WEIGHTS AND MEASURES
CASE REFERENCE BOOK

U. S. DEPARTMENT OF COMMERCE
NATIONAL BUREAU OF STANDARDS
Lyman J. Briggs, Director

U. S. DEPARTMENT OF COMMERCE • Sinclair Weeks, *Secretary*
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Weights and Measures Case Reference Book

(Through July 1952 Court Decisions)

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PREFACE

A need has existed for concise legal information in lay terms regarding court decisions involving weights and measures cases. This publication has been prepared to fill this need and to make available to administrative and enforcement personnel, and to others, an indexed reference to reported decisions of Federal and State courts. The use of the *Weights and Measures Case Reference Book* will make it possible to locate quickly any particular decision or decisions concerning a given phase of weights and measures law.

Presented first are the decisions of the United States Supreme Court and other Federal courts. The cases of State courts are grouped by States in alphabetical order. The cases of each State are listed chronologically.

Each case is cited precisely and is presented in a simplified form. In certain instances, the recorded case titles have been somewhat abbreviated. The heading and subheadings of each decision give individual designations to the principal information expounded by the court. The decisions have been briefed to the extent that only material particularly meaningful to weights and measures officials and other interested lay readers is included.

The index will guide the reader to the cases covering legal principles which he is interested in exploring. The cases have been numbered, in order of their appearance in the publication, and indexed according to these identifying numbers.

The present publication was prepared by the staff of the Bureau's Office of Weights and Measures. Work in this field stems from the Bureau's development, custody, and maintenance of the national standards of measurement and the calibration services rendered to the Nation in connection with these standards. The program also includes cooperative activities with the States in securing uniformity in weights and measures laws and methods of inspection as well as the compilation and issuance of useful information, as authorized by the Congress.

A. V. Astin, *Director,*
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CONTENTS

INTRODUCTION

The Weights and Measures Case Reference Book is intended as an index to and digest of weights and measures decisions of record, through July 1952. The decisions have been digested and considerably condensed. The material presented is designed as a guide to the lay reader; it gives in lay language condensed legal principles as expounded by the courts.

Weights and measures officials may find the Weights and Measures Case Reference Book useful as a "field" manual. The book should be consulted through its index to information on a specific item. This information must not be accepted out of context, but must be expanded through study of the law bearing upon the particular case as correlated with the facts upon which that decision was predicated. The actual wording of the various weights and measures laws is contained in National Bureau of Standards Circular 501, Federal and State Weights and Measures Laws (through 1949 enactments), which may be purchased from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. (price: $5.75). This compilation of laws should prove very helpful as an adjunct to this case reference book.

After locating a case herein, the reader should, through the identity of the citation, obtain and study the full decision. All cases included in this publication are reported and should be available at various law libraries. Reference is given to the official report in all cases. Since, occasionally, reports of the National Reporter System will be more readily available, references to these reports are given whenever possible.

It must be remembered that weights and measures laws do not remain static. Consideration must be given to possible amendments and revisions which would influence any later decision.

This publication is not a text book. A mere study of the material contained herein will not afford a broad knowledge of legal principles. It must be kept in mind that this case reference book was designed and composed as a ready guide to decisions cognate to certain definite and specific situations in weights and measures administration and enforcement. No attempt has been made to describe the facts or to interpret the law.

The subject index has been carefully cross-indexed to enable the reader to locate desired information under the principal or associated words. In the index, the abbreviation appearing before the case number identifies the jurisdiction in which the case was heard; the number refers to the identification of the case in this publication. Thus, "Minn 145" denotes that the material in question will be found in case number 145 and that the case was heard in the State of Minnesota.

All included cases of a given State can be located in the table of contents. The States are listed alphabetically; the number refers to the page on which cases of that State first appear.

The table of cases lists in alphabetical order all cases either digested or cited herein. Those which have been digested are given in roman type; those cited in the footnotes are in italics. The references in the table of cases, like the index, are to the jurisdiction and to the number of the case as it appears in this publication.

TABLE OF CASES

Roman type denotes cases digested; italic type denotes cases cited in footnotes. The abbreviation appearing before the case number identifies the jurisdiction in which the case was heard. The number refers to the identification of the case in this publication.

L

M

N

O

P

Q

R

S

T

U

V

W

Y

Weights and Measures Case Reference Book

United States Supreme Court Decisions

1. Turner v. State of Maryland, 107 U. S. 38, 2 S. Ct. 44, 27 L. Ed. 370 (1882), affirming 55 Md. 240 (1881).

Public Inspection and Weighing of Commodities.

Constitutionality of Inspection Law. A statute which provides that tobacco shall not be exported from a State unless packed in hogsheads of limiting dimensions and submitted to a public official for weighing, marking, and inspection, for which services a charge is made on each hogshead, is a State inspection law and is constitutional. The charge is lawful as an inspection duty. The law does not regulate interstate commerce, nor does it levy a duty on exports, within the meaning of the Federal Constitution.

State Authority to Prescribe Standard Weights or Sizes. A State, under its police power, may prescribe the form, capacity, dimensions, and weight of packages containing articles grown or produced in the State. The State may require inspection by an official in order to ascertain that the statutory requirements in respect to the article have been observed.

Elements of Inspection Law. Recognized elements of inspection laws have always been quality of the article, form, capacity, dimensions, and weight of package, manner of packing, and marking. (The characteristics of inspection laws are considered in this decision, with numerous references to the legislation of the American colonies and the States on the subject.)

2. Pittsburgh & Southern Coal Co. v. State of Louisiana, 156 U. S. 590, 15 S. Ct. 459, 39 L. Ed. 544 (1894), affirming 41 La. Ann. 465, 6 So. 220 (1889).

Public Weighing or Measuring.

Constitutionality of Inspection Law. A statute requiring that all boat loads of coal or coke for sale in the State be gauged or inspected by official gaugers, and prescribing fees for such services, is an inspection law, and is constitutional. The law is not a regulation of interstate commerce, in conflict with the power vested in Congress over the subject. It is a police regulation which every State may enact. Such a statute does not lay an impost or duty on imports from other States.

3. McLean v. State of Arkansas, 211 U. S. 539, 29 S. Ct. 206, 53 L. Ed. 315 (1909), affirming 81 Ark. 304, 98 S. W. 739 (1906).

Coal at Mines, Weighing Before Screening.

Constitutionality of Statute.[1] A statute requiring mine owners or operators employing 10 or more men underground at bushel or ton rates, to weigh coal before it is screened, is a valid exercise of the State's police power, and is constitutional. Such a law does not arbitrarily interfere with the right to contract; nor does it discriminate or deny equal protection of the law because applicable only to mines employing 10 or more men, all such mines being regulated alike.

Validity of Police Laws. *Reasonableness.* The legislature of a State is primarily the judge of the necessity of enacting a police regulation. The courts will not declare such an act invalid unless it is so arbitrary as to be unmistakably and plainly in excess of legislative authority.

Wisdom. The fact that the court doubts the wisdom of a State law is no ground for declaring it unconstitutional.

Liberty to contract. Liberty of contract, which is protected by the Federal Constitution against hostile State legislation, is not unlimited or universal, but is subject to legislative restrictions in the exercise of the police power.

Right to carry on business. The right to carry on trade or business, which is protected by the Federal Constitution against hostile State legislation, is not unlimited or universal, but is subject to legislative restrictions in the exercise of the police power.

[1] *See also,* Rail and River Coal Co. v. Yaple, 236 U. S. 338, 35 S. Ct. 359, 59 L. Ed. 607 (1915), affirming 214 Fed. 273 (Ohio 1914); Woodson v. State of Arkansas, 69 Ark. 521, 65 S. W. 465 (1900); Martin v. State of Indiana, 143 Ind. 545, 42 N. E. 911 (1896); State of Kansas v. Wilson, 61 Kan. 32, 58 Pac. 981 (1899); State of West Virginia v. Peel Splint Coal Co., 36 W. Va. 802, 15 S. E. 1000 (1892). *CONTRA:* In Re House Bill No. 203, 21 Colo. 27, 39 Pac. 431 (1895); Millet v. People, 117 Ill. 294, 7 N. E. 631 (1886); Ramsey v. People, 142 Ill. 380, 32 N. E. 364 (1892); Harding v. People, 169 Ill. 459, 43 N. E. 624 (1912); Re Preston, 63 Ohio St. 428, 59 N. E. 101 (1900); Commonwealth of Pennsylvania v. Brown, 8 Pa. Super. 339 (1898).

4. House v. Mayes, 219 U. S. 270, 31 S. Ct. 234, 55 L. Ed. 213 (1911), affirming 227 Mo. 617, 127 S. W. 305 (1910).

Deduction from Weights.

Constitutionality of Statute. A statute prohibiting a purchaser of grain, seed, hay or coal from deducting any amount from the actual weight or measure thereof under custom or rules of boards of trade, is a valid exercise of the police power and constitutional. Such a law does not unlawfully deprive a person of his property, or interfere with his liberty of contract, or deny to him the equal protection of the law.

Regulating Board of Trade. A board of trade has such close and constant relations with the general public that the conduct of its business may be regulated by such means, not arbitrary or unreasonable, as may be found necessary by the State to protect the people against unfair practices.

Police Power Defined. One of the powers never surrendered by, and therefore remaining with the State, is to so regulate the relative rights and duties of all within its jurisdiction as to guard the public morals, safety and health, as well as to promote the public convenience and common good. It is within the power of the State to devise the means to be employed to such ends. A State may exercise all such governmental authority as is consistent with its own Constitution, and not in conflict with the Federal Constitution. This power of a State is called its police power. The police power is not granted by, or derived from, the Federal Constitution, but exists independently of it, by reason of its never having been surrendered by the State to the Federal government.

Liberty of Contract. The liberty of contract which is protected by the Federal Constitution against hostile State legislation is subject to such regulations as the State may establish for the protection of the public and the promotion of the general welfare. If these regulations are not unreasonable or arbitrary they are not forbidden by the Constitution of the United States.

5. Williams v. Walsh, 222 U. S. 415, 32 S. Ct. 137, 56 L. Ed. 253 (1912), affirming 79 Kan. 212, 98 Pac. 777 (1908).

Standard Weights or Sizes.

Constitutionality of Statute Excepting Sales Made Under Existing Contracts. A criminal statute, fixing the weight of the package in which a particular commodity may be sold, is not discriminatory as a denial of equal protection of law because it exempts from its operation sales made under contracts entered into prior to its enactment.

The legislature may properly distinguish between contracts made before the passage of a criminal statute and those made after such passage. Legislation which makes criminal acts which are done after they are forbidden, and does not penalize acts done to complete legal contracts, is not arbitrary classification.

6. Schmidinger v. City of Chicago, 226 U. S. 578, 33 S. Ct. 182, 57 L. Ed. 364 (1913), affirming 243 Ill. 167, 90 N. E. 369 (1909), and 2d. appeal 245 Ill. 317, 92 N. E. 244 (1910).

Standard-Weight Bread Law.

Constitutionality. An ordinance fixing standard weights for bread loaves, and prohibiting the sale of other sizes, is a reasonable exercise of the police power and is constitutional. Such legislation does not deprive bakers of their property without due process of law; nor does it deny to them equal protection of the law. It does not interfere with their liberty to contract.

Inconvenience in Complying With Law. The fact that it may be inconvenient or difficult to make a loaf of full standard size does not invalidate the law.

