and his heirs, or successors, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in, or to the premises conveyed by, from, under, or in trust for him or them, shall and will at any time or times thereafter upon the reasonable request, and at the proper costs and charges of the grantee, his heirs, successors and assigns, make, do, and execute, or cause to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises thereby granted or so intended to be, in and to the grantee, his heirs, successors or assigns forever, as by the grantee, his heirs, successors or assigns, or his or their counsel learned in the law, shall be reasonably advised or required.

5. Warranty of title.—A covenant that the grantor "will forever warrant the title" to the said premises, must be construed as meaning that the grantor and his heirs, or successors, the premises granted, and every part and parcel thereof, with the appurtenances, unto the grantee, his heirs, successors or assigns, against the grantor and his heirs or successors, and against all and every person or persons whomsoever lawfully claiming or to claim the same shall and will warrant and forever defend.

6. Grantor has not incumbered.—A covenant that the grantor "has not done or suffered anything whereby the said premises have been incumbered," must be construed as meaning that the grantor has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered in any manner or way whatsoever.

**§ 254. Construction of covenants in mortgages and bonds.** In mortgages of real property, and in bonds secured thereby, the following or similar covenants must be construed as follows:

1. Agreement that whole sum shall become due.—The words "and it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of said mortgagee or obligee after default in the payment of any instalment of principal or of interest for . . . . . days, or after default in the payment of any tax or assessment for . . . . . days after notice and demand." must be construed as meaning that should any default be made in the payment of any instalment of principal

or any part thereof, or in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, or should any tax or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due or payable, and should the said interest remain unpaid and in arrear for the space of . . . . . days, or such tax or assessment remain unpaid and in arrear for . . . . . days after written notice by the mortgagee or obligee, his executors, administrators, successors or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, shall, at the option of the said mortgagee or obligee, his executors, administrators, successors or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in any wise notwithstanding.

2. In default of payment, mortgagee to have power to sell.— A covenant that the mortgagor “will pay the indebtedness, as provided in the mortgage, and if default be made in the payment of any part thereof, the mortgagee shall have power to sell the premises therein described, according to law,” must be construed as meaning that the mortgagor for himself, his heirs, executors and administrators or successors, doth covenant and agree to pay to the mortgagee, his executors, administrators, successors and assigns, the principal sum of money secured by said mortgage, and also the interest thereon as provided by said mortgage. And if default shall be made in the payment of the said principal sum or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the mortgagee, his executors, administrators or successors to enter into and upon all and singular the premises granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said mortgagor, his heirs, executors, administrators, successors or assigns therein, at public auction, according to the act in such case made and provided, and as the attorney of the mortgagor for that purpose duly authorized, constituted and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the same in fee simple (or otherwise, as the case may be) and out of the money arising from such sale, to retain the principal and interest which shall then be due, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money, if any



there shall be, unto the mortgagor, his heirs, executors, administrators, successors or assigns, which sale so to be made shall forever be a perpetual bar both in law and equity against the mortgagor, his heirs, successors and assigns, and against all other persons claiming or to claim the premises, or any part thereof by, from or under him, them or any of them.

3. Mortgagor to keep buildings insured.—A covenant “that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee,” must be construed as meaning that the mortgagor, his heirs, successors and assigns will, during all the time until the money secured by the mortgage shall be fully paid and satisfied, keep the buildings erected on the premises insured against loss or damage by fire, to an amount and in a company to be approved by the mortgagee, and will assign and deliver the policy or policies of such insurance to the mortgagee, his executors, administrators, successors or assigns, so and in such manner and form that he and they shall at all time and times, until the full payment of said moneys, have and hold the said policy or policies as a collateral and further security for the payment of said money, and in default of so doing, that the mortgagee or his executors, administrators, successors or assigns, may make such insurance from year to year, in a sum not exceeding the principal sum for the purposes aforesaid, and pay the premium or premiums therefor, and that the mortgagor will pay to the mortgagee, his executors, administrators, successors or assigns, such premium or premiums so paid, with interest from the time of payment, on demand, and that the same shall be deemed to be secured by the mortgage, and shall be \*collectable thereupon and thereby in like manner as the principal moneys, and in default of such payment by the mortgagor, his heirs, executors, administrators, successors or assigns, or of assignment and delivery of policies as aforesaid the whole of the principal sum and interest secured by the mortgage shall, at the option of the mortgagee, his executors, administrators, successors or assigns, immediately become due and payable.

4. Mortgagor to give further assurance of title.—A covenant that the mortgagor “will execute any further necessary assurance of the title to said premises, and will forever warrant said title,” must be construed as meaning that the mortgagor shall and will make, execute, acknowledge and deliver in due form of law, all such further or other deeds or assurances as may at any time hereafter be reasonably desired or required for the more fully and effectually conveying the premises by the mortgage described, and thereby granted or intended so to be, unto the

\*So in original

said mortgagee, his executors, administrators, successors or assigns, for the purpose aforesaid, and unto all and every person or persons, corporation or corporations, deriving any estate, right, title or interest therein, under the said indenture of mortgage, or the power of sale therein contained, and the said granted premises against the said mortgagor, and all persons claiming through him will warrant and defend.

**§ 255. Construction of grant of appurtenances and of all the rights and estate of grantor.** In any grant or mortgage of freehold interests in real estate, the words, "together with the appurtenances and all the estate and rights of the grantor in and to said premises," must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and right of dower, curtesy and right of curtesy, property, possession, claim and demand whatsoever, both in law and in equity, of the said grantor of, in and to the said granted premises and every part and parcel thereof, with the appurtenances.

**§ 256. Construction of grant in executor's or trustee's deed of appurtenances, and of the estate of testator and grantor.** In any deed by an executor of, or trustee under a will, the words "together with the appurtenances and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein which said grantor has or has power to convey or dispose of, whether individually or by virtue of said will or otherwise," must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, or which the said grantor has or has power to convey or dispose of, whether individually or by virtue of the said last will and testament or otherwise, of, in and to the said granted premises, and every part and parcel thereof, with the appurtenances.

**§ 257. Covenants bind representatives of grantor and mortgagor and inure to the benefit of whom.** All

covenants contained in any grant or mortgage of real estate bind the heirs, executors, administrators, successors and assigns, of the grantor or mortgagor, and inure to the benefit of the heirs, executors, administrators, successors and assigns of the grantee or mortgagee in the same manner and to the same extent, and with like effect as if such heirs, executors, administrators, successors and assigns were so named in such covenants, unless otherwise in said grant or mortgage expressly provided.

§ 258. **Short forms of deeds and mortgages.** The use of the following forms of instruments for the conveyance and mortgage of real property is lawful, but this section does not prevent or invalidate the use of other forms:

### SCHEDULE A.

#### DEED WITH FULL COVENANTS.

This indenture, made the ..... day of ....., in the year nineteen hundred and ....., between ..... of (insert residence) of the first part, and ..... of (insert residence) of the second part.

Witnesseth, that the said party of the first part, in consideration of ..... dollars lawful money of the United States, paid by the party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever. And the said party of the first part doth covenant with said party of the second part as follows:

First. That the party of the first part is seized of said premises in fee simple, and has good right to convey the same.

Second. That the party of the second part shall quietly enjoy the said premises.

Third. That the said premises are free from incumbrances.

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth. That the party of the first part will forever warrant the title to said premises.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE B.

EXECUTOR'S DEED.

This indenture, made the ..... day of ....., nineteen hundred and ....., between ..... as executor of the last will and testament of ....., late of ....., deceased, of the first part, and ....., of the second part, witnesseth:

That the said party of the first part, by virtue of the power and authority to him given in and by the said last will and testament, and in consideration of ..... dollars, lawful money of the United States, paid by the said party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (description) together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein, which the said party of the first part has or has power to dispose of, whether individually, or by virtue of said will or otherwise.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever.

And the said party of the first part covenants with said party of the second part that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE C.

MORTGAGE.

This indenture, made the ..... day of ....., in the year nineteen hundred and ....., between ....., of ....., party of the first part, and ....., of ....., party of the second part.

Whereas, the said ..... is justly indebted to the said party of the second part in the sum of ..... dollars, lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of ..... dollars, on the ..... day of ....., nineteen hundred and ....., and the interest thereon, to be computed from ....., at the rate of ..... per centum per annum, and to be paid .....

It being thereby expressly agreed that the whole of the said principal sum shall become due after default in the payment of any instalment of principal, interest, taxes or assessments, as hereinafter provided.

Now, this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of one dollar, paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said party of the second part, and to his heirs (or successors) and assigns forever (description), together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises. To have and hold the above granted premises unto the said party of the second part, his heirs and assigns forever. Provided, always, that if the said party of the first part, his heirs, executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents, and the estate hereby granted, shall cease, determine and be void. And the said party of the first part covenants with the party of the second part as follows:

1. That the said party of the first part will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises therein described according to law.

2. That the said party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

3. And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the second part after default in the payment of any instalment of principal or of interest for . . . . . days, or after default in the payment of any tax or assessment for . . . . . days after notice and demand.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

In the presence of:

**§ 259. When contract to lease or sell void.** A contract for the leasing for a longer period than one year, or for the sale, of any real property, or an interest therein, is void, unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the lessor or grantor, or by his lawfully authorized agent.

**§ 260. Effect of grant or mortgage of real property adversely possessed.** A grant of real property is absolutely void, unless the same shall be made to the people of the state of New York, if at the time of the delivery thereof, such property is in actual possession of a person claiming under a title adverse to that of the grantor; but such possession does not prevent the mortgaging of such property, and such mortgage, if duly recorded, binds the property from the time the possession thereof is recovered by the mortgagor or his representatives, and has preference over any judgment or other instrument, subsequent to the recording thereof; and if there are two or more such mortgages, they severally have preference according to the time of recording thereof, respectively. (*Thus amended by L. 1909, ch. 481, in effect May 25, 1909.*)

Amendment of 1909 inserted the clause, after the words "absolutely void", beginning with "unless" and ending with "New York" at the beginning of the first sentence.

**§ 261. Maintenance of telegraph or other electric wires raises no presumption of grant.** Whenever any wire or cable used for any telegraph, telephone, electric light or other electric purpose, or for the purpose of communication otherwise than by the aid of electricity, is or shall be attached to, or does or shall extend upon or over any building or land, no lapse of time whatever shall raise a presumption of any grant of, or justify a prescription of any perpetual right to, such attachment or extension.

**§ 262. Conveyances with intent to defraud purchasers and incumbrancers void.** A conveyance of an estate or interest in real property, or the rents and profits thereof, and every charge thereon, made or created with intent to defraud prior or subsequent purchasers or incumbrancers, for a valuable consideration, of the same real property, rents or profits, is void as against such purchasers and incumbrancers. Such a conveyance or charge shall not be deemed fraudulent in favor of a subsequent purchaser or incumbrancer, who, at the time of his purchase or incumbrance, has actual or legal notice thereof, unless it appears that the grantee in the conveyance, or the person to be benefited by the charge, was privy to the fraud intended.

**§ 263. Conveyances with intent to defraud creditors void.** A conveyance or assignment in writing or otherwise, of an estate, interest, or existing trust in real property, or the rents or profits issuing therefrom, or a charge on real property, or on the rents or profits thereof, made with the intent to hinder, delay or defraud creditors, or other persons, of their lawful suits, damages, forfeitures, debts or demands, or a bond or other evidence of debt given, suit commenced or decree or judg-

ment suffered, with the like intent, is void as against every person so hindered, delayed or defrauded.

**§ 264. Conveyances void as to creditors, purchasers and incumbrancers, void as to heirs and assigns.** A conveyance, charge, instrument or proceeding, declared by this article to be void as against creditors, purchasers or incumbrancers, is equally void as against their heirs, successors, personal representatives or assigns.

**§ 265. Fraudulent intent, question of fact.** The question of fraudulent intent in a case arising under this article, shall be deemed a question of fact and not of law; and a conveyance or charge shall not be adjudged fraudulent as against creditors, purchasers or incumbrancers, solely on the ground that it was not founded on a valuable consideration.

**§ 266. Rights of purchaser or incumbrancer for valuable consideration protected.** This article does not in any manner affect or impair the title of a purchaser or incumbrancer for a valuable consideration, unless it appears that he had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

**§ 267. Conveyances with power to revoke, determine or alter.** A conveyance of, or charge on, an estate or interest in real property, containing a provision for the revocation, determination or alteration of the estate or interest, or any part thereof, at the will of the grantor, is void, as against subsequent purchasers and incumbrancers, from the grantor, for a valuable consideration, of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered by the grantor, by virtue of the power reserved or expressed in the prior conveyance or charge. Where a power to revoke a conveyance of real property or the rents and profits thereof, and to reconvey the same, is given to any person, other than the grantor in such conveyance, and such person thereafter conveys the same real property, rents or profits to a purchaser or incumbrancer for a valuable consideration, such subsequent conveyance is valid, in the same manner and to the same extent as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared. If a conveyance to a purchaser or incumbrancer, under this section, be made before the person making it is entitled to execute his power of revocation, it is nevertheless valid, from the time the power of revocation actually vests in such person, in the same manner, and to the same extent, as if then made.

**§ 268. Disaffirmance of fraudulent act by executor and others.** An executor, administrator, receiver, assignee or

other trustee, may, for the benefit of creditors, or of others interested in real property held in trust, disaffirm, treat as void and resist any act done or transfer or agreement made in fraud of the rights of any creditor, including himself, interested in such estate or property; and a person who fraudulently receives, takes, or in any manner interferes with the real property of a deceased person, or an insolvent corporation, association, partnership, or individual, is liable to such executor, administrator, receiver or other trustee for the same, or the value thereof, and for all damages caused by such act to the trust estate. A creditor of a deceased insolvent debtor, having a claim or demand exceeding one hundred dollars against such deceased, may, for the benefit of creditors or others interested in the real property of such deceased, disaffirm, treat as void, and resist any act done or conveyance, transfer or agreement made by such deceased in fraud of the rights of any creditor, including himself, and may maintain an action to set aside such act, conveyance, transfer or agreement, without having first obtained a judgment on such claim or demand; but the same, if disputed, may be established on the trial. The judgment in such action may provide for the sale of the premises or property involved, when a conveyance or transfer thereof is set aside, and that the proceeds thereof be brought into court or paid into the proper surrogate's court to be administered according to law.

**§ 269. When remainderman may pay interest owed by life tenant.** Whenever real property held by any person for life is incumbered by mortgage or other lien, the interest on which should be paid by the life tenant, and such life tenant neglects or refuses to pay such interest, the remainderman may pay such interest, and recover the amount thereof, together with interest thereon from the time of such payment, of the life tenant.

**§ 270. Powers of courts of equity not abridged.** Nothing contained in this article abridges the powers of courts of equity to compel the specific performance of agreements in cases of part performance.

**§ 271. Construction of covenants in mortgages on leases of real property and bonds.** In mortgages on leases of real property and in bonds secured thereby, the following or similar covenants or agreements must be construed as follows:

1. In default of payment, mortgagee to have power to sell.— A covenant that the mortgagor "will pay the indebtedness, as provided in the mortgage, and if default be made in the payment of any part thereof, the mortgagee or obligee shall have power to sell the premises therein described, according to law," must



be construed as meaning that the mortgagor or obligor shall well and truly pay unto the mortgagee or obligee the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, according to the condition of the said bond or obligation. And if default shall be made in the payment of the said sum of money therein mentioned, or in the interest which shall accrue thereon, or of any part of either, that then and from thenceforth it shall be lawful for the said mortgagee or obligee, his legal representative or assigns, to sell, transfer and set over, all the rest, residue and remainder of the said term of years then yet to come, and all other, the right, title and interest of the said mortgagor or obligor of, in and to the same, at public auction, according to the act in such case made and provided. And as the attorney of the said mortgagor or obligor for that purpose by these presents duly authorized, constituted and appointed, to make, seal, execute and deliver to the purchaser or purchasers thereof, a good and sufficient assignment, transfer or other conveyance in the law, for the said premises, with the appurtenances; and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said mortgagor or obligor, his legal representatives or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said mortgagor or obligor, and against all persons claiming or to claim the premises or any part thereof, by, from or under him or them, or any of them.

2. Mortgagor to keep buildings insured.— A covenant “that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee,” must be construed as meaning that the said mortgagor or obligor shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss and damage by fire, by insurance, and in an amount approved by the said mortgagee or obligee and his assigns, and either assign the policy and certificates thereof or have such insurance made payable to the said mortgagee or obligee or his assigns, and in default thereof it shall be lawful for the said mortgagee or obligee and his assigns to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand, with legal interest.