Regulating Trades. It is well established that States and municipalities, in the exercise of the police power, may regulate trades and callings, and that the making and selling of bread is one of the trades subject to such regulation.

The right of States and municipalities to regulate one trade and not another is also well settled. Such a law is not discriminatory in violation of the equal protection clause of the Constitution.

Constitutionality of Police Laws. *Reasonableness.* Local legislative authorities, and not the courts, are primarily the judges of the necessities for police regulation in local situations. The courts may not interfere unless such regulations are so arbitrary as to be plainly and unmistakably in excess of any reasonable exercise of authority.

Freedom of contract. There is no absolute freedom of contract. The exercise of the police power which fixes weights and measures and standard sizes must necessarily limit the freedom of contract which would otherwise exist. Such limitations, by police regulations of the State, are frequently necessary in the interest of the public welfare, and do not violate the freedom of contract guaranteed by the Fourteenth Amendment.

7. McDermott v. State of Wisconsin, 228 U. S. 115, 33 S. Ct. 431, 51 L. Ed. 754 (1913), reversing 143 Wis. 18, 126 N. W. 888 (1910).

Labeling of Packaged Food and Drugs.

Federal and State Authority. The enactment by Congress of the Food and Drug Act [1] does not prevent a State from making laws, not in conflict therewith, to protect its people against fraud or imposition.[2] However, to the extent that a State statute interferes with or frustrates the operation of the Federal Act, it is void. Thus, if an article shipped into a State bears

a label meeting the requirements of the Federal Act, the State cannot require the removal of such label from the immediate container, and a State label substituted, so long as the article remains unsold on the shelves of the consignee, whether it be in the original shipping case or not.

Federal Food and Drug Act.[1] *Immediate container regulated.* The adulteration, misbranding, and seizure provisions of the Federal Food and Drug Act [1] apply to the immediate container of an article shipped in interstate commerce, not merely the shipping case. It is the labeling upon the package which contains the article intended for consumption which is the subject matter of regulation. Federal authority follows the immediate container at least to the shelf of the consignee. To limit the requirements of the act simply to the outside shipping container which may not be seen by the purchasing public would render the act ineffectual.

Effect on original package doctrine. The doctrine of original packages had its origin in an early opinion of the United States Supreme Court which ruled that an imported article did not become subject to the taxing power of the State "while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported." [3] To determine the time when an article passes out of interstate into State jurisdiction for the purpose of taxation is entirely different from deciding when an article which has violated a Federal prohibition becomes immune. The original package doctrine was not intended to limit the right of Congress, when it chose to assert it, as it has done in the Food and Drug Act,[1] to keep the channels of interstate commerce free from the carriage of injurious or fraudulently branded articles, and to choose appropriate means to that end.

[1] Now Federal Food, Drug, and Cosmetic Act (1938).

[2] *See also* Savage v. Jones, State Chemist of the State of Indiana, 225 U. S. 501, 32 S. Ct. 715, 56 L. Ed. 1182 (1912); Standard Stock Food Co. v. Wright, State Food and Dairy Commissioner of Iowa, 225 U. S. 540, 32 S. Ct. 784, 56 L. Ed. 1197 (1912).

[3] Brown v. State of Maryland, 12 Wheat. 419, 6 L. Ed. 678 (1827). For further explanation of the original package doctrine and definition of an original package, *see* Leisy v. Hardin, 135 U. S. 100, 10 S. Ct. 681, 34 L. Ed. 128 (1890), reversing 78 Iowa 286, 43 N. W. 188 (1889); Schollenberger v. State of Pennsylvania, 171 U. S. 1, 18 S. Ct. 757, 43 L. Ed. 49 (1898); May v. City of New Orleans, 178 U. S. 496, 20 S. Ct. 976, 44 L. Ed. 1165 (1900); Austin v. State of Tennessee, 179 U. S. 343, 21 S. Ct. 132, 45 L. Ed. 224 (1900); Caldwell v. State of North Carolina, 187 U. S. 622, 23 S. Ct. 229, 47 L. Ed. 336 (1903); Cook v. Marshall County, Iowa, 196 U. S. 261, 25 S. Ct. 233, 49 L. Ed. 471 (1905); Rearick v. State of Pennsylvania, 203 U. S. 507, 27 S. Ct. 159, 51 L. Ed. 295 (1906); Savage v. Jones, State Chemist of the State of Indiana, 225 U. S. 501, 32 S. Ct. 715, 56 L. Ed. 1182 (1912); Hebe Co. v. Shaw, Secretary of Agric. of Ohio, 248 U. S. 297, 39 S. Ct. 125, 63 L. Ed. 255 (1919); U. S. v. Phelps Dodge Merc. Co., 157 F. 2d 453 (1946).

8. Great Northern Railway Co. v. State of Minnesota, 238 U. S. 340, 35 S. Ct. 753, 59 L. Ed. 1337 (1915), reversing 122 Minn. 55, 141 N. W. 1102 (1913).

Compulsory Installation and Maintenance of Track Scales.

Constitutional Limitations. An order of a State railroad commission requiring a railroad company to install and maintain scales amounts to a taking of the company's property. If the order is arbitrary or unreasonable, the taking is without due process of law in violation of the Fourteenth Amendment to the Federal Constitution.

Arbitrary Order of Railroad Commission. An order of a State railroad commission, requiring a railroad company to install at a station, scales similar to those installed at some of its other stations in order to abate discrimination, is arbitrary and unreasonable, and therefore unconstitutional, where it does not give the company the alternative right of dis-

continuing the scales installed at the other stations, and abating the discrimination in that manner. The scales, while conveniences of the public, have no direct part in transportation.

9. **Armour & Co. v. State of North Dakota, 240 U. S. 510, 36 S. Ct. 440, 60 L. Ed. 771 (1916), affirming 27 N. Dak. 177, 145 N. W. 1033 (1913).**

Standard Net-weight Containers for Lard.

CONSTITUTIONALITY OF STATUTE. A statute requiring lard, when not sold in bulk, to be put up in pails or other containers holding 1, 3, or 5 pounds, net weight, or some whole multiple thereof, and requiring the net weight to be marked on the containers, is a reasonable exercise of the police power and is constitutional.

Such statute does not deny equal protection of the law; nor deprive sellers of their property without due process of law; nor interfere with interstate commerce.

NONCONFLICT WITH FEDERAL FOOD AND DRUGS ACT.[1] The North Dakota net weight lard statute is directed to the manner of selling at retail. It is not repugnant to nor in conflict with the Food and Drugs Act of 1906[1] which is directed against the misbranding of articles of food transported in interstate commerce.

EFFECT ON GROSS WEIGHT SALES. The legislature, under its police power may require that lard in pails be sold by net weight, thus eliminating the practice of selling it by gross weight. To comply with the law a packer may be forced to change his packing methods with resulting expense. This is a sacrifice the law can require to protect the public from the deception of the old method of selling by gross weight.

REGULATION OF ONE PRODUCT AND NOT ANOTHER. The State may single out one product for regulation, and exclude others, because of the different degrees of evil involved, or because detriment is especially experienced in particular instances. Such a law is not unlawfully discriminatory in violation of the equal protection clause of the Constitution.

[1] Now "Federal Food, Drug and Cosmetic Act" (1938).

10. **Merchants Exchange of St. Louis v. State of Missouri, 248 U. S. 365, 39 S. Ct. 114, 63 L. Ed. 300 (1917), affirming 269 Mo. 346, 190 S. W. 903 (1916).**

Public Weighing of Grain at Warehouses.

CONSTITUTIONALITY OF STATUTE PROHIBITING PRIVATE WEIGHING. A statute providing for the weighing of grain at public warehouses by State weighers, and forbidding all other persons and corporations to certify to the weight of the grain, is constitutional.

In requiring weighing by the State exclusively, the statute does not deprive members of an incorporated board of trade, maintaining a private weighing bureau, of their property without due process of law; nor does it unlawfully discriminate against such members.

The statute does not unlawfully burden interstate commerce as applied to grain received from, or shipped to, points without the State.

UNITED STATES GRAIN STANDARDS ACT. State regulation of the weighing of grain received from, or shipped to, points without the State was not superseded by the United States Grain Standards Act of August 1916. That act relates exclusively to the establishment by the Secretary of Agriculture of standards of quality and condition, and was not intended to supersede State laws.

11. Jay Burns Baking Co. et al. v. Bryan, Governor, et al., 264 U. S. 504, 44 S. Ct. 412, 68 L. Ed. 813 (1924), reversing 108 Neb. 674, 189 N. W. 383 (1922).

Standard-weight Bread Law.

Unreasonable Tolerances. A standard-weight bread statute fixing a tolerance in excess, and requiring that the standard weights shall be determined by averaging the weight of not less than 25 loaves, such weights to apply for at least 24 hours after baking, is unreasonable and unconstitutional, where it is shown that the tolerance is so narrow that it can be maintained only by wrapping the bread, or by other artificial means.[1]

Purpose, and Relation to Validity of Act. If a standard-weight bread statute does not accomplish its purpose, which is to protect purchasers of bread against fraud by short weight, the act will be declared unconstitutional.

[1] Upon authority of this decision, the standard-weight bread statutes of Alabama, Iowa, and Ohio were declared unconstitutional, in whole or in part, by the lower Federal or State courts. See State of Alabama v. Curran, 220 Ala. 4, 124 So. 909 (1929); Quaker Baking Co. v. Herring, 3 F. Supp. 118 (S. D. Iowa 1933); Holsum Baking Co v. Green, 45 F. 2d. 238 (N. D Ohio 1931); Wonder Bakeries Co v. White, 3 F. Supp. 311 (S. D. Ohio 1933). However, in 1934 the Supreme Court of the United States declared constitutional the Nebraska standard-weight bread statute and regulations promulgated thereunder concerning tolerances in excess. *See* Petersen Baking Co. v. Bryan, Case No. 12, herein.

12. Petersen Baking Co. et al. v. Bryan, Governor, et al., 290 U. S. 570, 54 S. Ct. 277, 78 L. Ed. 505 (1934), affirming 124 Neb. 464, 247 N. W. 39 (1933).

Standard-weight Bread Law.

Constitutionality. A statute fixing standard weights for bread and directing a state administrative officer to prescribe reasonable tolerances in excess of, but not under, the specified weights, and the time for which said weights shall be maintained, is constitutional.

Purpose, and Relation to Validity of Act. A bread statute prescribing standard weights and tolerances in excess has the double purpose of protecting consumers from short weight and of protecting the bakers from unfair competition. The act will only be declared unconstitutional when it fails to accomplish both purposes.

Tolerances. *Power of State to prescribe.* A State has power to prescribe not only the minimum weights of loaves of bread that may be sold, but also the tolerances in excess of those weights.

Reasonableness. An administrative rule or regulation fixing an excess tolerance on bread loaves of not more than 3 ounces per pound and requiring that the bread be so made that under normal conditions it will maintain the minimum weight for not less than 12 hours after cooling, the weights to be determined by taking the average of not less than 5 loaves, is reasonable.

Rules and Regulations. *Proper delegation of authority.* A statute which directs a State administrative officer to prescribe reasonable tolerances in excess of, but not under, the weight specified by statute for bread loaves, and the time for which they shall be maintained, is a proper delegation of legislative authority.

Implied authority. The failure of a standard weight bread statute to define "fancy bread" and giving a State administrative officer the implied

authority to decide what is covered by the phrase, does not operate to vest arbitrary power in him. Such a delegation of authority is proper.

Relief from enforcement. Where one complains that regulations promulgated under legislative authority by a State board are unreasonable and oppressive, he should seek relief by applying to that board to modify them, before bringing suit.

13. **Pacific States Box & Basket Co. v. White et al., 296 U. S. 176, 56 S. Ct. 159, 80 L. Ed. 138 (1935), affirming 9 F. Supp. 341 (Dist. Ct. Oregon 1934).**

Standard Containers for Fruit.

Power of State. A State has power to prescribe standard containers in order to facilitate trading, to preserve the condition of the merchandise, to protect buyers from deception, or to prevent unfair competition. Such a regulation of trade is a part of the inspection laws.

Rules and Regulations Prescribing Standards. *Constitutionality.* An order of a State administrative officer, made under statutory authority, fixing the capacity, form, and dimensions of containers for raspberries and strawberries, and prohibiting the use of any other type of container is reasonable and constitutional. This is true, even though one effect of the order is to exclude the use in that State of containers of nonresident manufacturer of a different type of container.

Form and dimensions. A regulation prescribing the for mand dimensions of containers is not arbitrary or capricious, and is a valid exercise of the police power, since the form and dimensions bear reasonable relation to the protection of buyers.

Non-conflict with Federal Standard Container Acts. A rule or regulation prescribing the capacity, form and dimensions of containers for small fruits is not in conflict with the Federal Standard Container Acts of 1928 and 1916, relating to fruits and vegetables. The 1928 Act [which is intrastate in its application] deals solely with hampers, round stave, and splint baskets of capacity not less than 4 quarts. The 1916 Act [which is interstate in its application] fixes the capacity of baskets or other containers for small fruits, berries, and vegetables, making no reference to the dimensions or form of such containers [except for climax baskets].

Discretion of administrative agency. The questions of fact and policy as to whether or not it was necessary to provide standard containers for certain berries, and if so, whether the use of other type containers should be prohibited, can be determined by the administrative agency given such duty and power by statute.

Wisdom of regulation. The United States Supreme Court has no concern with the wisdom of an administrative regulation. The court may only determine whether the regulation is arbitrary or unreasonable.

Monopoly. A regulation requiring use of standard containers and prohibiting use of any other type does not grant a monopoly to manufacturers of the type of containers prescribed. All are free to engage in the business. Moreover, the grant of a monopoly, if otherwise an appropriate exercise of the police power, is not void as denying equal protection of the law.

Burdening interstate commerce. A regulation which prescribes standard containers and which does not prevent the importation of other kinds of containers, but only prohibits their use after they have come into the State and have been taken from the original package, is not an undue burden on interstate commerce.

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Presumption of validity. Rules and regulations, dealing with a subject clearly within the police power, and made under authority legally delegated to the administrative agency, are presumed to be valid. Courts will presume that facts existed which were sufficient to have justified the making of such rules. When the regulation is adopted after notice and public hearing, as required by statute, there is an added reason for presuming that it is valid. A challenger of the administrative order has the burden of proving that there are no justifying facts, and that the order is arbitrary.

14. United States v. Resnick, 299 U. S. 207, 57 S. Ct. 126, 81 L. Ed. 127 (1936).

Federal Standard Container Act of 1928.

Inapplicability to Two-Quart Hampers. The Federal Standard Container Act of 1928 [which is intrastate in its application] does not regulate or prohibit the manufacture or sale of two-quart hampers for fruits and vegetables. The statute fixes the capacities, based upon a bushel of 2,150.42 cubic inches, of nine sizes of hampers ranging from one-eighth of a bushel to two bushels, and makes it unlawful to manufacture for sale or to sell containers that do not comply with the act. The act applies to no hamper of a capacity of less than four quarts, and expresses no condemnation of two-quart hampers. The provisions of the statute are ineffective to make the manufacture or sale of two-quart hampers punishable as a crime. Failure of the act to expressly permit the manufacture for sale, or sale of containers of a certain capacity is not to prohibit, since in the absence of governmental regulation, the making and selling of containers is untrammeled.

Criminal Statute Strictly Construed. Statutes creating crimes are to be strictly construed by the courts in favor of the accused.

15. Hauge v. City of Chicago, 299 U. S. 387, 57 S. Ct. 241, 81 L. Ed. 297 (1937), affirming 363 Ill. 125, 1 N. E. 2d. 396 (1936).

Public Weighing Ordinance.

Constitutionality of Ordinance as Applied to Non-Resident Truckers. A public weighing ordinance requiring non-residents engaged in trucking coal for hire from mines outside the city, before delivery of the coal to a consumer in the city, to obtain a local public weighmaster's certificate showing the gross, tare, and net weights notwithstanding that the coal had been weighed at the mine on State tested scales, is not so unreasonable as to violate the due process clause of the Fourteenth Amendment; nor does it unduly discriminate against such outside truckers in favor of dealers with yards in the city.

16. U. S. v. Dotterweich, 320 U. S. 277, 64 S. Ct. 134, 88 L. Ed. 48 (1943), reversing 131 Fed. 2d. 500 (1942).

Misbranding.

Knowledge or Intent. Knowledge or intent need not be alleged or proved in a prosecution brought under the Federal Food, Drug and Cosmetic Act, which act is silent in this respect.[1] Corporate officers and agents are liable for violations regardless of their intent or lack of knowledge of misbranding.

[1] *See also* U. S. v. Greenbaum, 138 Fed. 2d 437 (1943), and Triangle Candy Co. v. U. S., 144 Fed. 2d 195 (1944).

Other Federal Court Decisions

17. Dwight & Lloyd Sintering Co. v. American Ore Reclamation Co., 363 Fed. 315 (C. C. A., N. Y. 1920).

Weights and Measures in Contracts.

Statutory Ton Controls, When. The statutory ton of 2,000 pounds governs all contracts involving ton weights, unless the parties otherwise agree.

Construing Parts of Statutes. Every part of a statute will be given a meaning by the courts, if possible. When considering the meaning of parts of a statute, the courts will consider the intent and spirit of the whole act.

Regulation of Weights and Measures. *Federal and State authority.* The Federal Constitution gives to Congress the power to establish uniform weights and measures, but until Congress exercises this power, the States may legislate for themselves.

State authority. The power to adopt and compel the use of a uniform system of weights and measures is within the police power of the State.

18. United States v. 462 Bags of Flour, 8 Fed. Supp. 79 (Dist. Ct. La. 1934).

Packaged Commodities.

Proof of Misbranding. Evidence showing that more than 90 percent of 462 bags of flour were short in weight is proof of misbranding. The bags were found short by an average of 4.62 ounces per sack of 24 pounds. The flour was reweighed on a rainy day within six days of its arrival at destination. Under such circumstances, it is unreasonable that there could have been such a consistent loss of approximately five ounces per sack if the bags had weighed exactly 24 pounds each when shipped, the miller making no allowance for shrinkage.

19. May Coal and Grain Co. v. City of Kansas City, 10 Fed. Supp. 792 (Dist. Ct. Mo. 1935).

Regulation of Retail Coal Dealers.

Municipal Authority. A city has great latitude in the exercise of the police power, particularly in respect to regulation, classification, and the like. A city has the right to provide reasonable regulations for retailers of coal and other products within the city. This is particularly true in respect to weights and measures.

Excluding Non-Resident Retailers From Doing Business in the City. An ordinance providing that all retailers selling coal within the city shall maintain a coalyard therein, thereby excluding a non-resident retailer from doing business in the city, is discriminatory and unreasonable, and therefore unconstitutional. A city can subject such non-resident to reasonable regulations, but has no right to exclude him from carrying on his business within the city.

20. United States v. Porter, 12 Fed. Supp. 234 (Dist. Ct. N. Y. 1935).

Federal Standard Container Act of 1928.

Constitutionality. The Federal Standard Container Act of 1928 is constitutional.

Power of Congress and Intrastate Applicability of Act. In enacting the Federal Standard Container Act of 1928, Congress exercised the power given to it by the weights and measures clause of the Federal Constitution. The act fixes standard sizes for hampers and round stave and splint baskets for fruits and vegetables, and is applicable to both intrastate and interstate transactions. The contention that the weights and measures clause gives Congress the power to adopt a unit of weight or measure, but not to regulate the standard unit, was rejected by the court.

Purpose of Act. The purpose of the Federal Standard Container Act of 1928 is to avoid the difficulties caused by the use of varying weights and measures in the several States.

21. Snively Groves, Inc. et al. v. Florida Citrus Commission et al., 23 Fed. Supp. 600 (Dist. Ct. Fla. 1938).

Standard Containers.

Maximum Capacity Fixed, Constitutionality. A rule or regulation of a State administrative agency, promulgated under statutory authority, which fixes the maximum capacity of standard containers for citrus fruit at one and three-fifths bushels, is a reasonable exercise of the police power and is constitutional. Such a regulation does not deprive manufacturers and users of other containers of their property without due process of law; nor does it interfere with interstate commerce.

Wisdom of Rules and Regulations. The question of the wisdom and policy in adopting administrative regulations is one with which the courts have no concern. The courts will only interfere with such a regulation when it is shown to be so clearly arbitrary and discriminatory as to invade constitutional rights.

Interstate Commerce. *Commencement.* Interstate commerce commences when a product is actually delivered to a common carrier for transfer to another State. Until then, the production of an article intended for interstate commerce is a matter of local regulation.

Interfering with. A regulation fixing the maximum capacity of standard containers for citrus fruit does not unlawfully interfere with interstate commerce, since the regulation affects the product while within the jurisdiction of the State and before it enters into interstate commerce.

22. Independent Dairymen's Ass'n. Inc. v. City and County of Denver, 142 Fed. 2d 940 (C. C. A. Colo. 1944).

Milk Bottles.

Validity of Ordinance Fixing Capacities. A city ordinance which fixes the capacities of milk bottles and which has the effect of prohibiting the use of gallon bottles in the sale of milk and cream, is a reasonable exercise of the police power of the city, and is constitutional.

Constitutionality of Police Regulations. *Wisdom.* The courts are not concerned with the wisdom or expediency of police regulations. Such questions are to be determined exclusively by the legislative authorities.

Reasonableness. Debatable questions as to the reasonableness of a law are not for the courts to determine, but for the legislative authority, which is entitled to form its own judgment.

Hardship. The courts may not set aside a city ordinance merely because compliance therewith is burdensome.

Regulation of particular evils. A legislative enactment does not violate the equal protection clause of the Constitution merely because it is not all embracing. The legislature is free to recognize degrees of harm. It may confine its regulation to a field in which the need for restriction is clearest.

23. United States v. 116 Boxes, etc. Arden Assorted Candy Drops, 80 Fed. Supp. 911 (Dist. Ct. Mass. 1948).

Slack-filling of Containers.

Effect of Correct Weight Statement. The Federal Food, Drug, and Cosmetic Act prohibits the shipment of a package which is in fact so slack-filled as to be misleading, even if the package clearly states the weight of the contents.

Question of Fact. The question whether a container is so filled as to be misleading is a question of fact. The test is whether the ordinary buyer, who is not particularly attentive, would be misled. The standard is not whether experts or men of peculiar training, experience, shrewdness, or sophistication would be misled.