3. Mortgagor to pay rent and charges on premises.— A covenant that the mortgagor “will pay the rent and other charges mentioned in and made payable by said indenture of lease within . . . . . days after said rent or charges are payable,” must be construed as meaning that the said mortgagor or obligor and his legal representatives and assigns, will pay or cause to be paid, and discharge all rent and rents mentioned in and made payable by the indenture of lease aforesaid, and also all taxes, assessments or other charges that now are a lien, or hereafter shall or may be levied, assessed or imposed and become a lien upon the premises above described or any part thereof; and in default thereof, for the space of . . . . . after such taxes or assessments or . . . . . after the said rent or rents, or any of them shall have become due and payable by the terms of said lease or by law, then and in each and every such case the said mortgagee or obligee, his legal representatives or assigns may, at option, and without notice, pay such rent or rents, taxes, assessments or other charges and expenses, and the amount so paid, and interest thereon, from the time of such payment, shall forthwith be due and payable from the said mortgagor or obligor, his legal representatives or assigns, to the said mortgagee or obligee, his legal representatives or assigns, and shall be deemed to be secured by these presents, and shall be \*collectable in the same manner, and at the same time, and upon the same conditions as the interest then next maturing upon the principal sum hereinbefore mentioned.

4. Agreement that whole sum shall become due.— The words “And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of said mortgagee or obligee after default in the payment of any instalment of principal or after default in the payment of interest for . . . . . days, or after default in the payment of any rent or other charge made payable by said indenture of lease for . . . . . days, or after default in the payment of any tax or assessment for . . . . . days after notice and demand,” must be construed as meaning that should any default be made in the payment of any instalment of principal or any part thereof, or of said interest or any part thereof, or of any rent or other charge made payable by said indenture or lease, on any day whereon the same is made payable, or should any tax or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due and payable, and should the said interest, rent or other charge aforesaid, remain unpaid and in arrear for the space of . . . . . days, or such tax or assessment remain unpaid and in arrear for . . . . . days after written notice by

\* So in original.

the mortgagee or obligee, his executors, administrators or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, rent and other charges paid by the mortgagee or obligee, shall, at the option of the said mortgagee or obligee, his executors, administrators or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in anywise notwithstanding.

**§ 272. Construction of grant of appurtenances, and all of the rights and estate of the mortgagor.** In any mortgage on a lease of real property the words "together with the appurtenances and all the estate and rights of the part . . . . . of the first part of, in and to said premises under and by virtue of the aforesaid indenture of lease," must be construed as meaning, together with all and singular the edifices, buildings, rights, members, privileges and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, right, title, interest, term of years yet to come and unexpired, property, possession, claim and demand whatsoever, as well in law as in equity, of the said mortgagor or obligor, of, in and to the said demised premises, and every part and parcel thereof, with the appurtenances; and also the said indenture of lease, and the renewal therein provided for, and every clause, article and condition therein expressed and contained.

**§ 273. What form of mortgage on lease of real property.** The use of the following form of instrument for mortgages on leases of real property is lawful, but this section does not prevent or invalidate the use of other forms.

#### SCHEDULE D.

##### MORTGAGE ON LEASE OF REAL PROPERTY.

This indenture, made the . . . . . day of . . . . ., in the year one thousand . . . . hundred and . . . ., between . . . . . of (insert residence) of the first part and . . . . . of (insert residence) of the second part; whereas . . . . . did, by a certain indenture of lease, bearing date the . . . . . day of . . . . ., in the year one thousand nine hundred and . . . . ., demise, lease and to farm let unto . . . . . and to . . . . . executors, administrators and assigns, all and singular the premises herein after mentioned and described, together with their appurtenances:

to have and to hold the same unto the said ..... and to ..... executors, administrators and assigns, for and during and until the full end and term of ..... years, from the..... day of ....., one thousand nine hundred and ....., fully to be complete and ended, yielding and paying therefor unto the said ..... and to ..... or assigns, the yearly rent or sum of .....

And whereas, the said part .... of the first part justly indebted to the said part... of the second part, in the sum of ..... lawful money of the United States of America, secured to be paid by ..... certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of ..... on the ..... day of ....., nineteen hundred and ..... and the interest thereon to be computed from ..... at the rate of ..... per centum per annum and to be paid .....

It being thereby expressly agreed that the whole of the said principal sum shall become due at the option of the mortgagee or obligee after default in the payment of interest, taxes or assessments or rents as hereinafter provided.

Now this indenture witnesseth that the said part... of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of the sum of one dollar, paid by the said part... of the second part, the receipt whereof is hereby acknowledged, doth grant and release, assign, transfer and set over unto said part... of the second part, and to his heirs (or successors) and assigns forever.

(Description.)

Together with the appurtenances and all the estate and rights of the part... of the first part of, in and to said premises under and by virtue of the aforesaid indenture of lease.

To have and hold the said indenture of lease and renewal, and the above granted premises, unto the said part... of the second part, his heirs and assigns, for and during all the rest, residue and remainder of the said term of years yet to come and unexpired, in said indenture of lease and in the renewals therein provided for; subject, nevertheless, to the rents, covenants, conditions and provisions in the said indenture of lease mentioned.

Provided always that if the said part... of the first part shall pay unto the said part... of the second part, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents and the estate hereby granted, shall cease, determine and be void.

And the said part... of the first part covenant.. with the said part... of the second part as follows:

First. That the part... of the first part will pay the indebtedness as hereinbefore provided.

And if default shall be made in the payment of any part thereof the said part... of the second part shall have power to sell the premises therein described according to law.

Second. That the said premises now are free and clear of all incumbrances whatsoever, and that ..... ha... good right and lawful authority to convey the same in manner and form hereby conveyed.

Third. That the part... of the first part will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee.

Fourth. That the part... of the first part will pay the rents and other charges mentioned in and made payable by said indenture of lease within ..... days after said rent or charges are payable.

Fifth. And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of the said mortgagee or obligee after default in the payment of any instalment of principal, or after default in the payment of interest for ..... days, or after default in the payment of any rent or other charge made payable by said indenture of lease for ..... days, or after default in the payment of any tax or assessment for ..... days after notice and demand.

In witness whereof, the said part... of the first part to these presents ha... hereunto set ..... hand.. and seal.. the day and year first above written.

Scaled and delivered }  
in the presence of }

**§ 274. Transfers and mortgages of interest in decedents' estates.** Every conveyance, assignment, or other transfer of, and every mortgage or other charge upon the interest, or any part thereof, of any person in the estate of a decedent which is situated within this state, shall be in writing, and shall be acknowledged or proved in the manner required to entitle conveyances of real property to be recorded. Any such instrument may also be recorded as herein~~after~~ provided; and if not so recorded, it is void against any subsequent purchaser or mortgagee of the same interest or any part thereof, in good faith and for a valuable consideration, whose conveyance or mortgage is first duly recorded. If such interest is entirely in the real prop-

erty of a decedent, the conveyance or mortgage shall be recorded in the office of the clerk of the county where such real property is situated. If such interest is in both the personal and the real property of a decedent, the conveyance or mortgage shall be recorded in the office of the surrogate issuing letters testamentary or letters of administration upon the said decedent's estate, or if no such letters have been issued, then in the office of the surrogate having jurisdiction to issue the same, and also in the office of the said county clerk. Such a conveyance or mortgage when so recorded, shall be indexed under the name of the decedent, in a book to be kept for that purpose by each recording officer. The person presenting any such instrument for record shall pay to the clerk of the surrogate's court a fee of ten cents for each folio.

## ARTICLE 9

### Recording Instruments Affecting Real Property

- Section 290. Definitions; effect of article.
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322. Recording discharge of mortgage in counties embraced in cities of first class.
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328. Certain acts not affected.
329. Actions to have certain instruments canceled of record.
330. Officers guilty of malfeasance liable for damages.
331. Laws and decrees of foreign countries appointing agents and attorneys and recording of the same.
332. The record of certain conveyances validated.

**§ 290. Definitions; effect of article.** 1. The term "real property," as used in this article, includes lands, tenements and hereditaments and chattels real, except a lease for a term not exceeding three years.

2. The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration, and every assignee of a mortgage, lease or other conditional estate.

3. The term "conveyance" includes every written instrument, by which any estate or interest in real property is created, transferred, mortgaged or assigned, or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument postponing or subordinating a mortgage

lien; except a will, a lease for a term not exceeding three years, an executory contract for the sale or purchase of lands, and an instrument containing a power to convey real property as the agent or attorney for the owner of such property.

4. The term "recording officer" means the county clerk of the county, except in the counties of New York, Kings or Westchester, where it means the register of the county.

5. This article does not apply to leases for life or lives, or for years, heretofore made, of lands in either of the counties of Albany, Ulster, Sullivan, Herkimer, Dutchess, Columbia, Delaware or Schenectady.

**§ 291. Recording of conveyances.** A conveyance of real property, within the state, on being duly acknowledged by the person executing the same, or proved as required by this chapter, and such acknowledgment or proof duly certified when required by this chapter, may be recorded in the office of the clerk of the county where such real property is situated, and such county clerk shall, upon the request of any party, on tender of the lawful fees therefor, record the same in his said office. Every such conveyance not so recorded is void as against any subsequent purchaser in good faith and for a valuable consideration, from the same vendor, his heirs or devisees, of the same real property or any portion thereof, whose conveyance is first duly recorded.

**§ 292. By whom conveyance must be acknowledged or proved.** Except as otherwise provided by this article, such acknowledgment can be made only by the person who executed the conveyance, and such proof can be made only by some other person, who was a witness of its execution, and at the same time subscribed his name to the conveyance as a witness.

**§ 293. Recording of conveyances heretofore acknowledged or proved.** A conveyance of real property, within the state, heretofore executed, and heretofore acknowledged or proved, and certified, so as to be entitled to be read in evidence, or recorded, under the laws in force at the time when so acknowledged or proved, but which has not been recorded is entitled to be read in evidence, and recorded in the same manner, and with the like effect, as if this chapter had not been passed. If heretofore executed, but not proved or acknowledged, it may be proved or acknowledged in the same manner as conveyances hereafter executed and with like effect.



**§ 294. Recording executory contracts and powers of attorney.** An executory contract for the sale or purchase of real property, or an instrument containing a power to convey real property, as the agent or attorney for the owner of the property, acknowledged or proved, and certified, in the manner to entitle a conveyance to be recorded, may be recorded by the recording officer of any county in which any of the real property to which it relates is situated.

**§ 295. Recording of letters patent.** Letters patent, issued under the great seal of the state, granting real property, may be recorded in the county where such property is situated, in the same manner and with like effect, as a conveyance duly acknowledged or proved and certified so as to entitle it to be recorded.

**§ 296. Recording copies of instruments which are in secretary of state's office.** A copy of an instrument affecting real property, within the state, recorded or filed in the office of the secretary of state, certified in the manner required to entitle the same to be read in evidence, may be recorded with such certificate in the office of any recording officer of the state.

**§ 297. Certified copies may be recorded.** A copy of a record, or of any recorded instrument, certified or authenticated so as to be entitled to be read in evidence, may be again recorded in any office where the original would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of a conveyance or mortgage affecting separate parcels of real property situated in different counties, or of the record of such conveyance or mortgage in one of such counties, certified or authenticated so as to be entitled to be read in evidence, may be recorded in any county in which any such parcel is situated, with the same effect as if the original instrument authenticated as required by section three hundred and ten of this chapter were so recorded.

**§ 298. Acknowledgments and proofs within the state.** The acknowledgment or proof of a conveyance of real property within the state may be made at any place within the state, before a justice of the supreme court; or within the district wherein such officer is authorized to perform official duties, before a judge, clerk, deputy clerk, or special deputy clerk of a court, a notary public, or the mayor or recorder of a city, a justice of the peace, surrogate, special surrogate, special county judge, or commissioner of deeds.

**§ 299. Acknowledgments and proofs in other states.**

The acknowledgment or proof of a conveyance of real property, within the state, may be made without the state, but within the United States, before any of the following officers acting within his jurisdiction, or of the court to which he belongs:

1. A judge of the supreme court, of the circuit court of appeals, of the circuit court, or of the district court of the United States.

2. A judge of the supreme, superior, or circuit court of a state.

3. A mayor of a city.

4. A commissioner appointed for the purpose by the governor of the state.

5. Any officer of the state or territory in which the acknowledgment is taken authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein.

6. Any officer of the District of Columbia authorized by the laws of the United States to take the acknowledgment or proof of deeds to be recorded in said district.

**§ 300. Acknowledgments and proofs in Porto Rico, the Philippines, Cuba, and elsewhere.**

If the party or parties executing such conveyance shall be or reside in Porto Rico, the Philippine islands, Cuba, or in any other place over which the United States of America at the time has or exercises sovereignty, control, or a protectorate, the same may be acknowledged or proved before:

1. A judge or clerk of a court of record thereof, acting within his jurisdiction;

2. A mayor or other chief officer of a city, acting in such city;

3. A commissioner appointed for the purpose by the governor of this state and acting within his jurisdiction;

4. An officer of the United States regular army or volunteer service of the rank of captain or higher, or an officer of the United States navy of the rank of lieutenant or higher, while on duty at the place where such party or parties are or reside.

The certificate of an acknowledgment taken before any of the officers mentioned in subdivision one, two or three of this section, shall have attached thereto the seal of the court or officer if he have a seal, and if such officer have no seal, then a statement to that effect. The certificate of an acknowledgment taken before an officer of the army or navy mentioned in subdivision four of this section, shall state his rank, the name of the city, or other political division where taken, and the fact that he is on duty there, and shall be authenticated by the secretary of war or the secretary of the navy, as the case may be, of the United States.

**§ 301. Acknowledgments and proofs in foreign countries.** The acknowledgment, or proof, of a conveyance of real property situated within this state, may be made without the United States before any of the following officers:

1. An ambassador, a minister plenipotentiary, a minister extraordinary, a minister resident, or a chargé d'affaires of the United States, accredited to the country, in which the acknowledgment or proof is taken, and residing therein.

2. A consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul, a deputy-consul, a consular agent, a vice-consular agent, a commercial agent, or a vice-commercial agent of the United States, if residing within the country to which he is appointed, or a secretary of legation at the post, port, place or within the limits of his legation.

3. A commissioner appointed for the purpose by the governor, and acting within his own jurisdiction.

4. A person specially authorized for that purpose by a commission, under the seal of the supreme court of this state, issued to a reputable person residing in, or going to, the country where the acknowledgment or proof is to be taken.

5. If within the Dominion of Canada, it may also be made before any judge of a court of record; or before any officer of a province or territory of such Dominion authorized by the laws of such province or Dominion to take the acknowledgment or proof of deeds to be recorded therein.

6. If within the United Kingdom of Great Britain and Ireland, or the dominions thereunto belonging, it may also be made before the mayor, the provost or other chief magistrate of a city or town therein, under his hand and the seal of such city or town.

7. All acts of ambassadors, ministers plenipotentiary, ministers extraordinary, ministers resident, chargés d'affaires and secretaries of legation, in taking the acknowledgment or proof of a conveyance of real property situated within this state, performed before April twenty-ninth, nineteen hundred and four, are hereby confirmed, provided that the certificate of acknowledgment or proof is in the form required by the laws of this state.

8. If within the states comprising the empire of Germany, it may also be made before a judge of a court of record under the seal of such court, or before a notary public under the seal of his office and the seal of the city or town in which the notary resides.

**§ 302. Acknowledgments and proofs by married women.** The acknowledgment or proof of a conveyance of real property, within the state, or of any other written instrument, may be made by a married woman the same as if unmarried.

**§ 303. Requisites of acknowledgments.** An acknowledgment must not be taken by any officer unless he knows or has satisfactory evidence, that the person making it is the person described in and who executed such instrument.

**§ 304. Proof by subscribing witness.** When the execution of a conveyance is proved by a subscribing witness, such witness must state his own place of residence, and that he knew the person described in and who executed the conveyance. The proof must not be taken unless the officer is personally acquainted with such witness, or has satisfactory evidence that he is the same person, who was a subscribing witness to the conveyance.

**§ 305. Compelling witnesses to testify.** On the application of a grantee in a conveyance, his heir or personal representative, or a person claiming under either of them, verified by the oath of the applicant, stating that a witness to the conveyance, residing in the county where the application is made, refuses to appear and testify concerning its execution, and that such conveyance can not be proved without his testimony, any officer authorized to take, within the state, acknowledgment or proof of conveyance of real property may issue a subpoena, requiring such witness to attend and testify before him concerning the execution of the conveyance. A person who, on being duly served with such a subpoena, without reasonable cause refuses or neglects to attend or refuses to answer under oath concerning the execution of such conveyance, forfeits to the person injured one hundred dollars; and may also be committed to prison by the officer who issued the subpoena, there to remain without bail, and without the liberties of the jail, until he answers under oath as required by this section.

**§ 306. Certificate of acknowledgment or proof.** An officer taking the acknowledgment or proof of a conveyance must indorse thereupon or attach thereto, a certificate, signed by himself, stating all the matters required to be done, known, or proved on the taking of such acknowledgment or proof; together with the name and substance of the testimony of each witness examined before him, and if a subscribing witness, his place of residence.

Any conveyance which has heretofore been recorded, or which may hereafter be recorded, shall be deemed to have been duly acknowledged or proved and properly authenticated, when thirty years have elapsed since such recording; saying, however, the

rights of every purchaser in good faith and for a valuable consideration deriving title from the same vendor or grantor, his heirs or devisees, to the same property or any portion thereof, whose conveyance shall have been duly recorded before the said period of thirty years shall have elapsed or before September first, nineteen hundred and five.

**§ 307. When certificate to state time and place.**

When the acknowledgment or proof is taken by a commissioner appointed by the governor, for a city or county within the United States, and without the state, the certificate must also state the day on which, and the town and county or the city in which the same was taken.

**§ 308. When certificate must be under seal.** When a certificate of acknowledgment or proof is made by a commissioner appointed by the governor, or by the mayor or other chief magistrate of a city or town without the United States, or by an ambassador, a minister, a chargé d'affaires, a consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul or a deputy-consul, a consular or a vice-consular agent, a commercial or a vice-commercial agent, or a secretary of legation, of the United States, it must be under his seal of office, or the seal of the consulate or legation to which he is attached.

All acknowledgments or proofs of deeds, mortgages or other instruments relating to real property, the certificates of which were made in the form required by the laws of this state, by a consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul, a deputy-consul, a consular agent, a vice-consular agent, a commercial agent, a vice-commercial agent, or a secretary of legation of the United States prior to April twenty-ninth, nineteen hundred and four, are confirmed, but nothing herein contained shall affect any action or proceeding now pending in any court.

**§ 309. Acknowledgment by corporation and form of certificate.** The acknowledgment of a conveyance or other instrument by a corporation, must be made by some officer thereof authorized to execute the same by the board of directors of said corporation. The certificate of acknowledgment must be in substantially the following form, the blanks being properly filled.

State of New York, }  
 County of ..... } ss. :

On the ..... day of ..... in the year ....., before me personally came ..... to me known, who, being by me duly sworn, did depose and say that he resides in .....; that he is the (president or other officer) of the (name of corporation), the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(Signature and office of officer taking acknowledgment.)

If such corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

**§ 310. When county clerk's authentication necessary.** A certificate of acknowledgment or proof, made within the state, by a commissioner of deeds, justice of the peace, or, except as otherwise provided by law, by a notary public, does not entitle the conveyance to be read in evidence or recorded, except within the county in which the officer resides at the time of making such certificate, unless authenticated by a certificate of the clerk of the same county; provided, however, that all certificates of acknowledgments or proof, made by or before a commissioner of deeds of the city of New York residing in any part therein, shall be authenticated by the city clerk of said city, that the said commissioner of deeds, was duly appointed and qualified as such, and no other certificate shall be required, from any other officer to entitle said conveyance to be read in evidence or recorded in any county or part of a county, situated within the limits, confines, or boundaries, of the said city of New York. But this section does not apply to a conveyance executed by an agent for the Holland Land Company, or of the Pulteney estate, lawfully authorized to convey real property.

**§ 311. When other authentication necessary.** In the following cases a certificate of acknowledgment or proof is not entitled to be read in evidence or recorded unless authenticated by the following officers, respectively:

1. Where the original certificate of acknowledgment or proof is made by a commissioner appointed by the governor, by the secretary of state.
2. Where made by a judge of a court of record in Canada, by the clerk of the court.

3. Where made by an officer of a state of the United States, or of any province or territory of the Dominion of Canada, authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein, by the secretary of state of the state, the provincial secretary, deputy provincial secretary or assistant provincial secretary of the province, or commissioner of the territory of the Dominion of Canada, or the clerk, register, recorder or prothonotary of the county, city or parish in which the officer making the original certificate resided, when the certificate was made, or in which such acknowledgment or proof was taken, or by the clerk of any court in or of that county, city or parish, having by law a seal. The word county shall be deemed to apply to and include the District of Columbia for the purpose of this section. All acknowledgments or proofs of deeds, mortgages or other instruments relating to real property authenticated prior to April sixteenth, nineteen hundred and eight, by any of the officers above referred to are confirmed, saving, however, the rights of purchasers in good faith and for a valuable consideration whose conveyance shall have been duly recorded prior to said date; this subdivision shall not affect any action or legal proceeding pending on said date.

4. All acts of the secretary of state of any state or territory of the United States in authenticating a certificate of acknowledgment or proof of a conveyance of real property within the state, performed before October first, eighteen hundred and ninety-six, are hereby confirmed, provided that the said certificate of authentication is in the form required by the laws of this state.

### **§ 312. Contents of certificate of authentication.**

An officer authenticating a certificate of acknowledgment or proof must subjoin or attach to the original certificate a certificate under his hand, and if he has, pursuant to law, an official seal, under such seal. Except when the original certificate is made by a judge of a court of record in Canada, such certificate of authentication must specify that, at the time of taking the acknowledgment or proof, the officer taking it was duly authorized to take the same; that the authenticating officer is acquainted with the former's handwriting, or has compared the signature to the original certificate with that deposited in his office by such officer; and that he verily believes the signature to the original certificate is genuine; and if the original certificate is required to be under seal, he must also certify that he has compared the impression of the seal affixed thereto with the impression of the seal of the officer who took the acknowledgment or proof deposited in his office, and that he verily believes the impression of the seal upon the

original certificate is genuine. A clerk's certificate authenticating a certificate of acknowledgment or proof, taken before a judge of a court of record in Canada, must specify that there is such a court; that the judge before whom the acknowledgment of proof was taken, was, when it was taken, a judge thereof; that such court has a seal; that the officer authenticating is clerk thereof; that he is well acquainted with the handwriting of such judge, and verily believes his signature is genuine.

**§ 313. Recording of conveyances acknowledged or proved without the state, when parties and certifying officer are dead.** When the execution of a conveyance of real property within this state is acknowledged or proved according to the laws of any other state of the United States, and a certificate of the acknowledgment or proof signed by the officer taking it is annexed to or indorsed upon the instrument, if such officer and the grantor or mortgagor be dead and the death of all of them be proved by affidavit, sworn to in such state before an officer authorized by its laws to administer an oath therein, the conveyance, with the affidavit or affidavits annexed thereto, on being authenticated as required by this section, may be read in evidence and recorded in the same manner, and with like effect, as if the conveyance was acknowledged or proved and certified as required by the laws of this state. To entitle such conveyance and affidavits to be read in evidence, or recorded, a certificate of the clerk, recorder, register or prothonotary of the county in which the deceased officer resided, authenticating his signature, and also certifying that the conveyance is acknowledged or proved in all respects, as required by the laws of such state, must be annexed to the original certificate; and a like certificate of such clerk, recorder, register or prothonotary, authenticating the signature of the officer, before whom the affidavits proving the deaths were taken, must be annexed to such affidavits. The affidavits on being recorded, are presumptive evidence of the matters of fact, required to be stated therein.

**§ 314. Proof when witnesses are dead.** When the witnesses to a conveyance, authorized to be recorded, are dead, its execution may be proved before any officer authorized to take within the state the acknowledgment and proof of conveyances, other than a commissioner of deeds, a notary public, or a justice of the peace. The proof of the execution must be made by satisfactory evidence of the death of all the witnesses thereto, and of the handwriting of such witnesses, or any one of them, and of the grantor, which evidence, with the name and residence of each witness examined, must be set forth by the officer tak-



ing the same, in his certificate of proof. A conveyance so proved, and certified, may be recorded in the proper office, if the original conveyance be at the same time deposited in the same office, there to remain for the inspection of all persons desiring to examine the same. If the conveyance affects real property in two or more counties, a certified copy of the conveyance, with the proof and certificates, may be recorded in each of such counties. Such recording and deposit are constructive notice of the execution of such conveyance to all purchasers of the same real property, or any part thereof, from the same vendor, his heirs or assigns, subsequent to such recording, but do not entitle the conveyance or the record thereof, or a transcript of the record, to be read in evidence.

**§ 315. Recording books.** Different sets of books must be provided by the recording officer of each county, for the recording of deeds and mortgages; in one of which sets he must record all conveyances and other instruments absolute in their terms delivered to him, pursuant to law, to be so recorded, which are not intended as mortgages, or securities in the nature of mortgages, and in the other set, such mortgages and securities delivered to him.

**§ 316. Indexes.** Each recording officer must provide, at the expense of his county, proper books for making general indexes of instruments recorded in his office, and must form indexes therein, so as to afford correct and easy reference to the books of record in his office. There must be one set of indexes for mortgages or securities in the nature of mortgages, and another set for conveyances and other instruments not intended as such mortgages or securities. Each set must contain two lists in alphabetical order, one consisting of the names of the grantors or mortgagors, followed by the names of their grantees or mortgagees, and the other list consisting of the names of the grantees or mortgagees, followed by the names of their grantors or mortgagors, with proper blanks in each class of names, for subsequent entries, which entries must be made as instruments are delivered for record. This section, so far as relates to the preparation of new indexes, shall not apply to a county where the recording officer now has general numerical indexes. A recording officer who records a conveyance of real property, sold by virtue of an execution, or by a sheriff, referee or other person, pursuant to a judgment, the granting clause whereof states whose right, title or interest was sold, must insert in the proper index, under the head "grantors," the name of the officer executing the conveyance, and of each person whose right, title or interest is so stated to have been sold.

**§ 317. Order of recording.** Every instrument, entitled to be recorded, must be recorded by the recording officer in the order and as of the time of its delivery to him therefor, and is considered recorded from the time of such delivery.

**§ 318. Certificate to be recorded.** The certificate of the acknowledgment or proof of the execution of an instrument, and the certificate authenticating the signature or seal of the officer so certifying, or both, if required, must be recorded together with the instrument so acknowledged or proved; otherwise neither the record of the instrument nor a transcript thereof can be read in evidence.

**§ 319. Time of recording.** The recording officer must make an entry in the record, immediately after the copy of every instrument recorded by him, stating the hour, day, month and year, when it was recorded, and must indorse upon every such instrument a certificate, stating the time as aforesaid, when, and the book and page where, the same was recorded.

**§ 320. Certain deeds deemed mortgages.** A deed conveying real property, which, by any other written instrument, appears to be intended only as a security in the nature of a mortgage, although an absolute conveyance in terms, must be considered a mortgage; and the person for whose benefit such deed is made, derives no advantage from the recording thereof, unless every writing, operating as a defeasance of the same, or explanatory of its being desired to have the effect only of a mortgage, or conditional deed, is also recorded therewith, and at the same time.

**§ 321. Recording discharge of mortgage.** A mortgage registered or recorded must be discharged upon the record thereof, by the recording officer, when there is presented to him the certificate signed by the mortgagee, his personal representative or assignee, and acknowledged or proved and certified in like manner as to entitle a conveyance to be recorded, specifying that the mortgage has been paid, or otherwise satisfied and discharged. The certificate of discharge, and the certificates of its acknowledgment or proof, must be recorded and filed; and a reference must be made to the book and page containing such record in the minute of the discharge of such mortgage, made by the officer upon the record thereof. After such discharge has been recorded the recording officer shall make and deliver to the person in whose interest such discharge of mortgage is executed and recorded, his certificate setting forth the names of the mortgagor and mortgagee, the liber and page at which, the time when, such

mortgage was recorded, and the date on which said mortgage was satisfied and discharged.

**§ 322. Recording discharge of mortgage in counties embraced in cities of first class.** In counties wholly embraced in a city of the first class, no mortgage shall be discharged of record, unless in addition to the certificate provided and required by the preceding section, there shall be presented to the recording officer for cancellation the original mortgage, or a certified copy of an order made and entered as hereinafter provided. The said officer shall, at the time of the discharge of said mortgage, cancel said original mortgage by effacing the signatures thereto, without obliterating the same, and shall file the same in his office and keep the same so filed for the term of ten years. If for any reason said mortgagee, his personal representative or assign can not produce said original mortgage, the said officer shall not discharge said mortgage until there shall be delivered to him a certified copy of an order made and entered as hereinafter provided, which order shall be recorded and filed with the certificate of discharge, or the substitute for said certificate of discharge hereinafter referred to, and a reference must be made to the book and page containing such record in the minute of the discharge of such mortgage, made by the officer upon the record thereof. Where the mortgage shall have been lost, mutilated or destroyed, or upon which the signature or signatures are wholly obliterated or removed, any person having any interest in securing the discharge of the same may apply to the supreme court or the county court in or of the county in which property affected by the mortgage, or any part thereof, is situated, upon a petition duly verified, containing the name and address of the owner of the property covered by the mortgage, the name and address of the owner of the bond and mortgage, to the best of the petitioner's knowledge and belief, and the owner thereof as appears of record, a full description of the mortgage and of any assignments thereof, that may appear upon the record, including the names of the mortgagor, mortgagee, assignor, assignee, date, amount, and the place, book, page and time of record of said mortgage and any assignments thereof, and a description of the property affected thereby, and showing the loss, mutilation or destruction of the mortgage, or obliteration or removal of the signature or signatures thereon or therefrom, and the interest of the petitioner in the property or the mortgage, for an order dispensing with the production of the said mortgage and directing the discharge thereof. Eight days' personal notice of the application for such order shall be given to the then present owner of the real estate, and the mortgagor, the mortgagee, his or their

personal representatives, heirs, successors or assigns as the case may require, except that where any of the parties upon whom service is herein required to be made can not with due diligence be personally served, the court to which the petition is presented may direct such mode of service as may appear proper. If sufficient cause be shown, the court may issue an order to show cause upon the petition returnable in less than eight days. Upon the return day of such notice or order to show cause, the court, upon due proof of service of the notice, or order to show cause, upon the parties above specified, and on further proof of the identity of the person presenting the petition, shall inquire, in such manner as it may deem advisable, into the truth of the facts set out in the petition, and upon proof satisfactory to the court that said mortgage has been lost, mutilated or destroyed, or that the signature or signatures have been obliterated or removed thereon or therefrom, and as to the identity of the mortgagee, his personal representatives or assigns, and such other proof in relation thereto as to the court may seem desirable, the court shall make an order dispensing with the production of the mortgage and directing its cancellation of record, as hereinabove provided. In case the mortgagee, his personal representatives or assigns, shall not appear in court upon the return day of said notice or order to show cause, or shall refuse or neglect, if present, to give the certificate for discharge above specified, the court may direct the amount due upon said bond and mortgage to be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the mortgaged premises are situated in whole or in part, and the mortgage to be canceled of record in all counties where any of the lands affected by said mortgage are situated upon the production of a certified copy of the order and the receipt of such officer showing that the amount of said mortgage has been deposited with him, which receipt shall be a substitute for the certificate of discharge above specified. If in the proceedings had under and in pursuance of this section it shall appear to the satisfaction of the court that the principal sum and interest due upon said mortgage, or the bond accompanying the same has been fully paid, then the said deposit of money hereinabove provided for shall be dispensed with. The money deposited shall be payable to the mortgagee, his personal representatives or assigns, upon an order of the supreme or county court directing the payment thereof to him, made upon such evidence as to his right to receive the same as shall be satisfactory to the court.

**§ 323. Recording discharge of mortgage in counties embraced in cities of first class where property lies**

**in more than one of such counties.** In any case, however, in which the land affected by a mortgage which is to be discharged lies in more than one such county, and in which the mortgage has been recorded in more than one such county, the original mortgage need be filed in one of said counties only. For the discharge of such mortgage in the other county or counties where the land is located there shall be required to be filed, together with a properly executed satisfaction piece, a copy of the mortgage certified to by the recording officer of the county in which the original mortgage shall have been filed, together with a certificate of said recording officer, stating that the said mortgage has been discharged in his county by the filing of the original mortgage, and stating the time when the mortgage was so discharged. The said certificate shall be recorded and filed with the satisfaction piece in the other county, and a reference shall be made to the book and page, containing such record, in the minute of the discharge of such mortgage, made by the officer upon the record thereof. The recording officer, however, shall not discharge the said mortgage without first having compared his record of it with the certified copy of the recording officer of the other county, so as to satisfy himself of the identity of the records in the two counties, and he shall keep the said certified copy on file for ten years the same as though it were the original mortgage.