Slack-Filling Not Proved.[1] Machine packed, five-cent boxes of candy, having air space of 33 percent, were not misbranded under the Federal Food, Drug and Cosmetic Act as being so filled as to be misleading. The question as to whether such a package is misleading is not determined by what a five year old child would expect, but by what an ordinary person, not necessarily an adult, with a common degree of familiarity with industrial civilization, would expect.

[1] *See also* United States v. 738 Cases, 71 Fed. Supp. 279 (Ariz. 1946), and United States v. Cataldo, 157 Fed. 2d 802 (R. I. 1946).

24. Willapoint Oysters, Inc. v. Ewing, et al., 174 Fed. 2d 676 (C. C. A. Wash. 1949).

Standard of Fill of Containers.

Validity of Standard for Canned Oysters. A Federal regulation, promulgated under the Federal Food, Drug, and Cosmetic Act, was valid and reasonable which established standards of fill of containers for all canned oysters, and required that all packers conform to a standard under which drained weight of all species packed in all sizes of can should not be less than 59 percent of the water capacity of the can.

25. Porter v. Craddock, 84 Fed. Supp. 704 (Dist. Ct. Ky. 1949).

Misbranding.

Implied Warranty as to Correct Weight. There is an implied warranty on the part of a seller that the merchandise he sells and ships in interstate commerce is not short in weight. Introduction in interstate commerce of misbranded food constitutes a breach of such implied warranty. Proof that the goods were seized by Federal authorities because of being misbranded as to weight establishes breach of implied warranty, entitling the buyer to recover damages.

State Court Decisions

ALABAMA

(See also Case US 11 herein)

26. Mobile v. Yuille, 3 Ala. 137 (1841).

Bread Ordinance.

Constitutionality. An ordinance fixing the prices of loaves of bread, and requiring the mayor to prescribe the weight of the loaves on a graduated scale according to the price of flour, is constitutional and within the power of the city to enact. Such an ordinance does not restrain trade.

Wisdom of Police Laws. The wisdom of laws passed under the police power is a question for decision by the proper legislative authorities, and not by the courts.

27. South and North Alabama R. R. Co. v. Wood, 74 Ala. 449 (1883).

Evidence.

Judicial Notice. The courts cannot take judicial notice of the rule for measuring corn in the shuck, or the capacity of a railroad car of a certain size.

28. State of Alabama v. 22 Sacks Daisy Horse & Mule Feed, 205 Ala. 444, 88 So. 422 (1921).

Misbranding.

Proof of Intent to Deceive. Evidence that 21 out of 22 sacks of feedstuff were under their marked weight is sufficient to prove intent to deceive or defraud.

29. Smith v. State of Alabama, 223 Ala. 346, 136 So. 270 (1931).

Short Weight.

Purpose of Statute. The purpose of a short weight statute is to protect the public from short weight or measure. It is not intended solely for the punishment of the violator. It makes the vendor or seller a guarantor of the weight or quantity he sells.

Knowledge or Intent. Intent or knowledge need not be alleged or proved under a short weight statute silent as to knowledge or intent. The doing of the prohibited act constitutes the crime.

Sufficiency of Complaint. A complaint substantially adopting the language of the statute creating the crime is sufficient.

30. Woodward v. State of Alabama, 241 Ala. 557, 2 So. 2d 330 (1941). (Rehearing and certiorari denied, see 3 So. 2d 530)

Shortweight Sale of Coal.

Inapplicability of General Short Weight Statute. A prosecution for short weight sales of coal must be brought under the coal statute (Code 1940, Title 14, Sec. 225); the general short weight statute does not apply.

ARIZONA

31. State of Arizona v. De Witt, 49 Ariz. 197, 65 Pac. 2d. 659 (1937).

Milk Bottles.

Constitutionality of Statute Fixing Capacities. A statute fixing the capacities of milk bottles, and prohibiting the use of bottles of any different capacities, is a valid exercise of the police power and is constitutional.

ARKANSAS

(See also Case US 3 herein)

32. Taylor v. City of Pine Bluff, 34 Ark. 603 (1879).

Public Weighing Ordinance.

Municipal Authority. Under a statute authorizing cities "to provide for the measuring or weighing of hay, wood, or any other article for sale", a city may by ordinance create the office of city weigher, require that specified commodities shall be brought to him for weighing, fix a reasonable weighing fee, and punish those who refuse to comply with the ordinance.

Excessive Fee. An ordinance fixing an excessive fee for the weighing of commodities on city scales is a revenue measure, and is void.

33. Wills v. Fort Smith, 70 Ark. 221, 66 S. W. 922 (1902).

Public Weighing Ordinance.

Municipal Authority. Under a statute authorizing cities "to provide for the measuring or weighing of hay, wood, or any article for sale," a city has power to require parties selling coal therein to have the same weighed on city scales, and to pay a reasonable fee for the weighing.

Hardship or Inconvenience. The fact that city scales are 10 blocks from dealer's yards during the summer months does not render an ordinance requiring coal to be weighed on public scales unreasonable, if the city maintains other scales near the dealer's yards during the winter months.

Load Defined. The word "load", as used in an ordinance which authorizes a specified fee for the weighing "of any load or part of a load of coal", refers to wagon loads, and not to sales of small quantities such as a basket, or a wheelbarrow, of coal.

34. Petty v. State of Arkansas, 102 Ark. 170, 143 S. W. 1067 (1912).

Public Weighing Statute.

Validity. A statute which prohibits any person other than an official cotton weigher from weighing cotton sold on the market, is valid.

Sufficiency of Indictment. An indictment is sufficient which alleges a statutory offense substantially in the language of the statute. It is not necessary that the exact words of the statute be used.

35. Petty v. Lyons, 115 Ark. 372, 171 S. W. 12 (1914).

Use of Untested Scales by Public Weigher.

Fee Uncollectible. A public weigher is not entitled to weighing fees where he fails to use scales tested and sealed as required by law. This is true irrespective of whether such failure was his own fault or the fault of some official over whom he had no control.

36. Robertson v. Mena Bonded Warehouse Co., 145 Ark. 106, 223 S. W. 378 (1920).

Repeal of Statutes.

A Special Law May Repeal A Special Law. The State Constitution, Art. 5, Sec. 25, providing that "in all cases where a general law can be made applicable no special law shall be enacted," does not prohibit a special law from repealing a special law.

Repeal of Special Cotton Weigher Act. The special cotton weigher statute, Acts 1915, No. 236, was impliedly repealed by Acts 1917, No. 266, providing for the establishment and regulation of bonded warehouses; and was expressly repealed by Special Acts 1919, No. 519.

CALIFORNIA

37. Higgins v. California Petroleum and Asphalt Co., 109 Cal. 304, 41 Pac. 1087 (1895).

Regulation of Weights and Measures.

Federal and State Authority. Under the Federal Constitution, Congress has the power to fix the standard of weights and measures. Until this power has been exercised however, the States may legislate for themselves.

38. Higgins v. California Petroleum and Asphalt Co., 120 Cal. 629, 52 Pac. 1080 (1898).

Weights and Measures in Contracts.

Gross Ton. *Defined.* The term "gross ton" as used in a written contract, means a ton of 2,240 pounds, and not the statutory ton of 2,000 pounds.

Admissibility of oral evidence to explain term. Under California procedural statutes, oral testimony is admissible in evidence to show that by the term "gross ton" in a written contract, the parties meant a ton of 2,240 pounds, and not the statutory ton of 2,000 pounds.

39. Hale Bros. v. Milliken, 5 Cal. App. 344, 90 Pac. 365 (1907).

Weights and Measures in Contracts.

Statutory Standard Governs Contracts, When. Where there is nothing in a written contract to show the adoption of any other standard than that authorized by statute, the contract must be construed according to the statutory standard. In other words, the statutory standard governs contracts, unless the parties otherwise agree.

Evidence of Custom or Usage, Admissibility. Where a contract is certain in its terms, oral proof of a usage is inadmissible in evidence. When a statute furnishes a rule of interpretation for certain contracts, the statutory rule governs, unless the parties otherwise agree. Thus, if a contract provides for the sale of steel at a certain price "per pound," and makes no mention as to how the weight of the steel is to be determined, evidence of a local usage among manufacturers of, and dealers in, structural iron and steel to give a "figured," or estimated weight according to dimensions, instead of "scale" weight, which is the actual weight in pounds, is inadmissible to vary the legal effect of the contract.

40. Scott v. Boyle, 164 Cal. 321, 128 Pac. 941 (1912).

The Weights and Measures Official.

Appointment. *State authority.* The Constitution of California, Art. XI, Sec. 14, authorizes the legislature to provide by general law for the inspection, measurement and graduation of any merchandise, manufactured article and commodity, and for the appointment of the necessary officers therefor. Under this provision, the legislature may provide either a State system administered by State officers, or a local system administered by said counties or cities.

Municipal authority. An ordinance authorizing the appointment of a city sealer and deputies, and fixing their compensation, is a valid exercise of the police power conferred on cities by Art. XI, Sec. 11, of the State Constitution, which provides: "Any county, city, town, or township may make and enforce within its limits all such local police, sanitary, and other regulations as are not in conflict with general laws."

41. McEvers v. Boyle, 25 Cal. App. 476, 144 Pac. 308 (1914).

Injunction against City Sealer.

Effect of Injunction on Office. *Vacancy.* An involuntary cessation of duties by a city sealer, restrained from performing any official act by an injunction, does not create a vacancy in office. The cessation of duties must be voluntary in order to create a vacancy.

Abandonment. The fact that, during the pendency of an injunction against a sealer, such officer surrenders his office equipment to the city on demand, does not show an abandonment of the office.

42. Milliken v. Meyers, 25 Cal. App. 510, 144 Pac. 321 (1914).

The Weights and Measures Official.

Appointment and Compensation, Municipal Authority. A city deputy sealer appointed under an ordinance enacted by the City of Los Angeles which is empowered by its charter to fix the compensation of all municipal officers, and prior to the adoption of the State Weights and Measures Act of 1913, is entitled only to the compensation fixed by the ordinance, not that provided by the statute. The compensation of a municipal officer is purely a municipal affair, and the charter provisions of the municipality upon that subject are exclusive and conclusive.

43. In the Matter of Frank Fujii on Habeas Corpus, 189 Cal. 55, 209 Pac. 537 (1922).

Standard Containers for Berries.

Discrimination as to Size of Container for Strawberries. A statute providing that strawberries may be sold only in dry pint containers, while other kinds of berries may be sold in dry one-half pint containers, is a valid exercise of the police power, and is constitutional. Such a statute is not discriminatory.

44. Johnson v. Kvale, 94 Cal. App. 424, 271 Pac. 379 (1928).

Weight Certificates.

Conclusiveness. The certificate of a public weighmaster is not conclusive evidence of the weight of a commodity.

Fraud or Mistake. A weighmaster's certificate may be challenged on the ground of fraud or mistake.

45. Graham v. Justice's Court, 20 Cal. App. 2d. 257, 67 Pac. 2d. 127 (1937).

Standard Containers for Honey.

Constitutionality of Statute. A statute prescribing standard containers for honey, and requiring the net weight to be marked thereon, is a valid exercise of the police power, and is constitutional.

Use of Words "Label" and "Mark" Interchangeably. The words "label" and "mark" are very similarly defined. They may be used interchangeably.