**§ 324. Effect of recording assignment of mortgage.**

The recording of an assignment of a mortgage is not in itself a notice of such assignment to a mortgagor, his heirs or personal representatives, so as to invalidate a payment made by either of them to the mortgagee.

**§ 325. Recording of conveyances made by treasurer of Connecticut.** A conveyance of real property, executed at any time since the tenth day of March, eighteen hundred and twenty-five, by the treasurer of the state of Connecticut, acknowledged by him before the secretary of state of such state, and the acknowledgment of which is certified by such secretary of state under the seal of such state, in the manner required for the acknowledgment and certification of a conveyance within this state, may be recorded in the proper office within this state, without further proof thereof.

**§ 326. Revocation to be recorded.** A power of attorney or other instrument, recorded pursuant to this article, is not deemed revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded.

**§ 327. Penalty for using long forms of covenants.** The recording officer of any county may charge for the recording of an instrument containing any of the covenants mentioned in section two hundred and fifty-three and two hundred and fifty-four of this chapter, at large, instead of the short forms thereof, in said sections contained, the sum of five dollars in addition to the fees chargeable by law for such recording.

**§ 328. Certain acts not affected.** Nothing contained in this article repeals or affects any act providing for recording and indexing instruments affecting real property in the city of New York, according to city blocks or other limited areas.

**§ 329. Actions to have certain instruments canceled of record.** An owner of real property or of any undivided part thereof or interest therein, may maintain an action to have any recorded instrument in writing relating to the same, other than those required by law to be recorded, declared void or invalid, or to have the same canceled of record as to said real property, or his undivided part thereof or interest therein.

**§ 330. Officers guilty of malfeasance liable for damages.** An officer authorized to take the acknowledgment or proof of a conveyance or other instrument, or to certify such proof or acknowledgment, or to record the same, who is guilty of malfeasance or fraudulent practice in the execution of any duty prescribed by law in relation thereto, is liable in damages to the person injured.

**§ 331. Laws and decrees of foreign countries appointing agents and attorneys and recording of the same.** A copy of a law of a foreign country or of a decree of the executive power of such a country, appointing an agent or attorney with power to execute and deliver in the name or on behalf of such foreign country, any instrument in writing granting, assigning, surrendering or in any manner affecting any estate or interest of such government in real property within this state, or assigning or discharging any lien or claim of such government upon real property within this state, or of a law or decree revoking such an appointment, if in English, or a translation into English of any such law or decree, if the original thereof be in a language other than English, when certified and recorded as hereinafter provided, shall be presumptive evidence of the authority of such agent or attorney. Certification of such copy or translation shall be made under the great seal of such foreign country and shall be to the effect that the same is a true copy or translation of such law

or decree. Such copy or translation of such law or decree, when so certified, may be recorded in the office of the clerk or register of any county of this state, and such copy or translation when so certified and recorded, or a certified copy of the record thereof, shall be received as evidence in any court of this state. The authority conferred under any instrument so recorded shall not be deemed revoked as to property situated in any county except by the recording in such county of a copy or translation of a law or decree to that effect, duly certified in the manner hereinbefore provided. Nothing in this section shall in any way affect the right or power of a foreign country to acquire, hold or convey real property in this state, or be construed to confer any such right or power.

**§ 332. The record of certain conveyances validated.**

The record made prior to January first, nineteen hundred, in the county clerk's office of any county in this state of any deed or mortgage or of any assignment or satisfaction piece of a mortgage otherwise authorized to be recorded therein when the acknowledgment or proof was taken in another county, notwithstanding the failure to append thereto a certificate as to the authority of the notary public, or other officer, who took the acknowledgment or proof, to take the same, shall be in all respects as valid and effectual as though such certificate had been appended to such instrument. Provided only that the notary public, or other officer, was duly authorized at the time of taking the proof or acknowledgment to take the same in the county where the instrument is recorded and in the county where the same was taken, but this section shall not affect any action or proceeding pending on May sixteenth, nineteen hundred and five.

**ARTICLE 10**

**Discharge of Ancient Mortgages**

Section 340. When mortgagor may petition for discharge of mortgage of record.

341. Presentation of petition.

342. Order to show cause.

343. Proceedings thereon.

344. When county clerk to discharge mortgage of record.

**§ 340. When mortgagor may petition for discharge of mortgage of record.** The mortgagor, his heirs or any person having any interest in any lands described in any mortgage of real estate in this state, which is recorded in this state, or mentioned in a deed recorded in this state, and

which, from the lapse of time, is presumed to be paid, or in any moneys into which said lands have been converted under a decree of a court of competent jurisdiction, and which are held in place of such lands to answer such mortgage, may present his petition to the courts mentioned in this article, asking that such mortgage may be discharged of record. Such petition shall be verified; it shall describe the mortgage, and when and where recorded, or if such mortgage is not recorded that the same may be adjudged to have been paid and to be no longer a lien upon the lands therein described, and shall allege that such mortgage is paid; that the mortgagee has, or, if there be more than one mortgagee, that all of them have been dead for more than five years; or if such mortgage has been assigned by an instrument in writing for that purpose executed and acknowledged, so as to entitle the same to be recorded, and such instrument of assignment has been recorded in the office of the clerk of the county where the mortgaged premises, or some portion thereof is situated, and the assignee or assignees of said mortgage have been dead for more than five years, such petition shall state such facts, and no statement respecting the mortgagee or mortgagees or the names and places of residence of their heirs shall be required; or if such mortgagee be a corporation or association, that such corporation or association has ceased to exist and do business as such for more than five years; the time and place of his or their death, and place of residence at the time of his or their death; whether or not letters testamentary or of administration have been taken out, or, if said mortgagee or mortgagees, or assignee or assignees at the time of his or their death resided out of this state, whether or not letters testamentary or of administration have been taken out in the county where such mortgaged premises are situated; or if a corporation or association, its last place of business; the names and places of residence, as far as the same can be ascertained, of the heirs of such mortgagee or mortgagees, or assignee or assignees; or, if such mortgagee be a corporation or association, then the names of one or more of the receivers, if any were appointed, or of the person who has the care of the closing up of the business of such corporation or association, and that such mortgage has not been assigned or transferred, and if such mortgage has been assigned, state to whom and the facts in regard to the same. Provided, however, that if such mortgage has been duly assigned, by indorsement thereof or otherwise, but not acknowledged so as to entitle the same to be recorded, then it shall be competent for the court, at any time within the period aforesaid, upon proof that all the matters hereinbefore required to be stated in said peti-



tion are true, and that the assignee of such mortgage if living, or his personal representative if dead, has been paid the amount due thereon, to make an order that such mortgage be discharged of record. Provided, further, that in case of a mortgage which was recorded or adjudged to have been paid and no longer a lien, more than fifty years prior to the presentation of such petition, if the petitioner is unable with reasonable diligence to ascertain the facts herein required to be stated in the petition, other than the fact of payment, the petition may set forth the best knowledge and information of the petitioner in respect thereto and what efforts have been made to ascertain such facts, and if the court shall be satisfied that the petitioner has made reasonable effort to ascertain such facts, and that the same can not be ascertained with reasonable diligence, it may then, in its discretion, proceed upon said petition as hereinafter provided.

**§ 341. Presentation of petition.** Such petition may be presented to the supreme court in the county where the mortgaged premises are situated, or to the county court of such county.

**§ 342. Order to show cause.** The court, upon the presentation of such petition, shall make an order requiring all persons interested to show cause at a certain time and place, why such mortgage should not be discharged of record. The names of the mortgagor, mortgagee and assignee, if any, the date of the mortgage and where recorded, and the town or city in which the mortgaged premises are situate, shall be specified in the order. The order shall be published in such newspaper or newspapers, and for such time as the court shall direct. The court may also direct the order to be personally served upon such persons as it shall designate.

**§ 343. Proceedings thereon.** The court may issue commissions to take the testimony of witnesses and may refer it to a referee to take and report proofs of the facts stated in the petition. The certificate of the proper surrogate or surrogates, whether or not letters testamentary or of administration have been issued, shall be evidence of the fact; and the certificate of the clerk of the county or counties in which the mortgaged premises have been situate, since the date of the said mortgage, shall be evidence of the assignment of such mortgage, or of a notice of the pendency of an action to foreclose such mortgage, and of such other matters as may be therein stated; or if a notice of the pendency of an action to foreclose such mortgage has been filed, then his certificate that such mortgage has never been foreclosed, unless the allegation of payment shall be denied, and evidence be given tending to rebut

the presumption of payment, arising from lapse of time, such lapse of time shall be sufficient evidence of payment. Upon being satisfied that the matters alleged in the petition are true, the court may make an order that the mortgage be discharged of record.

**§ 344. When county clerk to discharge mortgage of record.** The county clerk, upon being furnished with a certified copy of such order and paid the fees allowed by law for discharging mortgages, shall record said order and discharge the mortgage of record.

## ARTICLE 11

### Quieting Title to Real Property

Section 360. When special proceeding to quiet title may be maintained.

361. Petition.

362. Order for publication of notice to persons interested.

363. Owners of several parcels may unite in proceedings.

364. Hearing and final order upon non-appearance of adverse claimants.

365. Hearing and final order upon appearance of adverse claimants.

366. Notice of pendency to be filed and recorded.

**§ 360. When special proceeding to quiet title may be maintained.** Whenever real property shall have been conveyed by a sheriff or referee, pursuant to a judicial decree, which decree has been lost or destroyed, and the defendants (other than lienors or incumbrancers) named in the notice of pendency of the action in which such decree was made, or those who might claim under them, or either of them, are dead, unknown or their whereabouts can not after diligent inquiry be ascertained, the person who has been, or he and those having his estate who have been, for thirty years in actual possession of such property claiming it in fee under said sheriff's or referee's deed, which deed shall have been recorded at least thirty years, may maintain a special proceeding for the purpose of establishing judicially his or their title to such real property.

**§ 361. Petition.** A person or persons, desiring to institute a proceeding under this article, must present a petition to the supreme court at a special term to be held in the judicial district in which the real property is situated, setting forth the facts proving to the satisfaction of the court, that the case is one of those specified in section three hundred and sixty, and must describe the

property with common certainty, and state what, if any, liens or incumbrances exist thereon, and the names of the persons, if any, besides the petitioners, who have been in the actual possession of the property during the past thirty years claiming title as owners thereof in fee, and how such title was derived, and shall also annex to said petition a duly certified copy of the sheriff's or referee's deed recorded thirty years since under which petitioners claim title.

**§ 362. Order for publication of notice to persons interested.** Upon the presentation of such petition, duly verified in the manner prescribed for the verification of pleadings by the code of civil procedure, the said court shall make an order for the publication of a notice requiring all persons claiming any interest in the real property described in such petition to appear before the court at a special term thereof, to be held at a time and place to be therein specified, not less than three months nor more than six months thereafter, and show cause, if any they have, why they should not be forever barred from maintaining any action or proceeding for the recovery of the real property, which shall be substantially described as set forth in said petition, and which notice shall also contain a reference to the time and place of record of the sheriff's or referee's deed referred to in this article. Said publication shall be made once a week for three months successively prior to the return day named in said notice in two newspapers designated in the order as most likely to give notice to any claimant of the property. (*Thus amended by L. 1909, ch. 240, § 70, in effect April 22, 1909.*)

Amendment of 1909 added last sentence.

**§ 363. Owners of several parcels may unite in proceedings.** In case the property described in said sheriff's or referee's deed shall have been subdivided, the owner or owners of the several parcels thereof may unite in the same petition and proceeding provided for by this article.

**§ 364. Hearing and final order upon non-appearance of adverse claimants.** Upon the return day named in said notice the court shall proceed summarily to inquire into the truth of the matters set forth in the petition, and may appoint a referee for that purpose, and if there shall be no appearance by any person claiming any adverse interest to the petitioners in the real property described in the petition, the court may make a final order declaring that the title of the petitioner to such real property has been judicially established, which final order, together with the petition and order for and proof of publication of the notice, and the proofs taken before the court or referee shall be filed in the office of the clerk of the county in which the real property is situated, and such final order shall be evidence of the facts so declared to be established thereby in all courts and places, and

thereafter no action or proceeding for the recovery of the real property described in said final order or any part thereof, or of any interest therein, shall be maintained by any person named as a defendant in the notice of pendency of action referred to in section three hundred and sixty, or by any person or persons claiming under such defendant or either of them.

**§ 365. Hearing and final order upon appearance of adverse claimants.** If any person shall appear on the return day of said notice and claim in writing an interest in the real property adverse to that of the petitioners, stating the nature of his claim and his place of residence, the court may proceed in like manner to inquire into the truth of the facts stated in the petition and may make a final order in like manner and with like effect as above provided, except that such final order shall not affect in any way any person who shall have appeared on the return day and asserted a claim adverse to the petitioners, as herein provided for.

**§ 366. Notice of pendency to be filed and recorded.** No such final order shall be made until the petitioners named in said proceedings, or their attorney, shall file in the clerk's office of the county in which such real property is situated a notice of the pendency of the said special proceeding, containing the names of all the persons claiming to be then owners of the property in fee, pursuant to said sheriff's or referee's deed, the object of the proceeding, together with a brief description of said property. Each county clerk with whom such notice is filed must immediately record it in the book kept in his office for recording of notices of pendency of an action, and index it to the name of each person claiming to be owner as aforesaid, and said clerk shall be entitled to receive for his services the same fees therefor as are now allowed by law for filing, recording and indexing a notice of pendency of action.

## ARTICLE 12

### Registering Title to Real Property

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**§ 370. Application to register title to real property.**

Real property, or any estate, interest, or right therein, the title to which is hereby authorized to be registered, may be brought under the operation of this article by the filing of a complaint, verified as prescribed by the code of civil procedure and praying for registration, with the officer hereinafter described as the "registrar," of the county in which the land, or some portion thereof, is situated. The application may be so made in person by the owner or owners of such property, estate, interest, or right, or by an attorney at law duly authorized so to do. A corporation may also apply by its duly authorized officer or agent. An infant or other person under disability may apply by his legally appointed guardian, or trustee, or committee. The natural person or corporation, in whose behalf the complaint is filed may be known, and is treated in this article, as the applicant, or plaintiff. The complaint so filed may be known, and is treated in this article, as the application.

**§ 371. Applications and proceeding to be in the supreme court; title part of special term.** The application

for registration must be made to the supreme court; and for that purpose said court shall be always open; and its orders, judgments and decrees in cases coming under this article may be made and entered as well in vacation as in term time. The proceedings upon such applications shall have the effect of proceedings in rem against the land, and the judgments shall operate directly on the land and vest and establish title thereto. An issue raised in such a case shall be tried at a special term of said court, in the county in which the application is filed, by the court or a referee, except that an issue of fact may be tried by a jury, in the manner prescribed by the constitution and code of civil procedure. When in any county the amount of business under this article makes it necessary or proper that one or more justices of said court should devote his or their entire time to such business, the appellate division of the judicial department in which such county is situated shall designate as many justices as may be deemed necessary, to constitute the "title part" of the special term in that court; said appellate division may provide by rules of practice for the conduct, in said title part, of the business coming under this article in such county. Said appellate division may assign one or more additional justices to said "title part" of the special term, or withdraw one or more justices therefrom, as the business coming under this article and the availability of the supreme court justices may require and make proper. One of the justices so assigned to the "title part" of the special term in any county shall be designated by said appellate division to have general supervision and control of the business coming under this article in that county.

**§ 372. County clerks and registers to be registrars of title.** County clerks in the several counties of the state, except the counties that may have registers, and in the latter counties the registers of said counties shall be "registrars" of titles in their respective counties. All laws relative to registers, county clerks and their deputies shall extend to registrars and their deputies, so far as the same may be applicable, except as in this article otherwise provided. Registrars of titles shall be county officers, within the meaning of the laws of this state.

**§ 373. Registrar's bond.** Every registrar, before entering upon his duties as registrar, shall give a bond with sufficient security, to be approved by a justice of the supreme court, payable to the people of the state of New York, in a penal sum the same as that for his bond as register or county clerk, conditioned for the faithful discharge of his duties, and to deliver up all

papers, books, records and other property belonging to the county or appertaining to his office as registrar of titles, whole, safe and undefaced, when lawfully required so to do, which bond shall be filed in the office of the secretary of state.

**§ 374. Deputy registrars' powers and duties.** In any county where the business under this article so requires, the registrar may appoint a chief deputy and as many other deputies as are needed. But no one unless he is also a deputy register or an assistant deputy register appointed under statutory authority, or a deputy county clerk, shall be appointed as such deputy registrar unless he is an "official examiner of title" as described and required by section three hundred and seventy-seven of this chapter. Deputies may perform any and all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in case of the death of the registrar, or his removal from office, the chief deputy shall thereupon become the acting registrar until such vacancy shall be filled according to law, and he shall file a like bond and be vested with the same powers and subject to the same responsibilities and entitled to the same compensation as in the case of the registrar. (*Thus amended by L. 1909, ch. 305, in effect May 7, 1909.*)

Amendment of 1909 inserted the clause beginning "or an assistant" and ending "statutory authority" following the words "deputy register" near middle of second sentence.

**§ 375. Compensation of registrars and deputy registrars and registration clerks.** Where county clerks and registers are already salaried officials, the local authorities (county officials who provide for county expenses) shall fix their additional compensation as registrars, also the compensation of deputy registrars, the clerks, at cetera, needed to carry on the work under this article. Where a county clerk or a register is compensated directly by the fees paid to himself, his deputies and assistants, the fees paid to him as registrar shall take the usual course and be used to compensate deputies, clerks, et cetera, at such rates as the registrar may fix, the remainder to belong to him.

**§ 376. Disposition and use of fees received by registrar.** All fees received by a registrar, for the performance of the duties devolving upon him pursuant to this article, shall be disposed of in such manner as the other fees paid to county clerks and registers, with the following proviso: In those counties where registrars under this article are or shall become salaried officials, all fees paid for the registration of titles shall be kept separate by the registrars and serve, so far as they are necessary or adequate, to pay the expenses of



registering titles and the other duties for which charges are made. It shall be the duty of the local authorities who provide for county expenses to provide such accommodations, help, safes, books, papers and for such other expenses as may properly be required by the registrar in the conduct of his office.

**§ 377. Official examiners of title.** Before application is made for the registration of a title, it must be thoroughly examined and certified by an "official examiner of title." A person duly admitted to practice as an attorney and counselor-at-law in the courts of record of this state, or a corporation duly incorporated under and by virtue of the laws of this state, and by said laws duly authorized to guarantee or insure titles to real property in this state, and no other person, corporation, or institution, may be admitted to the office or position of, and licensed to practice as, an official examiner of title. The court of appeals shall prescribe rules providing for the methods of ascertaining the fitness of individual applicants for license to practice as such examiners, and in doing so, shall take into account the length of time during which applicants have practiced law and the amount of work that they have done in the examination of titles to real property. In the case of experienced examiners of such titles, provision may be made for licensing them, without examination, to practice as "official examiners of title." After complying with the rules and requirements prescribed by the court of appeals pursuant to this section, an individual applicant may be licensed and admitted to practice as an official examiner of title in this state, by an order of the appellate division of the supreme court of the department in which he resides, or in which he has an office for the regular practice of law. He may be required to give such a bond as the court may prescribe. A corporation may be licensed and admitted to practice as an official examiner of title by an order of the appellate division of the supreme court of the department in which it has its principal place of business, which order shall be made on the certificate of the proper state official that such corporation is duly incorporated under and by virtue of the laws of this state, and by said laws authorized to guarantee or insure titles to real property within this state. Any official examiner of title in counties not exceeding three hundred thousand inhabitants may base the certificate and affidavits required by this article, upon searches and abstracts of title made by a corporation duly organized under and by virtue of the laws of this state, and by said laws duly authorized to make and to certify to searches and abstracts of title, provided, however, that said abstract company shall have been incorporated for a period of at least two years before the passage of this article.

**§ 378. What owners may apply; what titles may be registered.** Application for registration of title may be made by the following persons:

First. The person or persons who claim, singly or collectively, to own in fee simple the legal estate in land, or in some right in or over land, and who hold and possess such land or such right.

Second. The person or persons who claim, singly or collectively, to own a contract for the purchase in fee simple of the legal estate in land, or in some right in or over land, from the owner thereof.

Third. The person or persons who claim, singly or collectively, to have the power of appointing or disposing in fee simple of the legal estate in land, or in some right in or over land. No title to a mortgage, lien, trust, charge or estate less than a fee simple shall be registered, unless the title to the legal estate in fee simple in the same property is first registered. When the application is made by the holder of a contract to purchase, it shall refer to the ownership of the proposed vendor, and to the contract of purchase and sale. Registration in the name of the holder of the contract shall not be made, except on the production of a proper transfer of title under and pursuant to the contract, or the consent in writing, duly acknowledged, of the proposed vendor named in the contract and his wife, if he be married. Such transfer or consent may be made after the commencement of the registration proceedings or action. It shall not be an objection to bringing real property under this article that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, trust, charge, or other lien or right. But any such lesser estate, mortgage, trust, charge, or other lien or right shall be duly noted on the certificate of registration when issued.

**§ 379. Contents of application for registration; other papers to be filed.** The application for registration shall be made by filing a complaint, as required by section three hundred and seventy of this chapter. Except as otherwise specified herein, the complaint (and the summons in the action) shall name as parties to the action all persons having or claiming any right or interest in or lien upon the property, or any part thereof, as shown by the examiner's certificate of title hereinafter described, and such additional parties as may be designated by the court in its order directing the issuance and service of the summons, and the complaint and summons shall have the forms and effects prescribed for them by the code of civil procedure. The complaint shall set forth, in addition to any other proper allegations:

a. The name and post-office address of each of the plaintiffs, and when made by one acting in behalf of another, the name and post-office address and capacity of the person so acting.

b. Whether or not each of the plaintiffs (except in case of a corporation) is married, and, if married, the name and post-office address of the husband or wife, and, if unmarried, whether he or she has been married, and if so, when and how the marriage relation terminated, and, if the marriage was terminated by annulment or divorce, when, where and by what court the annulment or divorce was granted, and for the misconduct, if any, of which party it was granted.

c. That each of the plaintiffs is of the full age of twenty-one years and free from any disability, or, if he is a minor or under disability, his age or the nature of such disability, and the authority of the person by whom his application is made.

d. The names and post-office addresses of the defendants (and whether or not any of them are infants or otherwise incapacitated) as far as known or reasonably ascertainable; a description of those whose names are unknown, as prescribed by section four hundred and fifty-one of the code of civil procedure; and a designation of all other possible owners and claimants of the property or any right or interest in or lien upon the property or any part thereof as "all other persons, if any, having any right or interest in or lien upon said property (herein described) or any part thereof." In addition to the defendants above specified, the complaint shall specifically name as defendants the people of the state of New York, and also all persons who have filed any caution or cautions against the registration of such property, as provided for by section three hundred and eighty-three of this chapter.

e. A proper reference to the official examiner's certificate of title; and to the survey, map or plan of the property; each of which is to be annexed as an exhibit to the complaint, and made and declared by the complaint to be a part thereof.

f. A statement, when such is the case, that the complaint is made by, or on behalf of, the owner of a contract to purchase said property.

g. A prayer that the title be duly registered, as belonging to and vested in the plaintiff or plaintiffs, or as the facts may require at the time of such registration, in the manner set forth in the said certificate of title or otherwise; and that the court may order the issuance of the summons and service of the summons and the proper notice, as hereinafter directed, on all the defendants who have not duly appeared in the action. The court may require additional facts to be stated in the complaint, and may require the filing of any additional paper or evidence. It may

also require the complaint to be amended and reverified as the circumstances of the case may demand or make proper.

**§ 380. Examiner's certificate of title; other evidences of title.** The official examiner's certificate of the title referred to in section three hundred and seventy-nine shall accompany the complaint as an exhibit, and be made a part thereof. An individual examiner, who makes the certificate, shall annex thereto his affidavit that the same is true in every particular, to the best of his knowledge and belief, and that he has employed all usual means and methods for ascertaining the truth thereof, and all the facts and circumstances affecting and concerning the title to said property. A corporate official examiner, that makes the certificate, shall annex thereto its policy of guarantee or insurance of the title as shown by the certificate, for an amount to be fixed by it and the plaintiff or plaintiffs, which amount shall not be less than the last valuation of the property or interest insured, for the purpose of local annual taxation, or its proper proportion thereof; which guarantee or insurance shall be made in favor of the plaintiff, and the people of the state of New York, and shall inure to the benefit of, and be recoverable upon by, any one who may be injured in any way within ten years after the filing of said policy of guarantee or insurance, because of any error, fraud, omission or misdescription in said certificate. Said official examiner's certificate shall set forth the exact state and condition of the title sought to be registered in the action, and the names and post-office addresses as far as known or reasonably ascertainable, and the rights or interests, or claimed rights or interests, of the plaintiff and all other persons having or claiming any rights or interests in or liens upon said property or any part thereof, and the names and post-office addresses of the owners in fee simple of the surrounding contiguous properties, as far as they are known or can be reasonably ascertained by inquiry on said properties; and, as to actual or possible owners or claimants of the property sought to be registered, not known or not found, it shall state fully what search and efforts have been made to find them. All possible owners and claimants of the property sought to be registered, or any right or interest therein or lien thereon, or in or on any part thereof, who cannot be otherwise described, shall be designated in the certificate, and in the summons and complaint, by the expression, "all other persons, if any, who have any right or interest in or lien upon said property or any part thereof." By the statements of fact contained in said certificate of title, or by separate accompanying affidavits, or by any other or additional evidence, if necessary, stating the facts, or by any or all

of these, sufficient facts must be shown to satisfy the court that all owners and claimants of the property sought to be registered, or of any right or interest in or lien upon the same or any part thereof, who could be found by diligent inquiry are duly and specifically named and made parties to the action. The question of the sufficiency of the proof that all such owners and claimants who could be found by diligent inquiry are duly and specifically named and made parties to the action shall be for the court; its decision that such proof is sufficient shall be shown by its making the order for the service of the summons and the commencement of the action as prescribed in this article, and such decision or order shall not be drawn in question after six months from the time when the final judgment in the action is entered. There shall be filed, with said certificate of title, the abstract of title and the searches made or used by the official examiner in the process of his work of examining the title; also all the other proper evidences of the due examination of the title, and all original muniments of title within the plaintiff's control. Such original muniments of title as affect land not included in the action may be withdrawn upon filing certified copies thereof. After final judgment, or other termination of the action, the plaintiff or other owner may, with the consent of the court, withdraw original muniments of title, abstracts, or searches. The examiner's certificate of title shall contain a short form of description of the property, the title to which is sought to be registered, which form is to be used in the notice to accompany and be served with the summons, as provided by section three hundred and eighty-six of this chapter. The court shall approve of such form before it is used in said notice, and such approval shall be shown by the making of the order for the service of the summons and notice. Said examiner's certificate shall contain, or be accompanied by, any other or further information that the court may prescribe. The first part of said certificate shall be a summary of the results thereby shown, which summary shall briefly set forth the exact state of the title to said property. Said certificate shall be substantially in the form set out in section four hundred and thirty-four of this chapter, with such additions or modifications as the court may order.

**§ 381. Survey, map, or plan to be filed.** There shall be filed with the complaint and annexed thereto as an exhibit and made a part thereof, the survey, map or plan of the land referred to in section three hundred and seventy-nine of this chapter, which shall be made by a competent surveyor approved by the court, and which shall clearly show the exact bound-

aries of the land and its connection with adjacent lands and any adjoining or neighboring streets and avenues, and all encroachments, if any, and all other facts which are usually shown by accurate surveys. If any adjacent land is already registered, the survey so filed with the complaint must properly connect and harmonize with the survey of such previously registered land. There shall be attached to said survey, map, or plan, and filed with it, an affidavit of the surveyor by whom it was made, that it was made by him personally or under his immediate supervision and direction; that it is a survey, map or plan of the property described in the certificate of title of the examiner, and that according to the best of his knowledge and belief said property is included in the boundaries shown on such survey, map or plan, without any encroachments or improper erections, except as follows (stating and describing any encroachments or improper location of buildings, fences or other structures).

**§ 382. Notice of application and of pendency of action.** At the time when the application for registration of any property is filed, the plaintiff shall also cause to be filed a notice thereof in the office of the county clerk of each county where the property is situated, which notice shall be made and filed in the manner prescribed by section sixteen hundred and seventy of the code of civil procedure, and shall be indexed against the names of the plaintiff and all known defendants except the owners of abutting properties, and shall constitute notice of the pendency of the application, and of the action when the same is commenced, and shall be in all other respects the same as a notice of the pendency of an action under section sixteen hundred and seventy to sixteen hundred and seventy-four inclusive of the code of civil procedure, except that, if the application be dismissed, or the action discontinued, or in any way terminated other than by registration of the title, no order for the cancellation of such notice shall be made by the court until it is duly and fully proved to the court that the provisions of section four hundred and ten of this chapter have been fully complied with and performed.

**§ 383. Filing of caution.** Any person claiming to have any right or interest in or lien upon any real property or any part thereof, may file with the registrar a written notice, to be styled a "caution," that he requires written notice to be given to him of any application for the registration of the title of said real property. In such notice he shall show how he claims title, right, interest or lien, and shall give his own post-office address, and that of a person (who may be himself or not), upon whom

the notice may be served. In case of any application to register said title, service of such notice shall be made within ten days after the application is filed, by mailing said notice securely enclosed in a post-paid wrapper and directed to the person indicated at the place named. A like cautionary notice may be required by the owner of any land, as to the registration of the title of any or all of the land abutting upon his land, with the like proceedings in all respects. There shall be kept by the registrar a locality index of the cautionary notices, in which the same shall be indexed under the name of the street or road upon which the property referred to in the notice abuts, or if it abuts upon none, under the name of the street or road which is nearest to it. In any place, however, where there is a land map giving sections and dividing the property into blocks, the index shall be made by section and block numbers, and as far as convenient, by the lot numbers.

**§ 384. Agent of nonresident applicant.** If the applicant is not a resident of the state, he shall file with his application a paper appointing an agent residing in the state, giving his name in full and post-office address, and shall therein agree that the service of any legal process, in proceedings under or growing out of the application, shall be of the same legal effect, if made on the said agent, as if made on the applicant within the state. If the agent dies, or becomes incapacitated, or removes from the state, the applicant shall forthwith make another appointment; and if he fails to do so within a reasonable time, the court may dismiss the application.

**§ 385. Commencement of the action.** On the complaint and all the other papers and documents filed with the registrar in the making of the application for registration, the court shall determine whether or not the plaintiff appears to have a title that should be registered. For the purpose of arriving at such determination, the court may require a further examination of the title, to be made by the same examiner who has made the certificate, or by another official examiner, and it may also require a further or amended survey, or certificate, or additional affidavits, or any other proper evidence or proof. When the court is satisfied that the plaintiff appears to have a title that should be registered, it shall make an order directing that the action to register such title be commenced by the issuance of the summons, and the service of the summons and the notice required by section three hundred and eighty-six of this chapter. The summons shall be made and have the form, and it and said notice shall be served in the manner prescribed by the code

of civil procedure for a summons in an action in the supreme court; except that, when service is directed to be made by publication, it shall be ordered to be made in only one newspaper designated by the court once a week for four successive weeks, and such service so made shall be complete at the end of twenty-eight days from and including the day of the first publication; and except further that any defendant on whom personal service is made without the state pursuant to such an order shall appear, answer, or demur within twenty-eight days after such personal service; and except further that an order for service of the summons and said notice shall be a court order, and the summons served pursuant thereto need not be accompanied by any notice except that prescribed and required by section three hundred and eighty-six of this chapter; and except further as otherwise provided herein. Before making an order for service of the summons and said notice by publication or other form of substituted service, the court must be satisfied by proof of the facts that the plaintiff has been or will be unable, with due diligence, to make personal service of the summons. The question of the sufficiency of such proof shall be for the court; and an allegation, in an affidavit or other duly verified statement recited in said order, that the plaintiff has been or \*will be unable with due diligence to make personal service of the summons, or that after diligent inquiry a defendant remains unknown to the plaintiff or that the plaintiff is unable to ascertain whether the defendant is or is not a resident of the state, may be taken to be sufficient proof thereof. An order containing such a recital, and made on such proof, shall not be drawn in question after six months from the time when the final judgment in the action is entered. Service of the summons and said notice on the people of the state of New York shall be sufficiently made, by mailing a copy thereof securely inclosed in a postpaid wrapper, and directed to the attorney-general of the state of New York. The action shall be governed by, and shall proceed according to, the laws of this state and the rules of court, relative to an action in the supreme court, as far as the same are applicable and are not abrogated or modified by this article.