Sufficiency of Indictment. In charging violation of a statute requiring containers to be "marked", either the word "unlabeled" or "unmarked" may be used in the complaint. The words "mark" and "label" are interchangeable.

Wisdom of Police Law. A police regulation will not be declared invalid merely because the court doubts its wisdom. The judgment of the legislature, not of the court, is controlling.

46. People v. Beggs, 69 Cal. App. 2d. Supp. 819, 160 Pac. 2d. 600 (1945).

Packaged Commodities, Misbranding.

Intent or Knowledge. Intent or knowledge need not be alleged or proved in prosecution for misbranding, under statute silent as to knowledge or intent.

Sufficiency of Complaint. The use of the words "wilfully and unlawfully" in a complaint charging misbranding does not require proof of knowledge or intent, if the statute is silent in this respect.

Double Punishment. If a person sells a commodity in a misbranded package, without making any other representation as to the weight, he cannot be convicted of both misbranding and selling less than the quantity represented.

47. Ex parte Marley, 29 Cal. 2d. 525, 175 Pac. 2d. 832 (1946).

Short Weight.

Liability of Employer. An employer may be convicted for employee's act of giving short weight, under statute prohibiting short weight sales by any person or his employee. This is true even though employer was absent when sale was made, and did not instruct employee to give short weight.

Weight Ascertained From the Price Charged. In this case, the testimony showed that the weight of the alleged short weight article was ascertained from the price charged. There was no question raised by the parties, or ruling made by the court, concerning this method of determining the weight. Such method was assumed by all concerned to be proper and logical, and was accepted in evidence by the court.[1]

[1] *See also* State v. Weisberg, Case No. 245, herein, and Great Atlantic and Pacific Tea Co. v. District of Columbia, Case No. 52, herein. In the latter case, the court ruled that ascertaining the weight from the price charged was a proper method and constituted a representation of weight.

48. Cresci v. Brock, 101 A. C. A. 267, 225 Pac. 2d. 685 (1950).

Poultry, Dismembered or Eviscerated.

Method of Sale, Constitutionality of Statute. *Changing customary method of business.* A statute requiring retailers when selling poultry requested by the customer to be drawn or dismembered, to weigh it in that form, and to charge according to that weight,[1] contrary to the usual custom of charging by the weight prior to such cleaning or dismembering, is a valid exercise of the police power and is constitutional. Merely because the statute may require a retailer to change his customary way of conducting business does not render the statute unconstitutional.

Discrimination. Such a statute does not unlawfully discriminate between poultry retailers and retailers of other foods, including meat products. Because other products are not so regulated does not invalidate the statute. The state need not attack all abuses at one time; it may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses.

Due process of law. The statute does not deny due process of law or equal protection of law to a poultry retailer, 90 percent of whose business is affected by the statute. The fact that the consumer will now know the true price of poultry, and that such knowledge might cause him to buy cheaper products, or might add some burden to the business of retailers, does not deprive such retailers of due process or equal protection of the law.

Uncertainty. The statute is not vague and uncertain because of the use of the term "table dressed weight." While the term may be one not known to the trade, it is clearly defined in the act.[1] The legislature can create a term, unknown to a particular trade, if the term is defined so that the trade knows what it means.

Purpose of Statute. A statute requiring poultry retailers to sell table dressed poultry at the weight and price to be determined at time of sale is enacted for the protection of the consumer so that he might know the exact price he is paying for poultry delivered to him.

Shrinkage of Poultry, Judicial Notice of Official Table. The table of the U. S. Department of Agriculture giving shrinkage of poultry from dressed weight to ready to cook weight is an official table of which the court will take judicial notice.

Weighing in Presence of Customer Required, Validity of Statute. A statute which requires a dealer to weigh his commodity in the presence of the buyer is valid as a proper exercise of the police power.

Wisdom of Economic Policy. A court has not the power, nor is it its duty, to determine the wisdom of any economic policy; that function rests solely with the legislature.

[1] Table dressed weight, defined by the statute as follows: " 'Table dressed weight' shall mean the weight of poultry or fowl when completely dressed or dismembered for cooking." Bus. and Prof. Code, Sec. 12024.4.

COLORADO

(See Cases U S 3 and Fed 22 herein)

DELAWARE

49. State of Delaware v. Huber, 4 Boyce 259, 88 Atl. 453 (1913).

Standard Weight Bread Statute.

Constitutionality. A statute prohibiting the sale of bread loaves weighing less than one pound is a reasonable exercise of the police power, and is constitutional.

Intent. Intent need not be alleged or proved in prosecution brought under bread statute which is silent as to intent.

Purpose. The purpose of a statute prohibiting sale of bread loaves weighing less than one pound is to protect the public against false weight or measure.

DISTRICT OF COLUMBIA

50. Thompson v. District of Columbia, 21 App. D. C. 395 (1903).

Milk Bottles.

Authority of District of Columbia. Under Act of Congress, the Commissioners of the District of Columbia have power to promulgate regulations establishing tolerances for milk bottles and requiring bottles to be sealed as measures, and requiring that a fee be charged for such service.

Tolerances. A regulation in regard to the inspection and stamping of bottles used for the sale of milk and cream, will not be declared unreasonable on the testimony of a dealer that his bottles are of a uniform size on the outside but, because of various incidents to their manufacture, are of irregular size on the inside, and that it is impossible to make all such bottles of a given supposed size to be uniform in capacity. This incidental variation, the court points out, is probably the reason for the tolerance provision of the statute and the regulations pursuant thereto.

51. District of Columbia v. Gant, 28 App. D. C. 185 (1906).

Construing of Statutes by Courts.

Effect of Misworded Short-Weight Statute. The court cannot amend a statute, but can only interpret it. Where an Act of Congress makes it a penal offense to sell provisions for a weight *less* than the true weight, a prosecution thereunder of a dealer who sells chickens for a weight *greater* than the true weight, cannot be sustained.

52. Great Atlantic & Pacific Tea Co. v. District of Columbia, 67 App. D. C. 30, 89 F. 2d. 502 (1937).

Short Weight.

Representation of Weight. Stating the price only of a commodity from which the weight may be computed, is a representation of weight, within statute prohibiting sale of a commodity at weight greater than true weight.

Intent. Intent need not be alleged or proved in prosecution under short weight statute which is silent as to knowledge or intent.

Mistake. If a mistake is made without any intent to defraud, the mistake is no defense in prosecution for giving short weight.

FLORIDA

(See also Case Fed 21 herein)

53. Hackney v. Enslee, 138 Fla. 475, 189 So. 825 (1939).

Measurement of Logs.[1]

Deviation From Statutory Rule Allowable, When.[2] A contract which expressly permitted the vendor to use "any one of the approved scaling rules for scaling logs," authorizes the use of an aproved rule, such as the International rule, even though by statute Doyle's rule was authorized. The statute herein involved expressly permitted by mutual agreement the use of a rule different from the Doyle rule.

[1] For detailed annotation and discussion *see* 39 American Law Reports 1314, "Measurement of Standing Timber;" and 54 Corpus Juris Secundum, Logs and Logging, Secs. 40–44.

[2] *See also* Kinkle v. Fruit Growers Supply Co., 63 Cal. App. 2d 102, 146 Pac 2d 8 (1944); and Bulkley v. Whited, 113 La. 396, 37 So. 5 (1904).

GEORGIA

54. Southwestern Railroad Co. v. Cohen, 49 Ga. 627 (1873).

Inspection and Test of Devices.

Apparatus Not Subject to Test. A penal statute requiring the testing and marking of apparatus used by persons who "sell" by weight and measure, does not apply to persons engaged in buying by weight or measure. Neither does such a statute apply to scales used by a railroad company for weighing freight.

55. Finch v. Barclay, 87 Ga. 393, 13 S. E. 566 (1891).

Use of Unsealed Devices, Effect on Contract.

No Recovery for Price. If a statute expressly forbids the collection of accounts and notes for commodities sold on untested and unmarked scales, there can be no recovery of the amount for which such commodities were sold.

Refreshing Recollection of Witness by Use of Copy From Original Memorandum. It is not necessary that the writing used to refresh the memory of a witness be an original writing, provided, after inspecting it, the witness can speak of facts from his own recollection. The memorandum used to refresh a present memory may be a copy or abstract or transcript of the original.[1]

[1] *See* 125 A. L. R. 19, "Refreshing recollection of witness."

56. Jones v. State of Georgia, 99 Ga. 46, 25 S. E. 617 (1896).

Short Weight.

Evidence. *Weight ticket as part of representation.* In prosecution for short-weight, a weight ticket is admissible in evidence to prove the false representations made by accused. Such weight ticket is a material part of the representations of the seller, and is practically inseparable from the oral representations.

Refreshing recollection of witness by use of memoranda. Upon the laying of a proper foundation, a witness may testify from a written memoran-

dum, such as a stub in a weight certificate book, though the stub does not recall the facts to his memory.[1]

[1] *See* 125 A. L. R. 19, "Refreshing recollection of witness."

57. Fain and Stamps v. Ennis, 4 Ga. App. 716, 62 S. E. 466 (1908).

Bushel Weights.

Statutory Weight Governs, When. In the absence of other express agreement, the statutory bushel weight of 55 pounds governs contracts for the sale of potatoes by the bushel.

58. City of Cartersville v. McGinnis, 142 Ga. 71, 82 S. E. 487 (1914).

Public Weighing Ordinance.

Constitutionality. An ordinance requiring that certain bulky commodities, for sale within the city, shall be weighed on public scales, is a valid exercise of the police power. Such an ordinance does not restrain trade.

Conclusive Authority Given Weigher, Invalidity of Law. A section of an ordinance giving to the public weigher the power to conclusively determine all questions of tare and other reductions, without any provision for a hearing on appeal, is invalid, and so closely connected to the purpose and plan of an entire weighing ordinance as to invalidate the whole.

Hardship or Inconvenience in Using City Scales. The inconvenience in driving vehicles to the city scales for the purpose of weighing of commodities before sale must yield to the public good. Such inconvenience is not sufficient cause for declaring a public weighing ordinance unreasonable.

Validity of Police Laws. *Wisdom.* The wisdom of laws passed under the police power is to be decided by the proper municipal authorities, and not by the courts.

Hardship. That one may suffer in his business by enforcement of a police law does not render the law invalid.

59. Austin v. City of Atlanta, 28 Ga. App. 702, 113 S. E. 113 (1922).

Coal Weighing Ordinance.

Waiver of Weighing Not Allowable. An ordinance made it unlawful for any dealer in coal or coke to sell it by weight unless it had been weighed upon accurate scales. Under such an ordinance, coal sold by the ton must be weighed, whether or not the buyer signs an order waiving such weighing.

60. Southern Flour and Grain Co. v. Smith, 31 Ga. App. 52, 120 S. E. 36 (1923).

Weights and Measures in Contracts.

Deviation From Statutory Weight, Effect on Contracts. A contract for the sale of feeding stuff in non-standard weight bags is void, because violative of a statute requiring, under penalty of fine or imprisonment, that all commercial feeding stuff be sold in standard-weight bags. Where the terms of a contract directly involve the infraction of a statute not enacted for the purpose of raising revenue, and such infraction is penalized by fine or imprisonment, or both, the contract is void and unenforceable.

IDAHO

61. State of Idaho v. Schweitzer, 18 Idaho 609, 111 Pac. 130 (1910).

Sale by Gross Weight.