**§ 386. Notice of object of action; copy of complaint.**

The summons, however served, shall be accompanied by a notice, which shall state the object of the action and describe briefly, but plainly, the property, the title to which is sought to be registered. Said notice shall be approved by the court, and a copy thereof shall be annexed to the order directing the service of the

\*So in original.



summons and said notice. Said notice shall be as follows: "The object of this action is to register and confirm the title of (name or names and post-office address of plaintiff in full) in the following described property (description as approved by the court)." A copy of the complaint may be demanded by the attorney of any defendant, and if so demanded must be served, as prescribed by section four hundred and seventy-nine of the code of civil procedure.

**§ 387. Summons and notice to be posted on the land.**

A copy of the summons and notice of object of action, as above described, shall be posted in a conspicuous place on each parcel of land included in the action, at least forty days before application is made for judgment in the action. The affidavit of the person by whom such posting is made shall be conclusive proof that such notice was posted in a conspicuous place, and shall be filed with the application for the judgment or before the judgment is entered.

**§ 388. Guardian ad litem.** After service of the summons on all of the defendants is complete, if it appears from any of the papers in the case that any one or more of them are infants or otherwise incapacitated, the court shall make an order appointing a disinterested attorney, other than the examiner by whom the title was examined and certified, to act as guardian ad litem for all minor parties to the action and for all parties under disability. It shall be his duty actively to ascertain and protect as far as is reasonably possible, the interests of all parties to the action known to be or possibly incapacitated. The compensation of such guardian shall be determined by the court and paid by the plaintiff.

**§ 389. Any person interested may appear and defend.** Any person interested in the property, or whose interests may be affected by the judgment in the action, whether specifically named as defendant or not, may enter his appearance and answer the complaint, within the time allowed by this article, or such further time as shall be allowed by the court, and may oppose the application for registration of the property as belonging to the plaintiff, or set up a cross-demand to have the title registered in his own behalf. In either case, he shall state particularly what his interest is and answer the material allegations of the complaint.

**§ 390. Title in lands vested; clouds thereon removed.** In any action under this article, the court may find and decree in whom the title to or any right or interest in the property or any part thereof is vested, whether in the plaintiff or in any other person, and may remove clouds from the title, and may determine whether or not the same is subject to any lien or incumbrance, estate, right, trust or interest, and may declare and fix the same, and may direct the registrar to register such title, right, or interest, and in case the same is subject to any lien, incumbrance, estate, trust or interest, may give directions as to the manner and order in which the same shall appear upon the certificate of title to be issued by the registrar, and generally in such an action, the court may make any and all such orders and directions as shall be according to equity in the premises and in conformity to the principles of this article. But no judgment of registration of a title shall be made or entered until proof is duly made in the action that all taxes, water rents and assessments on the property, right or interest the title to which is so registered, have been fully paid and discharged, unless the court directs the title to be registered subject to any such tax, water rent or assessment, which said tax, water rent or assessment must then be noted on the certificate of registration.

**§ 391. Judgments and orders conclusive.** No judgment of registration shall be made, unless the court is satisfied that the title to be registered accordingly is free from reasonable doubt. The judgment and any order made and entered in an action under this act shall, except as herein otherwise provided, be forever binding and conclusive upon the state of New York and all persons in the world, whether mentioned and served with the summons and said notice specifically by name, or included in the description, "all other persons, if any, having any right or interest in or lien upon said property or any part thereof." It shall not be an exception to such conclusiveness that any such person is an infant, lunatic or is under any other disability or is not yet in being.

**§ 392. Fraud; action to set aside the judgment or to recover the property.** Any title registration procured by or as the result of fraud may be set aside, in the same manner and by the same proceedings as in case of a deed obtained by fraud, provided that such proceeding for setting aside the registration shall not injuriously affect the rights of an innocent purchaser or incumbrancer of the property after such registration, for value and without actual notice of the fraud, and provided

further that the action or other proceeding to set aside such registration be commenced within ten years from the time when the final judgment of registration was entered. No action or proceeding shall lie or be commenced, except on the ground of fraud as above stated, to set aside any judgment of registration or to modify or affect the same or for the recovery of registered property or any estate, right or interest in or lien upon the same or any part thereof, or make any entry thereon, adversely to the title or interest registered therein, as directed by a final judgment of the court, unless such action or proceeding is commenced within six months after such judgment of registration is entered.

**§ 393. Registration of title.** After the final judgment directing registration of title is duly entered and filed in the registrar's office, the registrar shall proceed to register the title to the real property, estate, right, or interest, pursuant thereto, and issue a certificate or certificates thereof and enter the same as herein prescribed.

**§ 394. Certificate of registration.** The registrar shall make, in the form prescribed by section four hundred and thirty-five of this chapter, an original certificate of registration of every title, right or interest registered by him pursuant to this article. Said certificate shall bear the date of its issue (the day and year), and be under the hand and official seal of the registrar, and be numbered in the order of its issue. Except in case of a corporation, it shall state whether the owner of the property, right, or interest registered is married or unmarried, and if married, the name of the husband or wife. If the owner is a minor, it shall state his age; if he is under any other disability, it shall state the nature of such disability. The registrar shall make proper memorials or notations on the certificate, showing in such manner as to set forth and preserve their priorities the particulars of all the estates, mortgages, trusts, liens and charges, to which such owner's title is subject. No such memorial or notation shall be more than one folio (one hundred words), in length; but it may refer to covenants, restrictions and forms recorded in the "book of covenants, restrictions and forms" provided for by this article. The form of the first certificate of title, as set forth in section four hundred and thirty-five of this article, shall be subject to such changes as may be required in any case. All subsequent certificates shall be in like form, except that in place of the words "first certificate," et cetera, shall be the words "transfer from number \* \* \*" (the number of the next previous certificate); also the words "first

registered \* \* \*” (date of first registration). On the back or reverse side of every certificate shall be printed, in plain legible type, the whole of section four hundred of this chapter.

**§ 395. Registration book.** The registrar shall keep a book or books to be known respectively as the “registration book,” wherein he shall enter all first and subsequent “original” certificates of title by binding or recording them therein, with appropriate blanks for the entry of memorials and notations prescribed by this article. Said book shall be of about the size of the conveyance books, now used in county clerks’ and registrars’ offices. Each certificate shall constitute a separate leaf of such book. About two inches of each leaf on the binding edge shall be kept blank on both sides, to facilitate rebinding. At such times as may be proper, the registrar may rebind the certificates in new volumes or registration books, containing respectively cancelled and uncanceled certificates. All memorials and notations, that may be entered in the registration book under the terms of this article, shall be entered upon the leaf constituting the last certificate of title of the property to which they relate. Whenever the term “certificate of title” is used in this article it shall be deemed as including all memorials or notations thereupon noted.

**§ 396. Duplicate certificate of title.** The registrar shall, at the same time that he makes out his original certificate of title, make out an exact duplicate thereof, with the memorials and notations thereon noted, which shall be delivered to the owner and shall be known as the owner’s duplicate. Any duplicate certificate, or certified copy of a certificate, shall be plainly stamped as such across its face.

**§ 397. Owner’s receipt for certificate of title.** For the purpose of preserving evidence of the handwriting of the owner of any registered property, right, or interest, it shall be the duty of the registrar to take from such owner, in every case where it is practicable so to do, his receipt for the certificate of title, or whatever paper shall be issued to him, signed by such owner in person. When such receipt is signed in the registrar’s office it may be witnessed by the registrar or some deputy. If signed elsewhere, it may be acknowledged before any officer authorized to take acknowledgment of deeds. When so signed and witnessed or acknowledged, such receipt shall be prima facie evidence of the genuineness of such signature.

**§ 398. Certificate to include dealings pending registration.** In every case of initial registration, the certificate

of title shall include all dealings with the real property, and all statutory or other liens filed against the same, subsequent to the filing of the application, except when they are modified or set aside by a judgment, decree or order of the court. On and after the filing with the registrar of an application for the registration of any real property, and until the same is registered or the application is denied, dismissed, or discontinued, all papers which are required or permitted by this article to be filed against registered property shall be filed with the registrar as if the property were registered.

**§ 399. Certificate of title as evidence.** The registration certificate of the title, and any copy thereof duly certified under the hand and seal of the registrar and the owner's duplicate certificate, until the expiration of the time herein limited to bring an action or proceeding to set aside the judgment of registration shall be received as evidence in all the courts of the state, and in all courts and places shall be prima facie evidence that the provisions of law up to the time of issue of such certificate or duplicate, or of the time of entry of the last memorial thereon, have been complied with, and that such certificate of title has been issued in compliance with a valid judgment, and that the title to the property is as therein stated; and after the expiration of such time limited for bringing said proceedings to set aside said judgment, such certificate or copy, up to the time of its issue, shall be so received as evidence in all courts of the state, and shall be conclusive evidence of the same facts. Every memorial or notation or cancellation thereof made on any certificate or duplicate or copy thereof shall be signed by the registrar or his deputy or his duly authorized deputy or clerk.

**§ 400. Rights of registered owners; exceptions; incumbrances and transfers to be filed.** A person who receives a certificate of title pursuant to a judgment of registration, except in case of fraud to which he is a party, and a purchaser of registered real property, who takes a certificate of title for value and in good faith, shall hold the same free from all incumbrances, charges, trusts, liens and transfers, except those noted on the certificate in the registrar's office, and any of the following which may exist:

First. Liens, claims, or rights arising or existing under the laws or constitution of the United States, which the statutes of this state do not require to appear of record;

Second. Any tax, water rate, or assessment which becomes a lien on the property after initial registration and for which a sale has not been made;

Third. Any lease or agreement for a lease, made after or pending registration, for a period not exceeding one year, where there is actual occupation of the land under the lease or agreement;

Fourth. Easements or servitudes which accrue against the property after initial registration in such manner as not to require their registration. Except as specified in the foregoing statement of exceptions, no incumbrance, charge, trust, lien, or transfer shall take effect upon or over real property the title to which has been registered, unless the instrument creating and setting forth such incumbrance, charge, trust, lien, or transfer has been filed with the registrar and a memorial or notation thereof made upon the certificate of title covering the property.

**§ 401. Registered property not affected by prescription or adverse possession.** No title to registered real property, in derogation of that of the registered owner, shall be acquired by prescription or adverse possession.

**§ 402. Fraud; notice only by registration.** Except in case of fraud and except also as herein otherwise provided, no person taking a transfer of any registered real property or of any estate or interest therein or lien or charge thereon from the registered owner shall be required to inquire into the circumstances under which, or the consideration for which such owner or any previously registered owner had the title registered, nor shall such transferee be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand or interest whatever; and the knowledge that an unregistered trust, lien, claim, demand or interest is in existence shall not of itself be imputed or treated as fraud.

**§ 403. Memorial to be carried forward.** Whenever a memorial or notation has been entered as permitted by this article, the registrar shall carry the same forward upon all certificates of title until the same is cancelled in some manner authorized by this article.

**§ 404. Registered property to remain registered.** The bringing of property under this article shall imply an agreement, running with the land and binding upon the applicant and all his successors in interest or title, that the property shall be subject to the terms of this article and all amendments and alterations thereof. All dealings with the property so registered, or any estate, right, or interest therein, after the same has been brought under this article, and all liens, incumbrances and charges upon the same after the first registration thereof shall be subject to the terms of this article.

**§ 405. Registered property subject to same rights and burdens as unregistered property.** Registered real property and every estate, right and interest therein shall be in all respects subject to the same rights, burdens and incidents as unregistered real property, except as otherwise expressly provided in this article or any amendment thereof.

**§ 406. Transfers of registered property.** A registered owner of real property, in order to transfer his whole estate or interest therein or any part or parcel thereof, or any undivided interest therein shall execute to the intended transferee a deed or instrument of conveyance in any form authorized by law. Upon filing such deed or other instrument in the registrar's office and surrendering to the registrar the duplicate certificate of title, if the interested parties agree in a statement as to the nature and effect of the transfer the registrar shall enter such statement as a memorial upon the proper original certificate, provided that such statement is not more than one folio (one hundred words) in length. He shall then make out and register as herein provided a new certificate and also an owner's duplicate certifying the title to the estate or interest in the property conveyed to the transferee and shall enter upon the original and duplicate certificate the date of the transfer, the name of the transferee and the number of the new certificate, and shall stamp across the original and surrendered duplicate certificates the word "cancelled." If the parties in interest fail to agree upon the statement to be entered upon the certificates, the registrar shall refuse to make the transfer until directed by the court as herein provided. Title to such property shall not pass by such transfer until the transfer is registered as prescribed by this section.

**§ 407. Certificate remaining part of property transferred.** When only a part of the property described in a certificate is transferred, or some estate or interest therein is to remain the transferrer's, a new certificate shall be issued for such part, estate or interest so remaining and belonging to him; or if the property is so described as to permit it, the property transferred may be cancelled on the certificate of the transferrer without the issue of a new certificate for the residue.

**§ 408. Book of covenants, restrictions and forms.** Each registrar shall provide a book to be known as the book of covenants, restrictions and forms. This book shall be bound in a substantial manner and the pages thereof shall be Crane's parchment paper or its equal. Any person may have recorded in this

book any covenant, restriction or form he may present for that purpose on payment to the registrar at the rate of fifty cents per folio. The covenant, restriction and form so entered shall be numbered consecutively and shall be written in the book with India ink or equally permanent ink in a clear and legible manner under the number given to it. References in any documents issued by the registrar to any covenant, restriction or form recorded in this manner shall be as follows:

Subject to restriction, (or covenant or form) recorded under No. . . . . in the book of covenants, restrictions and forms, in the registrar's office of this county.

**§ 409. Filing, entering and indexing papers pursuant to this act; tickler certificate.** Every paper filed with the registrar shall be given a serial number in the order of its filing, and then shall be entered by the registrar in an "entry book" under columns showing:

- First. The serial number;
- Second. Day of filing;
- Third. Filing number of application (complaint) to which it relates if the registration proceedings are still pending;
- Fourth. Certificate number, if registration proceedings are completed and certificate has been issued;
- Fifth. Kind of paper filed;
- Sixth. Name and address of the person in whose interest the paper is filed;

Every paper filed with the registrar affecting property for which registration proceedings are pending shall be kept by the registrar with the application. The registrar shall provide a book to be known as "the tickler certificate book" wherein he shall note all filed papers affecting property for which registration proceedings are pending. Each page shall constitute a separate tickler certificate, and on said certificate he shall enter the character of the paper, the date of filing and the filing number. The tickler certificate, subject to such change as the case may require, shall be substantially as follows:

Application number . . . . .

This certifies that the following papers have been filed in the office of the registrar of . . . . . county affecting, or in connection with an action to register the title to the following described real property, to wit:



(The description to appear here.)

Character of paper.	When filed.	Filing number.

A memorial of every paper filed with the registrar affecting title to registered property shall be entered at once upon the last original certificate to which it relates. Every paper filed with the registrar affecting the title to property shall be indexed from its contents as follows: In an index showing in alphabetical order in one column or in a set of columns the names and post-office addresses of all persons in whose interest applications for registration of title are filed; the names and post-office addresses of all persons to whom any interest, right, or power in real property is granted or released; and the names and post-office addresses of all persons claiming an interest in real property; also, in separate columns the kinds of papers filed, the numbers of the filed papers, the dates of filing, the filing numbers of application to which they relate (if application is pending) and the numbers of the last original certificate to which they relate (if the title to the property is registered). Whenever a judgment or an order of court directs that the title to real property be registered, it shall also direct the registrar to transfer all proper liens and incumbrances filed against the property pending registration to the certificate of title so to be issued. In those counties which have block indexes, an index shall be kept by blocks of all owners of registered property with a reference to the certificate numbers in which the properties are registered.

**§ 410. Notice of filed papers.** All papers filed by the registrar, and indexed and entered by him pursuant to this article, shall be of equal effect as to notice, in the order of their filing as shown by their filing numbers, as are similar papers when recorded by county clerks or registers under the recording acts. Should an action for registration be discontinued or otherwise terminated without registration, an order of court to that effect shall be filed with the registrar, who shall at once cause all the papers relating to the title to the property affected, filed with him, to be recorded by the county clerk or register in the order of their filing, on payment of the statutory fees.

**§ 411. Addresses of interested parties; notice.** On every paper or instrument filed with the registrar there shall be indorsed the name and post-office address of the person in whose behalf it is filed; and all notices by the registrar or other person relating to the property therein described may be served by mail on such person at such post-office address, except as otherwise provided herein. The address may be changed from time to time, by such person filing with the registrar a written notice of such change.

**§ 412. When a transfer is deemed to be registered.** Every transfer of registered property shall be deemed to be registered under this article when the new certificate to the transferee shall have been entered as in the case of first registration; and all other dealings shall be considered as registered when the memorial or notation shall have been entered in the registration book upon the last certificate of title to the property.

**§ 413. New certificates.** Upon the application of any registered owner of property held under separate certificates of title, or under one certificate, and delivering up of such certificate or certificates of title, the registrar shall issue to such owner a single certificate of title for the whole of such property, or several certificates, each containing a portion of such property in accordance with such application, and as far as the same may be done consistently with any regulations at the time being in force respecting the parcels of land that may be included in one certificate of title; and upon issuing any such certificate of title, said registrar shall indorse on the last previous certificate of title of such property so delivered up a memorial setting forth the occasion of such cancellation, and referring to the number or numbers of the new certificate or certificates of title so issued.

**§ 414. Loss of owner's duplicate.** If any duplicate certificate is lost or destroyed or cannot be produced, a duly verified

statement, setting forth the facts relating thereto, may be filed with the registrar by the registered owner, or other person in interest. Upon such application, after due notice and hearing, the court may direct the registrar to issue a new duplicate certificate, containing a memorandum of the fact that it is issued in place of a lost duplicate certificate, which shall be entitled to like faith and credit as the original duplicate.

**§ 415. Mortgages, leases and other liens and charges; may be registered.** Any mortgage, lease for a term of over one year, contract to sell or other instrument intended to create a lien, incumbrance, trust or charge on registered property or any right or interest therein, may be registered as herein provided.

**§ 416. Proceedings to register mortgage, lease or other lien or charge.** On the filing of the instrument in the registrar's office and the production of the duplicate certificate of title, if the interested parties agree in a statement as to the nature and effect of the mortgage, lease or other lien or charge, the registrar shall enter such statement upon the proper certificate in the registration book, provided such statement be not more than one folio (one hundred words) in length, and also he shall enter upon the owner's certificate a memorial thereof and the date of filing the instrument with a reference to its file number, which memorial shall be signed by the registrar. The registrar shall also note upon the instrument filed the number of the certificate on which the memorial is entered. If the parties in interest fail to agree upon the memorial so to be made by the registrar, he shall refuse to make any memorial thereof until directed by the court to do so, as herein provided.

**§ 417. Judgments, decrees, attachments and other liens to be noted on certificate.** No judgment, decree, attachment, execution, mechanic's lien, or other lien or charge, which may affect or be a lien or charge upon real property in this state, shall be or become a lien or charge on real property, or any right or interest therein, the title to which has been registered, unless a transcript, or certified copy, or other duly made or certified document, which is by law proper evidence in a court of record, of such judgment, decree, attachment, mechanic's lien, or other lien or charge, shall be duly filed with the registrar, and a proper memorial thereof made by him upon the certificate of registration in the registration book. Such transcript, or certified copy, or other duly made or certified document so filed shall have plainly written or stamped thereon the number of the certificate

of registration of the title to the property to be affected and bound thereby by virtue of such memorial on such certificate, and it shall be the duty of the registrar to make such memorial immediately on receipt of the same. A discharge, cancellation, or modification of any judgment, decree, attachment, mechanic's lien, or other lien or charge, so noted on the certificate, shall not affect or be binding upon the registered property, right, or interest, unless on like evidence a memorial thereof shall be made by the registrar on such certificate.

**§ 418. Assignment of mortgage, lease, or other lien or charge.** The holder of any mortgage, lease, or other lien or charge on registered property, in order to transfer the same or any part thereof, shall execute an assignment of the whole or any part thereof; and upon such assignment being filed in the office of the registrar, and the production of a true copy of the instrument, if any, which created the mortgage, lease or other lien or charge and which is held by the assignor, the registrar shall enter in the registration book a memorial of such transfer with a reference to the assignment by its file number; he shall also note upon the instrument on file in his office intended to be transferred, and upon the true copy thereof produced, the number of the certificate on which the memorial is entered, with the date of the entry.

**§ 419. Release, discharge or surrender of charge or incumbrance.** A release, discharge or surrender of a charge or incumbrance, or any part thereof, or of any part of the property charged or incumbered, may be effected in the same way as is above provided in the case of a transfer. In case only a part of the charge or only a part of the property charged is to be released, discharged or surrendered, the entry shall be made accordingly, but when the whole is released, discharged or surrendered, the registrar shall plainly stamp across the instrument on file, and on the memorial thereof, and on a true copy produced, the word "cancelled," and shall sign the same.

**§ 420. Enforcement of mortgages, charges, liens and incumbrances.** All charges, liens and incumbrances on registered property, or on any estate, right or interest in the same, and all rights therein may be enforced as now allowed by law; and all laws with reference to the foreclosure, release or satisfaction of mortgages shall apply to mortgages on registered property or on any estate, right or interest therein, except as herein otherwise provided, and except that until notice of the pendency of any suit to enforce such mortgage, charge, lien, or incumbrance is filed in the registrar's office and a memorial thereof entered on the certifi-

cate in the registration book, the pendency of such suit shall not be notice to the registrar or to any person dealing with the property or any right or interest therein.

**§ 421. Powers of attorney to be filed and registered.** Before any person can convey, charge, incumber or otherwise deal with any registered property, or any estate, right or interest therein, as attorney in fact for another, the deed or instrument empowering him so to act shall be filed with the registrar and a memorial thereof shall be entered upon the certificate in the registration book, in like manner as in the case of a charge or incumbrance.

**§ 422. Reference of doubtful matters to the court.** When the registrar is in doubt, and when the parties in interest fail to agree as to the proper memorial to be made in the registration book of any deed, mortgage or other voluntary instrument presented for registration, the question shall be referred to the court for decision, either on the certificate of the registrar stating the question, or upon the suggestion in writing of any party or parties in interest; and the court, after due notice to all parties in interest, and a hearing, if necessary or proper, shall enter an order prescribing the form of the memorial to be made by the registrar, who shall make the memorial accordingly.

**§ 423. Death of registered owner; transfer of property.** Upon the death of a registered owner of real property or any estate, right, or interest therein, his heirs-at-law or devisees, at any time after the due entry of a decree of the surrogate's court, probating his will and granting letters testamentary thereon or granting letters of administration, or in case of an appeal from such decree at any time after the entry of a final decree, may file with the registrar a certified copy of such final decree, and may make application for a new registration or new registrations of the title and new certificate or certificates thereof. Two or more heirs or devisees may unite in one such application. The proceedings and action on such application shall be the same as in the case of initial registration, except that the registration certificate of the deceased owner, or a duplicate copy thereof, shall be sufficient and conclusive evidence of his title at the time of his death, and no other evidence of the title up to that time may be produced.

**§ 424. Registration certificate during settlement of estate.** Any new certificate of registration, made and entered as prescribed in the preceding section of this act before the final settlement in the surrogate's court of the personal estate of the de-

ceased owner of the real property, shall state expressly that it is made and entered because of transfer of the title from the last certificate by descent or devise, and that such personal estate is in process of settlement. After the final settlement of such personal estate in the surrogate's court, or after the expiration of the time allowed by the code of civil procedure for bringing a proceeding for selling, mortgaging or leasing the real property of the deceased owner for the payment of his debts, the heirs-at-law or devisees may apply to the court in the registration action for an order directing the cancellation of said memorial upon the certificate, which memorial showed that the personal estate was in the course of settlement, and the court, after being satisfied by due proof that said personal estate is completely settled or that said time to apply for selling, mortgaging or leasing the said real property has expired, shall make an order directing the cancellation of said memorial; but the liability of heirs or devisees of registered property, or of such property itself, for claims against the deceased or his estate shall not be in any way diminished or changed by this article.

**§ 425. Title derived through execution of a power in a will.** When the will of a deceased registered owner of real property, or of any estate, right or interest therein, empowers the executor or executors to sell, incumber or otherwise deal with such property, estate, right or interest, it shall not be necessary for such executor or executors to be registered as the owner or owners thereof; but any person who acquires title through or by virtue of the execution of such power may have such title registered, by proceeding in the same manner as heirs or devisees of a deceased registered owner of real property, as directed and provided by this article.

**§ 426. Assurance fund.** Upon the original registration of real property, there shall be paid to the registrar one-tenth of one per centum of the value thereof on the basis of the last assessment for local taxation. All moneys received by the registrar under the provisions of this section shall be paid to the treasurer of the county (in New York city to the city chamberlain), as an assurance fund for land registered in his county. Said treasurer (or city chamberlain) shall invest the same as trust funds and report annually thereon as required by law in reference to other funds in his hands. Any person who states, at the original registration of property, that he takes such property without recourse to any action to recover compensation out of the assurance fund for any loss, damage or deprivation, shall not be required to make any payment on account of said fund, in which case the regis-

trar shall plainly place on the certificate of registration of such property or any duplicate or certified copy thereof, the words "without recourse to the assurance fund." Nothing herein shall prevent any person owning registered property from making payment to the registrar of the said one-tenth of one per centum of the said local assessed value thereof, whereupon the owner of said property may thereafter avail himself of any right to recover compensation from the assurance fund which right may thereafter arise; and on receipt of such payment the registrar shall cancel the words "without recourse to the assurance fund" from the certificate of registration, any duplicate or copy thereof.

**§ 427. Compensation from assurance fund.** Any person who, without negligence on his part, sustains loss or damage or is deprived of real property, or of any estate, right or interest therein, after the original registration thereof, because of the registration of another person as owner of such property, or of any estate, right, or interest therein, through fraud, or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry or memorial in the registration book, may bring an action to recover compensation out of the assurance fund for such loss or damage; but if the person who is deprived of such property, or any estate, right, or interest therein in the manner above stated has any other right of action or other remedy for recovery on account of such loss or damage, he shall exhaust such remedy before resorting to the action herein provided.

**§ 428. Action against assurance fund.** If an action is brought to recover for loss or damage, or deprivation of real property, or of any estate, right or interest therein, which arises wholly through any fraud, negligence, omission, mistake or misfeasance of the registrar or his deputies or clerks in the performance of their respective duties, the action shall be brought against the county treasurer (in New York city the city chamberlain), as the defendant. If such action is brought to recover for loss or damage, or deprivation of real property, or of any estate, right or interest therein, which arises wholly through any fraud, negligence, omission, mistake or misfeasance of some person or persons other than the registrar or the other officers and assistants above named, or which arises jointly through the fraud, negligence, omission, mistake or misfeasance of such other person and the registrar or the other officers and assistants above named, such action shall be brought against both the county treasurer (in New York city the city chamberlain), and such other person or persons as codefendants. In any action where there are defendants

other than the county treasurer (in New York city the city chamberlain), and damages shall have been recovered, no final judgment shall be entered against the county treasurer (in New York city the city chamberlain), until execution against the other defendants shall have been returned unsatisfied in whole or in part, and the officer returning the execution shall certify that the amount still due upon the execution cannot be collected except by application to the assurance fund. Thereupon, the court, being satisfied as to the truth of such return, may, upon proper showing, order the amount of the execution and costs, or so much thereof as remains unsatisfied, to be paid by the county treasurer (in New York city the city chamberlain) out of the assurance fund. Any person other than the county treasurer (in New York city the city chamberlain), against whom any such judgment may have been recovered, shall remain liable therefor, or for so much thereof as shall have been paid out of the assurance fund, and said treasurer or city chamberlain may bring suit at any time to enforce the lien of such judgment against such person or his estate for the recovery of any amount, with interest, paid out of the assurance fund as aforesaid. If the assurance fund is insufficient to pay the judgment in full, the unpaid balance thereof shall bear interest at the legal rate and shall be paid out of the first moneys coming into said assurance fund. It shall be the duty of the attorney-general of the state, or if the attorney-general so direct, the district or prosecuting attorney of the county, or the corporation counsel in New York city, to appear and defend such suits.

**§ 429. Restrictions on claims against assurance fund.** No person shall recover from the assurance fund any sum whatsoever by reason of any loss, damage or deprivation occasioned solely by a breach of trust on the part of any registered owner who is trustee, or by the improper exercise of any power of sale in a mortgage, nor shall any person recover from the assurance fund any greater sum than the fair market value of the property at the time the right to bring such action first accrued. Any action or proceeding to recover damages out of the assurance fund shall be commenced within six years from the time when the right to begin the same accrued, and not afterward, and such time shall not be extended because of any disability.

**§ 430. Penalties for fraudulent acts or false certificates.** Whoever fraudulently procures or assists in fraudulently procuring, or is intentionally privy to the fraudulent procurement of any certificate of title or other instrument, or of any entry in the registration or other book kept in the registrar's office,



or of any erasure or alteration in any entry in said book, or in any instrument authorized by this act, or knowingly defrauds, or is intentionally privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement or affidavit, affecting registered land, shall be guilty of a felony and shall be punished by a fine of not exceeding five thousand dollars, or imprisonment for a period not exceeding five years, or both, in the discretion of the court.

**§ 431. Forgery and fraudulent stamping; penalty.**

Whoever forges, or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature, handwriting of any officer of the registrar's office; or fraudulently stamps or procures to be stamped, or assists in stamping, any document with any forged seal of said registrar, or forges or procures to be forged, or assists in forging, the name, signature or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person, or uses any document upon which any impression or part of the impression of any seal of said registrar has been forged, knowing the same to have been forged, or any document the signature to which has been forged, knowing the same to have been forged, or swears falsely concerning any matter or proceeding made or done in pursuance of this article, shall be guilty of a felony, and shall be punished by imprisonment in the penitentiary for a period not exceeding five years, or by a fine not exceeding five thousand dollars, or both, in the discretion of the court.

**§ 432. Fees to be charged.** The following fees shall be charged by registrars for the various services performed pursuant to this article:

(a) Filing the application, including entering it in the entry book, indexing it, and entering it in tickler certificate book, one dollar and fifty cents.

(b) Entering and filing each order of service or summons, seventy-five cents.

(c) Entering and filing order appointing guardian ad litem, seventy-five cents.

(d) Entering, filing and indexing judgment and issuing certificates of title in accordance therewith, and indexing same, five dollars.

(e) Entering, filing and indexing any lien, incumbrance or charge pending registration or subsequent thereto, one dollar.

(f) Entering, filing and indexing a deed or other paper requiring the cancellation of one certificate and the issue of another — for each new certificate issued, two dollars.

(g) Entering, filing and indexing any instrument cancelling any lien or incumbrance on a certificate, fifty cents.

(h) Making any additional certificate, fifty cents.

(i) Entering, filing and indexing a caution, one dollar.

§ 433. Construction of article. This article shall be construed liberally, so far as may be necessary for the purpose of effecting its general intent.

§ 434. Form for examiner's certificate of title. The examiner's certificate of title shall be substantially in the following form, with such additions or modifications as the court may order:

EXAMINER'S CERTIFICATE OF TITLE.

State of New York, }
County of..... } ..... day of....., 190..

certifies that title to the premises herein described in this certificate is vested in.....

clear of all liens, incumbrances, defects, rights and interests. except as noted below. A full statement has been made of all liens, incumbrances, defects, rights and interests including restrictions, special agreements, covenants, easements, taxes, survey, judgments, mortgages, and encroachments as they arise in the order of this certificate, which statement is found in the following pages of this schedule. A brief summary statement of the same is as follows (such summary to be here set out in the order of the paragraphs of this certificate): The names and post-office addresses of all persons interested, or claiming to have any rights or interest in said property and the natures of their interests are as follows:

Names. Post-Office Address. Nature of Interest.

The names of the other persons interested, or claiming to have any rights or interests, in said property whose post-office addresses and whereabouts are unknown and cannot by diligent inquiry be ascertained are as follows:

Names. Nature of Interest.

The facts as to the inquiries and efforts made to find other persons having any rights or interests in said property and the diligence used to ascertain whether or not those known can be

personally served with a summons within the state, are set forth in the following detailed statement:

#### DETAILED STATEMENTS.

1. Description.— The following is an accurate diagram of the property proposed for registration in this action, the same having been copied from a survey made by..... dated.....

The arrow shows the north point.

The above property is more particularly bounded and described as follows: .....

2. Records examined.— Records necessary to determine the ownership of the above-described property and all liens and incumbrances have been examined in the offices of the register; clerk of the United States circuit court of the.....district; clerk of the United States district court of the.....district; United States loan commissioner; county clerk; tax collector; comptroller; county treasurer. The results of the examination of the records of the various offices above described are herewith set forth in detail separately. In case it has been found impossible to get necessary information to complete this certificate in any respect, a detailed statement has been given showing what efforts have been made.