Allowable Under Short Weight Statute. Under the short weight statute, a vendor is criminally liable for selling to a purchaser a commodity which does not weigh the amount he represents it to weigh. However, the evidence must be clear that a crime has been committed. Whether parties to a sale understood that a pail of lard was being sold at gross or net weight, is a question of fact for the jury to determine. If it is found that the parties did contract on a gross weight basis, there is no violation of the short weight statute.

ILLINOIS

(See also Cases US 3, 6 and 15 herein)

62. City of Chicago v. Quimby, 38 Ill. 274 (1865).

Board of Trade.

Charter Authority. The consolidated charter of Chicago authorizing appointment of a flour inspector does not repeal by implication the charter authority of Board of Trade to appoint officers for the purpose of inspecting flour bought and sold by its members.

Repeal of Statutes by Implication. A repeal of a statute by implication takes place only when the provisions of the new law and the old are clearly inconsistent. Whenever a reasonable construction can be given by which both acts may stand, such construction will be adopted.

63. City of Spring Valley v. Spring Valley Coal Co., 71 Ill. App. 432 (1897).

Inspection and Sealing of Devices.

Validity of Ordinance. An ordinance providing for the appointment of a city inspector of weights and measures and prescribing his duties is a valid exercise of the police power of the city.

Concurrent Jurisdiction of State and City. *General rule.* The grant of power to a city to make police regulations does not withdraw original jurisdiction on these subjects from the State. In matters of this nature the State and municipal authorities have concurrent jurisdiction.

Inspection of scales at city mine. A State statute making mine inspectors ex officio inspectors of weights and measures at coal mines, does not impliedly repeal a city ordinance providing for the appointment of a city inspector of weights and measures. The statute and the ordinance both stand together. Either the mine inspector or the city inspector may make inspections of scales at city mine.

Repeal of Statutes by Implication. The law does not favor repeal of statutes by implication. To repeal a statute by implication there must be such a positive repugnance between the provisions of the new law and the old that they cannot stand together or be consistently reconciled. The law is well settled on this point.

64. Heath & Milligan Manufacturing Co. v. National Linseed Oil Co., 197 Ill. 632, 64 N. E. 732 (1902).

Weights and Measures in Contracts.

Custom Governs Contracts, When. Where contracts for sale and purchase of linseed oil were for a certain number of gallons, and bills were rendered and paid on the basis of 7.50 pounds per gallon, according to custom known to both parties, discovery by the purchaser that the statutory gallon weighed 7.761 pounds did not entitle him to recover a rebate.

65. Rogers & Co. v. Beach, 127 Ill. App. 199 (1906), affirmed in 138 Ill. App. 44 (1907).

Weights and Measures in Contracts.

Meaning of "Official Weights and Grades." The term "official weights and grades," as used in a contract, did not mean that a public officer must do the weighing, where there was no such officer. The court construed the term to mean that the weight of the commodity involved was to be determined by weighers whose acts were official within the uniform custom and trade usages then prevailing at the place of weighing.

66. City of Chicago v. Bowman Dairy Co., 234 Ill. 294, 84 N. E. 913 (1908).

Milk Bottles, Capacity Marking.

Constitutionality of Ordinance. A city ordinance requiring all bottles and glass jars in which milk is sold to be permanently marked with the capacity thereof, is a valid exercise of the police power of the city, and is constitutional. Such an ordinance does not deprive a person of his property without due process of law.

Class Legislation. The fact that an ordinance, requiring capacity marking of certain milk receptacles, applies only to persons selling milk in glass bottles or jars, and not to persons selling milk in other receptacles, or to persons selling other liquids in bottles or jars, does not make the ordinance void as class legislation.

Depriving Person of Property. Property may be destroyed under a proper exercise of the police power without compensation to the owner. Under this rule, a milk ordinance is not invalid because it has the effect of depriving a person of the use of unmarked containers on hand when the ordinance was passed.

67. City of Chicago v. Bartels, 146 Ill. App. 180 (1909).

Short Weight.

Method of Obtaining Evidence. An itemized and signed statement obtained by sealer from grocer, admitting violations of short weight ordinance, may be used in evidence instead of the physical items of evidence.

Validity of Ordinance. An ordinance prohibiting short weight sales and providing for the method of sale of dry and liquid commodities does not conflict with the State weights and measures statute. The ordinance is within the power of the city to enact under statutory authority, and is valid.

State and Municipal Authority. The police regulations of a city or village may differ from those of the State upon the same subject if they are not inconsistent therewith.

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68. City of Chicago v. Miller, 146 Ill. App. 530 (1909).

Municipal Ordinances.

Judicial Notice of Ordinances. The Appellate Court will not take judicial notice of municipal ordinances.

69. City of Chicago v. Berry's, 159 Ill. App. 522 (1911).

Short Weight.

Effect of Uncompleted Sale on Conviction. The words "practice deceit or fraud" in short weight ordinance do not require that goods be paid for in order to establish the offense of selling at short weight.

Representation of Weight. A sign in a store not seen by the customer forms no part of the representation as to weight of a commodity.

70. City of Chicago v. Hiltwein, 161 Ill. App. 32 (1911).

Statute Forbidding Several Acts in the Alternative.

Single Offense Created. Where a statute forbids several things in the alternative, it is usually construed as creating but a single offense. Violating the act by doing one or all of the forbidden acts incurs only one penalty.

Indictment, Sufficiency of. Where a statute forbids several things in the alternative, it is usually construed as creating a single offense; and the indictment may charge the defendant with committing all the acts, using the conjunction "and" where the statute uses the disjunction "or."

71. Davis Bros. v. Vandalia Railroad Co., 168 Ill. App. 621 (1912).

Evidence.

Admissibility of Day Books.[1] A day book showing weight entries taken from slips of paper is admissible in evidence as a book of original entry.

Refreshing Recollection of Witness by Memoranda. Memoranda made by witnesses showing the weights of cars upon arrival may be admitted in evidence, though the witnesses have no independent recollection of the transaction.

[1] See 17 A. L. R. 2d 235, "What constitutes books of original entry within rule as to admissibility of books of account."

72. City of Chicago v. Alwart Bros. Coal Co., 177 Ill. App. 40 (1913).

Short Weight Sales of Coal.

Inapplicability of Short Weight Ordinance to Sales of Coal. Coal sold in load lots is governed by the short weight coal ordinance, not by the general short weight ordinance.

73. Shellabarger Elevator Co. v. Illinois Central Railroad Co., 278 Ill. 333, 116 N. E. 170 (1917).

Weighing of Grain by Railroads.

Constitutionality of Statute. *Maintaining scales.* A statute is constitutional in requiring railroads to weigh grain received for shipment

and to maintain scales at certain points, where the State constitution expressly provides for the weighing of grain by railroads.

Conclusiveness of shipper's weights. The provisions of a statute which make shipper's weights conclusive, is unconstitutional.

State authority as to conclusive evidence. The legislature has no power to declare what shall be conclusive evidence.

Invalidity of part of statute. The constitutional part of a statute will be given effect, and the unconstitutional part disregarded, provided the court can infer that the legislature would have passed the act without inclusion of the unconstitutional part.

74. City of Chicago v. Wisconsin Lime and Cement Co., 312 Ill. 520, 144 N. E. 3 (1924).

Public Weighing Ordinance.

Validity, and Municipal Authority to Enact. An ordinance requiring commodities sold in load lots to be weighed by a public weighmaster for a fee, is within the statutory power of the city to enact, and is valid. A city has power to pass such an ordinance under a general law authorizing cities to "regulate" the weighing of merchandise.

Municipal Power to "Regulate". There is no distinction between the power given cities to "regulate" and the power given them to "provide for" the weighing of merchandise. The power to "regulate" includes the power to make the regulation effective by establishing city scales and appointing city weighmasters.[1]

[1] This overrules City of Savannah v. Robinson, 81 Ill. App. 471 (1899).

75. City of Chicago v. Chicago Great Western Railroad Co., 348 Ill. 193, 180 N. E. 835 (1932).

Railroad Scales.

Exclusive Power of Commerce Commission. The State Commerce Commission has exclusive power to regulate the weighing of freight and the testing of wagon and other scales used by railroads for such weighing.

76. Dean Milk Co. v. City of Chicago,[1] 385 Ill. 565, 53 N. E. 2d 612 (1944).

Standard Milk Bottles.

Validity of Ordinance Excluding Use of Single Service Containers. A city ordinance requiring milk to be delivered in standard milk bottles, insofar as it excludes the use of single service containers, is not void as being unreasonable.

"Standard Milk Bottle" Defined. "Standard milk bottle," as used in milk ordinance, means the familiar glass milk bottle in common usage when the ordinance was adopted in 1935. Paper single service containers, which did not come into general use until 1938, are not standard milk bottles.

[1] The issues of this case have had an extended history of litigation in both the Federal and State courts. *See* Fieldcrest Dairies, Inc. v. City of Chicago, 35 F. Supp. 451 (D. C. Ill. 1939); Fieldcrest Dairies, Inc. v. City of Chicago, 122 F. 2d 132 (C. C. A. Ill. 1941); City of Chicago v. Fieldcrest Dairies, Inc., 316 U. S. 168, 62 Sup. Ct. 986, 86 L. Ed. 1355 (1942).

77. City of Chicago v. Cuda, 403 Ill. 381, 86 N. E. 192 (1949).

Public Weighing Ordinance.

Inapplicability to Deliveries From Another State, When. A public weighing ordinance is not applicable to loads of coal purchased and paid for in another State by a resident of the city, and delivered to such resident by trucker hired by him. Such an interstate shipment cannot be subjected to a city ordinance where no sale was made within the city.

The ordinance provided that "every load of solid fuel . . . sold in load lots by weight, delivered by vehicle within the city, shall be weighed by a public weighmaster." This language was construed by the court to mean that there must be a sale and a delivery—both to be within the city. The ordinance does not apply to one who moves his own goods from one place to another within the city, or from a place outside of the city to a point within it, or to a person hired by the owner to move the goods for him.

Municipal Authority. A city has no authority to control sales made outside the city, and especially sales in another State. Municipal corporations, being creatures of statute, have no inherent powers, and none that may be exercised beyond the corporate limits of the city, unless especially given by statute.

78. People ex rel. Israel v. Goldblatt, 345 Ill. App. 299, 103 N. E. 2d 178 (1951).

Misbranding a Criminal Offense.

Civil Suit Unauthorized. A violation of statutory provision making it a misdemeanor to offer for sale or sell food which is adulterated or misbranded, is a criminal offense which must be prosecuted by the people in conformity with constitutional provisions. A civil action in debt by an individual in the name of the State for collection of the penalty was void and unauthorized.

INDIANA

(See also Cases US 3 and 7 herein)

79. Blanchard v. State of Indiana, 3 Ind. App. 395, 29 N. E. 783 (1892).

Short Weight.

Evidence Insufficient to Prove Guilty Knowledge. When the evidence shows that the defendant sold coal at less than the statutory weight, with full knowledge and consent of the purchaser thereof, there is no deception. Consequently, there can be no conviction under a statute making intent to deceive a necessary element of the offense.

80. City of Tell City v. Bielefeld, 20 Ind. App. 1, 49 N. E. 1090 (1898).

Scales in Street.

Municipal Authority. A city has no power to obstruct a street by the establishment of scales therein.