3. Register's (or county clerk's) office.— The chain of title given below shows the source of title and the present owner. It also shows all agreements and instruments of record affecting said property. Special covenants, restrictions, unsatisfied mortgages, agreements appearing in said chain are set forth in detail after the chain of title in this certificate. Column one provides a numerical designation to avoid the rewriting of names, reference thereto hereafter being made by number; column two, grantors; column three, grantees; column four shows the nature of the instrument. The abbreviation F. C. W. means full covenant and warranty deed; B. & S., bargain and sale; Q. O., quitclaim; Exors., executors; Tr., trustees; Shf., sheriffs. The additional abbreviation C. A. G. in any column means covenants against grantors' acts. Column five shows nature of the transaction. The word fee, life estate or estate for years or special agreement has been filled in as the case may be. Column six, date of instrument; column seven, date of record; column eight, liber and page of record; column nine, defects in instruments which have

been noted defective. All liens and incumbrances and defects in the register's office (or county clerk's) are set forth after the chain of title.

(1)	(2)	(3)	(4)	(5)
(6)	(7)	(8)	(9)	
	Grantors.	Grantees.	Nature of Instrument.	Nature of Transaction.
Date of Instrument.	Date of Record.	Liber and Page of Record.		Defects.

RESUME OF REGISTER'S (OR COUNTY CLERK'S) OFFICE.

.....  
 .....

PARTICULARS OF EACH MORTGAGE UNSATISFIED.

Mortgagor,  
 Mortgagee,  
 Kind,  
 Amount,  
 Dated,  
 Recorded,  
 Liber, .....; Page, .....; Sect.  
 When due,  
 Rate of interest,  
 Interest payable,  
 Principal and interest payable in .....  
 Said mortgage is due and payable upon default in payment  
 of interest ..... days.  
 Taxes and assessments ..... days.

SPECIAL CLAUSES IN MORTGAGE.

(To be set out in full.)

Insurance,  
 Warranty,  
 Receivers,  
 Special tax,  
 Power of sale,  
 Other special clauses not included in the above,  
 Assignments of above and bond,  
 In case the bond has not been signed this fact is noted.  
 Assigned by,  
 Assigned to,

Dated,  
 Recorded,  
 Liber, .....; Page, .....; Section, .....

The details of other unsatisfied mortgages are also set forth in detail.

4. United States circuit and district courts, and United States loan commissioner's office.—In the United States circuit and district courts judgments, decrees and liens have been recorded within the past fourteen years as follows:

UNITED STATES CIRCUIT COURT.

Names.	Dates.
.....	.....
.....	.....

UNITED STATES DISTRICT COURT.

Names.	Dates.
.....	.....
.....	.....

Petitions and decrees in bankruptcy have been filed during the periods of the various bankruptcy acts; as follows:

Act of eighteen hundred and forty-one to eighteen hundred and forty-three inclusive:

Names.	Dates.
.....	.....
.....	.....

Act of eighteen hundred and sixty-seven to eighteen hundred and seventy-eight inclusive:

Names.	Dates.
.....	.....
.....	.....

Act of eighteen hundred and ninety-eight to date, inclusive:

Names.	Dates.
.....	.....
.....	.....

Mortgages in United States loan commissioner's office. (See particulars under mortgages unsatisfied, paragraph three.)

Names.	Dates.
.....	.....
.....	.....

5. County clerk's office.— The records of this office show judgments, decrees and transcripts of judgments and decrees from all courts filed or docketed therein. Surrogate's decrees and forfeited recognizances against the following persons for the past fourteen years:

Names.	Dates.
.....	.....
.....	.....

Building loan contracts filed since eighteen hundred and ninety-seven:

Names.	Dates.
.....	.....
.....	.....

Mechanics' liens have been filed against owners of record as follows:

Names.	Dates.
.....	.....
.....	.....

Unsafe building liens have been filed since April one, eighteen hundred and sixty-two, as follows:

Names.	Dates.
.....	.....
.....	.....

A search has been made against each owner of record for the same period as in paragraph three (register's or county clerk's office) above, to discover: notices of lis pendens; certificates of sheriff's and marshal's sales; insolvent assignments; general assignments; foreclosure by advertisements; appointment of receivers; appointment of trustees, of absconding concealed non-resident or imprisoned debtors; exemptions under the Homestead Act. A further search of sheriff's certificates has been made against each owner for a period of eleven years subsequent to the search in the register's office and for foreclosure by advertisement to date. Such instruments and notices have been discovered as indicated on the following dates:

.....	.....
.....	.....

Unsatisfied chattel mortgages indexed against persons since April first, nineteen hundred and two.

Owners.	Dates.
.....	.....
.....	.....

Unsatisfied chattel mortgages indexed against property where indexing against property is required.

Owners.	Dates.
.....	.....
.....	.....

6. Comptroller's office (New York city).— The records of the comptroller's office show that bonds of receivers of taxes, deputy receivers of taxes, and chief clerks in the office of receiver of taxes have been signed by the owners of said property as sureties pursuant to the act of eighteen hundred and twenty-three and acts amendatory thereof as follows:

Names.	Dates.
.....	.....
.....	.....

7. County treasurer's office.— The records of the county treasurer's office show that bonds of receivers of taxes, deputy receivers of taxes, and chief clerks in the office of receiver of taxes have been signed by the owners of said property as sureties, pursuant to the act of eighteen hundred and twenty-three and acts amendatory thereof, as follows:

Names.	Dates.
.....	.....
.....	.....

8. Tax offices.— Taxes, assessments and water rates unpaid:

Year.	Amount.
.....	.....
.....	.....

(State in detail searches in all offices, local or otherwise, in which records of taxes or public claims against the property are kept.)

Sales for taxes, assessments and water rates.

(Wherever record of such sales are kept.)

To.	Date.
.....	.....
.....	.....

9. Other interested persons.— The following persons who do not reside on the premises claim interests or rights in said property, the nature of their claim in law or equity being herewith set forth in detail:

Name.	Address.	Nature of Claim.
.....	.....	.....
.....	.....	.....

The names and post-office addresses of the owners of the adjoining parcels of land are, as far as reasonably obtainable by inquiry on the premises, given below as shown in the diagram:

.....

10. Inspection of property.—An inspection of the premises shows the property is occupied by the persons whose names and post-office addresses are set forth below; said occupants having described their interests and claims in said premises as follows:

Names.	Post-Office Address.	Nature of Claims.
.....	.....	.....
.....	.....	.....

An inspection of the plumbing, drains and sewers shows the following easements:

.....

An inspection of the walls, halls, roofs, yards and fire-escapes show easements as follows:

.....

Other matters which may or may not be of public record not included above and affecting said title are set forth as follows:

State of New York, }  
 } ss.:  
 County of..... }

.....  
being duly sworn, deposes and says that he is a duly qualified official examiner of title, licensed to practice as such under and by virtue of the laws of the state of New York; that he has personally examined the title to the property described in the foregoing certificate, and has made the foregoing certificate, and that the statements contained in said certificate are true in every particular to the best of his knowledge and belief; and that he has employed all usual means and methods for ascertaining the truth thereof and of all the facts and circumstances affecting and concerning the title to said property.

Sworn to before me, this ..... }  
 day of....., 190... }

.....  
**§ 435. Form for certificate of registration.** The registrar's certificate of registration shall be in the following form:  
No. .... First Registered .....



CERTIFICATE OF TITLE.

(First Certificate) or (Transfer from No. ....)

.....

State of New York, }  
 ..... County, } ss.:

.....

of (residence, and if a minor give his age; if under other disability, state the nature of the disability); married to (name of husband or wife, or if not married, say not married); is the owner of an estate in fee simple (or as the case may be) in the following land (here describe the premises) subject to the estates, easements, incumbrances and charges hereunder noted. (In case of trust, condition or limitation, say "in trust" or "upon condition" or "with limitation," as the case may be.)

Witness my hand and official seal this (date).

(Seal)

.....

Registrar.

MEMORIALS

of estates, easements and charges on the land described in the above certificate of title.

Document number.	Kind.	Running in favor of	Terms.	Date of Registration.	Signature of Registrar.

### ARTICLE 13 Cemetery Lands

Section 450. Lands used for cemetery purposes not to be sold or mortgaged.

451. Acquisition of lands by individuals for cemetery purposes in certain counties.

**§ 450. Lands used for cemetery purposes not to be sold or mortgaged.** No land actually used and occupied for cemetery purposes shall be sold under execution or for any tax or assessment, nor shall such tax or assessment be levied, collected or imposed, nor shall it be lawful to mortgage such land, or to apply it in payment of debts, so long as it shall continue to be used for such cemetery purposes. Whenever any such land shall cease to be used for cemetery purposes, any judgment, tax or assessment which, but for the provisions of this section would have been levied, collected or imposed, shall thereupon forthwith, together with interest thereon, become and be a lien and charge upon such land, and \*collectable out of the same. The provisions of this section shall not apply to any lands held by the city of Rochester.

**§ 451. Acquisition of lands by individuals for cemetery purposes in certain counties.** It shall not be lawful for any person to take by deed, devise or otherwise or set apart or use any land or ground in any of the counties of Westchester, Kings, Queens, Rockland, Suffolk or Nassau for cemetery purposes without the consent of the board of supervisors for such county, or of the board of aldermen of the city of New York as the case may be, first had and obtained in like manner as provided for in the membership corporations law; and said board of supervisors or board of aldermen in granting such consent may annex thereto such conditions, regulations and restrictions as such board may deem the public health or the public good require. (*Added by L. 1909, ch. 274, in effect April 30, 1909.*)

### ARTICLE 14

#### Laws Repealed; Construction; When to Take Effect

Section 460. Laws repealed.

461. Construction.

462. When to take effect.

**§ 460. Laws repealed.** Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

**§ 461. Construction.** This chapter does not alter or impair any vested estate, interest or right, or alter or affect the con-

\* So in original.

struction of any conveyance, will or other instrument which has taken effect at any time before this chapter becomes a law.

**§ 462. When to take effect.** This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

*Revised Statutes...	Part 2, chapter 1, title 1, sections 1 to 4 and 5 to 20, inclusive
Revised Statutes....	Part 2, chapter 1, title 2, sections 1-62, 64-148
Revised Statutes....	Part 2, chapter 1, titles 3-5. .... All
Revised Statutes....	Part 2, chapter 2. .... All
Revised Statutes....	Part 2, chapter 3. .... All
Revised Statutes....	Part 2, chapter 7, title 1. .... All

Laws of	Chapter	Section
1782.....	2.....	All
1784.....	18.....	All (8th Sess.)
1786.....	12.....	All
1787.....	4.....	All
1787.....	36.....	All
1787.....	37.....	All
1787.....	43.....	All
1787.....	44.....	Part relating to real property
1787.....	48.....	All
1788.....	7.....	All
1788.....	36.....	26-28
1788.....	44.....	All
1788.....	45.....	All
1788.....	46.....	32-34
1792.....	51.....	All
1793.....	50.....	All
*1794.....	1.....	1 and §§ 3 to 7, inclusive
1794.....	44.....	All
1797.....	18.....	All
1798.....	17.....	All
1798.....	72.....	All
1798.....	78.....	All
1798.....	95.....	3
1799.....	44.....	7
1800.....	61.....	All
1801.....	90.....	25, 26
1801.....	155.....	All
1801.....	156.....	All

\* Inserted and expressly repealed by L. 1909, ch. 240, in effect April 22, 1909. §§ 1 and 3-7, ch. 1, L. 1794, were already included in schedule but not in chronological order. See p. 2498.

Laws of	Chapter	Section
1801.....	169.....	All
1802.....	49.....	All
1804.....	109.....	26
1805.....	25.....	All
1805.....	98.....	All
1805.....	128.....	3
1806.....	17.....	All
1806.....	167.....	All
1806.....	168.....	All
1807.....	74.....	1
1807.....	123.....	2
1808.....	175.....	All
1809.....	44.....	1
1811.....	1.....	2
1811.....	7.....	All
1811.....	95.....	All
1811.....	238.....	4
R. L. 1813....	31.....	All
R. L. 1813....	32.....	All
R. L. 1813....	80.....	1-4, 7-9
R. L. 1813....	97.....	All
1814.....	5.....	All
1816.....	119.....	All
1817.....	69.....	1, 3-5
1818.....	55.....	5, 6
1819.....	25.....	All
1821.....	136.....	All
1822.....	245.....	1-4, 6
1822.....	254.....	All
1823.....	263.....	All
1825.....	307.....	All
1826.....	260.....	All
1826.....	297.....	1-3
1826.....	313.....	All
1827.....	204.....	All
1828.....	241.....	All
1828.....	20.....	15, ¶¶ 25-29, 46-47 (2d Meet.)
1828.....	21.....	1, ¶¶ 5, 8, 9, 14-16, 66, 94, 96, 97, 210, 226, 327, 368, 399, 453, 485 (2d Meet.)
1829.....	222.....	All
1830.....	171.....	All
1830.....	320.....	10-13
1831.....	172.....	All
1832.....	171.....	All
1833.....	167.....	All

Laws of	Chapter	Section
1834.....	272.....	All
1835.....	275.....	All
1836.....	339.....	All
1838.....	32.....	All
1839.....	295.....	5
1840.....	238.....	1
1840.....	318.....	Part relating to real property
1841.....	261.....	Part relating to real property
1843.....	87.....	All
1843.....	145.....	All
1843.....	199.....	All
1843.....	210.....	5
1845.....	109.....	All
1845.....	110.....	All
1845.....	115.....	All
1846.....	74.....	Part relating to real property
1846.....	182.....	3
1846.....	274.....	All
1847.....	170.....	All
1848.....	195.....	All
1853.....	303.....	All
1854.....	111.....	All
1855.....	17.....	All
1855.....	432.....	Part relating to real property
1855.....	547.....	All
1856.....	61.....	All
1857.....	576.....	All
1858.....	259.....	All
1860.....	322.....	All
1860.....	345.....	All
1860.....	396.....	All
1862.....	365.....	All
1863.....	246.....	All
1865.....	421.....	All
1867.....	557.....	All
1868.....	513.....	All
1868.....	798.....	All
1870.....	208.....	All
1872.....	120.....	All
1872.....	141.....	All
1872.....	358.....	All
1873.....	551.....	All
1873.....	583.....	All
*1794.....	1.....	1, 3-7
1874.....	261.....	All
1875.....	38.....	All

\* So in original.

Laws of	Chapter	Section
1875.....	336.....	All
1875.....	545.....	All
1877.....	111.....	All
1879.....	249.....	All
1879.....	310.....	All
1880.....	115.....	All
1880.....	300.....	All
1880.....	530.....	All
1882.....	100.....	All
1882.....	275.....	All
1882.....	278.....	All
1883.....	80.....	All
1884.....	26.....	All
1884.....	326.....	All
1886.....	40.....	All
1886.....	257.....	All
1887.....	539.....	All
1888.....	246.....	All
1889.....	42.....	All
1889.....	406.....	1
1890.....	61.....	All
1890.....	173.....	1
1890.....	282.....	All
1890.....	475.....	All
1890.....	502.....	All
1890.....	503.....	All
1891.....	100.....	All
1891.....	155.....	All
1891.....	172.....	All
1891.....	209.....	All
1892.....	208.....	All
1892.....	516.....	Part relating to real property
1892.....	616.....	All
1893.....	123.....	All
1893.....	182.....	All
1893.....	207.....	All
1893.....	599.....	All
1893.....	701.....	Part relating to real property
1894.....	315.....	All
1894.....	729.....	All
1895.....	171.....	All
1895.....	525.....	All
1895.....	793.....	All
1895.....	886.....	All
1895.....	1022.....	All

Laws of	Chapter	Section
1896.....	249.....	Part relating to real property
1896.....	547.....	All, except §§ 280-296
1896.....	572.....	2, 3
1897.....	136.....	All
1897.....	277.....	All
1897.....	593.....	All
1897.....	756.....	All
1898.....	174.....	All
1898.....	311.....	All
1898.....	338.....	All
1899.....	147.....	All
1899.....	542.....	All
1900.....	227.....	All
1901.....	84.....	All
1901.....	166.....	All
1901.....	287.....	All
1901.....	291.....	Part relating to real property
1901.....	481.....	All
1901.....	611.....	All
1902.....	151.....	All
1903.....	88.....	All
1903.....	98.....	All
1903.....	419.....	All
1903.....	432.....	All
1903.....	490.....	All
1904.....	235.....	All
1904.....	528.....	All
1904.....	690.....	All
1904.....	692.....	Part relating to real property
1904.....	742.....	All
1905.....	329.....	All
1905.....	377.....	All
1905.....	393.....	Part relating to real property
1905.....	449.....	All
1905.....	450.....	All
1906.....	398.....	All
1907.....	242.....	All
1907.....	289.....	All
1907.....	347.....	All
1907.....	621.....	All
1907.....	633.....	All
1908.....	35.....	All
1908.....	61.....	All
1908.....	136.....	All
1908.....	173.....	Part relating to real property
1908.....	444.....	All



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