81. Lipschitz v. State of Indiana, 176 Ind. 673, 96 N. E. 945 (1912).

False Report of Weight.

Completed Offense Irrespective of Injury. A false report of a weight is a completed offense, whether injury occurs or not, under statute

forbidding the report of a false weight or measure through which anyone may be injured or defrauded.

Sufficiency of Indictment. An affidavit or indictment is sufficient which charges an offense in the language of the statute creating the offense.

82. State of Indiana v. McCaffrey, 181 Ind. 200, 103 N. E. 801 (1914).

Short Weight.

Liability of Proprietor for Act of Employee. An employer is liable for the act of his employee in giving short weight, under statute silent as to knowledge and intent. The employer must know that no false weights or measures are being used in his business.

83. Freyermuth v. State of Indiana ex rel Burns, 210 Ind. 235, 2 N. E. 2d. 399 (1936).

The Weights and Measures Official.

City Inspectors. *Removal from office.* A mayor is without authority to dismiss a city inspector of weights and measures or declare the office vacant, under Indiana statutes.[1]

Constitutionality of statutory provisions relating to tenure during good behavior. The provision of a statute providing for the appointment of a city inspector to serve during good behavior,[2] is not in violation of the State constitution which forbids the creating of an office with tenure longer than four years,[3] such inspector being a mere employee or special policeman.

Repeal of Statutes by Implication. Implied repeals are only recognized and upheld when the later act is so repugnant to the earlier as to render the repugnancy or conflict between them irreconcilable. A court will always, if possible, adopt that construction which will permit both laws to stand and be operative.

[1] Burns' Ann. St., Secs. 69–105—69–109; Sec. 48–1222.
[2] Burns' Ann. St., Sec. 69–105.
[3] Ind. Const., Art. 15, Sec. 2.

84. Board of Commissioners of Knox County v. Ritterskamp, 110 Ind. App. 436, 36 N. E. 2d. 812 (1941).

The Weights and Measures Official.

County Inspectors. *Removal from office.* A county inspector of weights and measures may be removed from office by two methods, as provided by statute: [1]

(1) The Board of County Commissioners can remove a county inspector without charges being preferred and hearing given if the consent and approval of the State Commissioner of Weights and Measures has been first obtained.

(2) The State Commissioner of Weights and Measures can remove a county inspector of weights and measures after hearing on charges preferred by the State Commissioner.

Purpose of removal provisions. The purpose of the removal provisions is to provide a method of discharge by the State Commissioner of Weights and Measures if the county has an inspector who is failing to do his duty and if the county board refuses to act.

[1] *See* Burns' Ann. St., 69–104 and 69–107.

IOWA

(See also Cases US 7 and 11 herein)

85. Harris v. Rutledge, 19 Iowa 388 (1865).

Weights and Measures in Contracts.

Statutory Unit Governs Contracts, When. Where contracts do not show upon their face that they were made with reference to some custom, the statutory unit of weight or measure will govern in determining the rights of the parties thereunder.

Federal and State Authority to Regulate Weights and Measures. Until Congress exercises its constitutional power to "fix the standard of weights and measures," the States may regulate weights and measures for themselves. Experience throughout the ages and the world has shown that this is a proper and even necessary subject of legislative regulation; that in no other way can certainty and uniformity be secured.

86. Emerson v. Babcock, 66 Iowa 257, 23 N. W. 656 (1885).

Private Scales in Street.

Power of City to Remove. A town or city may compel a person to remove platform scales which he erected in the street for the purpose of carrying on his private business.

87. Davis v. Town of Anita, 73 Iowa 325, 35 N. W. 244 (1887).

Public Weighing.

Municipal Authority. An ordinance providing for the appointment of a city weighmaster, establishing city scales, and requiring certain commodities to be weighed thereon, is within the power of the city to enact, under statute authorizing cities and towns to provide for the weighing of any article for sale.

88. Town of Spencer v. McQueen, 82 Iowa 14, 47 N. W. 1007 (1891).

Private Scales in Street.

Municipal Authority. A town has power to permit the erection of private scales in the street, provided the scales do not interfere with the public use or travel.

89. Miller v. City of Webster City, 94 Iowa 162, 62 N. W. 648 (1895).

Public Weighing.

Municipal Authority. A city has power under the general law to establish markets and city scales. The matter of their location and necessity is left solely to the discretion of the city council. The courts will not interfere with the judgment of the city officers.

Nuisance. A market established by the city is not a nuisance because livestock confined in it corrupts the air.

90. State of Iowa v. Frolic, 95 Iowa 424, 64 N. W. 264 (1895).

Falsity of Devices.

Proof of Falsity. Whether a device is false is a question of fact. A device compared with official standards and found not in agreement therewith is false. However, it is not always necessary that a comparison be made with the official standards. The testimony of a competent person who has compared a device with another known and shown to be correct, is admissible in evidence.

91. Ewing v. City of Webster, 103 Iowa 226, 72 N. W. 511 (1897).

Public Weighing.

Inconvenience in Using Public Scales. Inconvenience or hardship in using public scales is not a sufficient ground for relief from compliance with public weighing ordnance.

92. State of Iowa v. Jamison and Crone, 110 Iowa 337, 81 N. W. 594 (1900).

Use of False Weights and Measures.

Evidence to Prove Guilty Knowledge. *Sufficiency.* In a prosecution for knowingly using false weights, evidence that an iron weight was secretly attached to the beam with a string—that the scales showed short weight on other occasions—that the employee who did the weighing in employer's absence had confessed the use of false weights to a co-employee—and that when the employer was told that a customer had discovered the false weight he said nothing to the customer—is sufficient to prove that both the employer and the employee knowingly used false weights, although the scale house was not always locked, and the scales were used by others at times.

Previous use of false device. In a prosecution for knowingly using a false device, evidence that the scales in question were inaccurate on previous occasions is admissible to show guilty knowledge on defendant's part.

Sufficiency of Indictment. Under a law making the "use" of false weights and measures an offense, "use" must be specifically alleged in the indictment, and not left to inference. An allegation that the defendant "kept" false weights and "bought" livestock weighed therewith, from which use may be inferred, charges no offense.

93. State of Iowa v. Smith, 123 Iowa 654, 96 N. W. 899 (1903).

Public Weighing Ordinance.

Validity, and Power of City to Enact. A city has power, under a general statute, to enact an ordinance establishing city scales and requiring certain articles for sale or consumption in the city to be weighed thereon. Such an ordinance is not unconstitutional as an unreasonable restraint of trade.

Nuisance. A public market established by ordinance in a portion of a street is not a nuisance, where it only partially or temporarily obstructs the street.

Obstructing Streets. The public has a right to the free and unobstructed use of a street. Any unauthorized obstruction which unnecessarily interferes with such use is a public nuisance. However, not every use of a public street for other purposes than for travel creates a nuisance. Temporary or partial obstruction of streets may be justified on the ground of public or private necessity.

94. **Huss v. City of Creston**, 224 Iowa 844, 278 N. W. 196 (1938).

Public Weighing Ordinance.

Constitutionality of Ordinance as Applied to Outside Truckers. Under city ordinance, truckers hauling coal from mines outside the city to customers in city were required to take their loads to city scales so that the gross, tare, and net weights could be ascertained. Such an ordnance is reasonable and constitutional.

95. **Peerless Weighing & Vending Machine Corporation v. Thornburg**, 233 Iowa 435, 9 N. W. 2d 284 (1943).

Coin-Operated Person-Weighing Machines.

Person-Weighing Scales Are Public Scales. Automatic, coin-operated, person-weighing machines are "public scales" within statute providing for an annual license fee for public scales. [Code 1939, Secs. 3258–3265.]

96. **Linnenkamp v. Linn**, 243 Iowa 329, 51 N. W. 2d 393 (1952).

Packages.

Cones and Cakes for Holding Ice Milk. It was decided by the lower court that cones and cake cups for ice milk are packages. Therefore, they must comply with the package-marking and other requirements of the Iowa statutes relating to food in packages. The State Supreme Court, however, did not decide the question.

KANSAS

(See also Cases US 3 and 5 herein)

97. **Wood v. Dickinson**, 34 Kan. 137, 8 Pac. 205 (1885).

Weights and Measures in Contracts.

Agreement to Weigh on Scales Designated by Seller, Effect of. A buyer of cattle, after a dispute as to the correctness of scales at a certain place, agreed that the cattle should be weighed on such scales, knowing they were incorrect. He was not entitled to a credit for a deficiency in the weight, no fraud being shown on the part of the seller. It was held that the agreement as to the weighing of the cattle on scales designated by the seller constituted a waiver of any question growing out of the weighing.[1]

[1] *See also* Crilly v. Ruyle, 87 Neb. 367, 127 N. W. 251 (1910). *But see* Clifton v. Sparks, Case No. 154 herein.

98. Missouri, K. & T. Ry. Co. v. Simonson et al., 64 Kan. 802, 68 Pac. 653 (1902).

Establishment of Track Scales by Railroads.

Constitutionality of Statute Requiring Establishment. A statute which requires railway companies to provide and maintain track scales at certain points and to issue duplicate bills of lading is constitutional. Such a statute does not violate the interstate commerce clause of the Federal constitution.

Conclusiveness of Bills of Lading. A provision in a statute making bills of lading issued by railroads conclusive proof of the weight of commodities received for shipment is unconstitutional. Such a statute denies to the railroads due process of law. It also wrongfully deprives the courts of the judicial power to determine the weight and sufficiency of evidence.

99. State of Kansas v. Belle Springs Creamery Co., 83 Kan. 389, 111 Pac. 474 (1910).

Short Weight Statute.

"Person" Includes Corporation. The undefined word "person" as used in general short weight statute includes a corporation.

Liability of Corporation for Giving Short Weight. A corporation can be held criminally liable for giving short weight.

Sufficency of Indictment. A complaint is sufficient which charges an offense substantially in the language of the statute creating the offense.

100. State of Kansas v. McCool, 83 Kan. 428, 111 Pac. 477 (1910).

Standard-Weight Bread Statute.

Constitutionality. A statute establishing a standard-weight bread loaf and prohibiting the sale of bread except by the whole, half, or quarter loaf is a valid exercise of the police power and is constitutional.

101. Cardwell v. Union Pacific Railroad Co., 90 Kan. 707, 136 Pac. 244 (1913).

Shrinkage of Grain in Transit.

Judicial Notice. The courts will take judicial notice of the natural shrinkage of grain in transit. The legislature having recognized the fact that grain in transit will naturally shrink as much as one-fourth of one percent of its total weight, no proof is required of this well-known fact.

KENTUCKY

(See also Case Fed 25 herein)

102. Collins v. City of Louisville, 41 Ky. 134 (2 Monroe 134, 1841).

Public Weighing.

Excessive Fees. Fees imposed for public weighing are regarded as illegal when so excessive that they constitute a tax for raising revenue.

103. Helm v. Bryant, 50 Ky. 64 (1850).

Weights and Measures in Contracts.

Hundredweight of Hemp as Fixed by Custom Governs Contracts. Hundredweight of hemp, as used in a contract for sale of hemp by the hundredweight and silent as to the number of pounds constituting the hundredweight, meant 112 pounds. A statute fixed a ton gross of hemp at 2,000 pounds, but did not define the hundredweight of hemp. The court held there was nothing in the statute to show that the legislature intended to change the meaning of the term hundredweight as fixed by custom at 112 pounds.

104. Caldwell, Hunter & Co. v. Dawson, 61 Ky. 121 (1862).

Standards of Weight or Measure.

Federal and State Authority. Congress has power to fix the standard of weights and measures, but until Congress exercises this power, the States may legislate for themselves.

Bushel, Cubic Inches to. Kentucky has adopted the standards furnished it by the United States. Therefore, a bushel contains 2150.42 cubic inches.

Contracts, Custom Non-controlling, When. There is a strong and increasing disinclination of the courts to allow the general laws of the country to be varied by proof of local usages. The fact that one party to a contract had knowledge of a local custom or usage, and supposed it would enter into the contract, is not sufficient. Even if both parties have knowledge of a local usage, such usage cannot enter into the contract if it appears that the parties did not contract with reference to it.

105. Bryan v. Newman, 7 Ky. Opin. 270 (1873).

Inspection and Sealing.

Excessive Fee for Testing Spring Scales. A county court, under statutory authority to regulate the fees of sealers, fixed a fee of $25 for testing spring scales in order to prohibit their use. This is a legislative and not a judicial power. The county court exceeded its authority, and a sealer cannot collect the fee.

106. Gibson v. Black, 10 Ky. L. Rep. 373, 9 S. W. 379 (1888).

Scales in Street.

Municipal Authority. A city has no power to authorize a person to erect scales on a public square opposite a hotel, and thereby interfere with the operation of the hotel.

107. Carter County v. Mobley, 150 Ky. 482, 150 S. W. 497 (1912).

Standards.

Compelling Furnishing of. The county fiscal court failed to furnish its inspector of weights and measures with testing apparatus, as required by a mandatory statute. Mandamus [1] is the appropriate remedy open to an inspector to compel such action by the county.

[1] "Mandamus . . . is a writ issuing from a court of competent jurisdiction, directed to a person, officer, corporation, or inferior court commanding the performance of a particular duty which results from the official station of the one to whom it is directed or from operation of law, or as a writ commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. It is a proceeding to compel someone to perform some duty which the law imposes on him, and the writ may prohibit the doing of a thing, as well as command it to be done." *See* 55 Corpus Juris Secundum, page 15, Sec. 1.

108. Louisville & Nashville Railroad Co. v. Commonwealth of Kentucky, 155 Ky. 189, 159 S. W. 667 (1913).

Inspecting and Testing of Devices.

Apparatus Not Subject to Test. A statute providing for the testing of public scales for hire and the devices of persons who buy and sell merchandise does not apply to scales used by railroads. Under such a statute, the railroad may refuse to allow a sealer to test its scales.

LOUISIANA

(See also Cases US 2 and 7 herein)

109. State of Louisiana v. Dubuc, 9 La. Ann. 237 (1854).

The Weights and Measures Official.

Invalid Appointment by Governor During Recess of Senate. A constitutional provision which empowers the Governor to appoint an officer to fill a vacancy during the recess of the Senate, does not extend to an appointment made by the Governor during a recess when no vacancy existed. The grant does not carry with it the power to create a vacancy.

Thus, a newly elected governor had no power, during the recess of the Senate, to appoint an inspector of weights and measures to an office already filled by an inspector duly appointed by the former governor.

110. Guillotte v. New Orleans, 12 La. Ann. 432 (1857).

Bread Ordinance.

Constitutionality. An ordinance regulating the weight of loaves of bread, and providing for the seizure and forfeiture of bread deficient in weight, is constitutional and within the power of the city to enact.

111. State of Louisiana v. Lamantia, 33 La. Ann. 446 (1881).

The Weights and Measures Official.

Removal From Office by Governor. The inspectors of weights and measures of the City of New Orleans are State officers. They may be removed from office by the Governor for certain causes. The Governor is the sole judge of the existence of such causes. His action of removal is final and cannot be reversed by the courts.

112. State of Louisiana v. Abbott, 41 La. Ann. 1096, 6 So. 805 (1889).

The Weights and Measures Official.

Removal From Office by Governor. The Governor is vested with power to remove from office, for certain causes, an inspector of weights and measures. The courts are without authority to inquire into the reasons for the removal.

If words equivalent to "removed" are used in papers appointing another to office, and plainly show that the party appointed is to act in the place of the one holding the office, this is sufficient notice of removal. No other declaration is necessary.

113. Walsh v. New Orleans Cotton Exchange, 188 La. 338, 177 So. 68 (1937).

Cotton Weigher.

Removal From Office by Cotton Exchange. Under an act providing that the directors of the New Orleans Cotton Exchange must recommend cotton samplers, weighers, and inspectors to the Board of Commissioners of the Port of New Orleans, and that the directors are warrantors of those recommended, the directors have an implied right to withdraw a recommendation at will.

MAINE

114. Pierce v. Kimball, 9 Maine 54 (1832).

Public Weighing or Measuring.

Local Application of Statute. It is within the constitutional powers of the State legislature to pass laws regulating certain branches of trade or manufacturing in particular districts only. A State statute providing for the appointment and duties of a lumber inspector in a particular county is constitutional.

115. Coombs v. Emery, 14 Maine 404 (1837).

Public Weighing or Measuring.

Failure of Town to Appoint Surveyor. Under a statute, not mandatory in its provisions, relating to the survey of wood, the parties to a contract may have wood surveyed by a private measurer if no public surveyor has been appointed. The seller may recover for the price of wood so sold.

116. James v. Josselyn, 65 Maine 138 (1876).

Weights and Measures in Contracts.

Sale Contrary to Statute, No Recovery for Price. There can be no recovery for the price of coal sold without being weighed by a public weigher as required by statute.

117. Durgin v. Dyer, 68 Maine 143 (1878).

Weights and Measures in Contracts.

Sale Contrary to Statute. *No recovery for price.* There can be no recovery for the price of hoops sold before being culled, branded, and certificate given by the proper officer, as required by statute.

General rule. The rule is well established that contracts for the sale of chattels entered into in contravention of the terms and policy of a statute, cannot be enforced. It is immaterial whether the sale is expressly prohibited, or a penalty imposed, because the imposition of a penalty implies a prohibition.

118. Duren v. Gage, 72 Maine 118 (1881).

Sale of Lumber Trimmings.

Inapplicability of Public Measuring Statute. A statute requiring firewood and bark to be measured by a sworn measurer before sale, unless the purchaser otherwise agrees, does not apply to small trimmings of lumber contracted for by the cart-load. Such a contract implies an agreement on the part of the buyer to take the wood without the statutory survey.

"Firewood" Defined. "Firewood" means cord-wood of the usual length and dimensions, and not chips or trimmings of lumber.

119. Richmond v. Foss, 77 Maine 590, 1 Atl. 830 (1885).

Weights and Measures in Contracts.

Sale Contrary to Statute, No Recovery for Price. A seller cannot recover the price of boards and shingles sold without the official survey which is required by statute.

120. MacHatton v. Dufresne, 121 Maine 221, 116 Atl. 449 (1922).

Official Weighing Upon Request of Purchaser.

Timeliness of Request. Under a statute requiring that, upon request of purchaser, coal be weighed by a sworn weigher, the purchaser must make such request at or before the time the coal is sold and delivered. Otherwise, he waives his right to have it so weighed, and the seller may recover the price of the coal without such official weighing.

121. Mexican Petroleum Corp. v. City of South Portland, 121 Maine 128, 115 Atl. 900 (1922).

Original Package.

Railroad Car as Original Package. Where a railroad car is itself the container in which a commodity such as oil is shipped, the car together with its contents constitutes the original package of commerce.

Original Package Defined. An "original package" as applied to interstate and international commerce is a package, bundle, or aggregation of goods, put up in whatever form, covering, or receptacle for transportation, and as a unit transported from one State or nation to another, and is the identical package delivered by the consignor to the carrier at the initial point of shipment.

When Original Package Loses Its Distinction as Such. Imported goods lose their character as imports when either of two changes has taken place: (1) when they have passed from the control of the importer as by sale, or (2) when they have been separated from the original receptacle in which they were shipped.

MARYLAND

(See also Cases US 1 and 7 herein)

122. Frazier v. Warfield, 13 Md. 279 (1859).

Weighing of Grain.

Weighing One Bushel in Sixty. An inspector may ascertain the weight of wheat by weighing one bushel in every 60, according to a long established custom. This is true, notwithstanding a statutory provision that inspectors "shall also carefully weigh . . . *all* wheat" inspected by them.

Construction of Statutes. *Inconvenience from particular construction.* Where great inconvenience will result from a particular construction of a statute, that construction is to be avoided, unless the meaning of the legislature is plain, in which case it must be obeyed.[1]

Intention of legislature. A cardinal rule in the construction of statutes is that the intention of the legislature shall be carried out. Every part of the statute is to be considered by the court in determining such intention.

Meaning of words. The words of a statute must be taken in their accepted and known sense.

Usage of words at particular locality. Where particular terms have obtained a certain and definite meaning in a locality, that meaning must be given to them when they are used in a statute applicable to that place. Doubtful words in a general statute may be explained with reference to general usage. When a statute is applicable to a particular place only, uncertain words will be given the meaning as understood and used in that place.

[1] In this case the court thought that the community would be subject to great inconvenience if the inspector weighed every bushel of wheat, instead of one in sixty.

123. Gill & Fisher v. Cacy, 49 Md. 243 (1878).

Public Weighing Statute.

"Grain Carried Through Elevators" Defined. "Grain carried through elevators" as used in public weighing statute exempting such grain from the requirements of the act, was grain which in this case had been removed from boats, and then taken into the elevators and hoppers, weighed, and deposited in bins of purchasers. This grain was declared exempt from being again weighed by the State weighers.

124. Jacobs v. City of Baltimore, 172 Md. 350, 191 Atl. 421 (1937).

Regulation of Retail Coal Dealers.

Municipal Authority. Baltimore has power, under its charter, to license and regulate the retail sale and delivery of coal. The prevention and suppression of fraud in the weights of coal are within the police power of a municipality.

Constitutionality of Ordinance. An ordinance requiring retail coal dealers to be licensed and bonded, and requiring all coal to be weighed before delivery on tested and sealed scales, and a delivery ticket given, is constitutional.

Certain provisions of the ordinance excepting therefrom coal sold in carload lots or over coal piers, or in small quantities, are not arbitrary or discriminatory.

Bonding Provision. Requirement of ordinance licensing and regulating retail sale and delivery of coal that retail dealers furnish a $500 bond is a reasonable regulation.

125. Yarger v. State of Maryland, 175 Md. 220, 200 Atl. 731 (1938).

Solid Fuel Act.

State Authority. An act regulating the transportation and sale of solid fuel is well within the proper exercise of the police power.

Constitutionality. *Discrimination.* A provision of a solid fuel act relating to certificates of origin is not discriminatory because limited to anthracite brought into the State by motor vehicles.

Lawful burden on interstate commerce. A solid fuel act which requires a certificate of origin for anthracite brought into the State by motor vehicle does not impose an unreasonable burden on interstate commerce.[1] Under proper conditions, State regulation of interstate commerce is allowable even though it may impose a direct burden upon interstate transportation.

Weighing vehicle empty—Unreasonable interference with interstate commerce. As applicable to interstate commerce, a provision of a solid fuel act requiring motor vehicles coming into the State to be weighed empty before issuance of delivery ticket, is unreasonable and unnecessary. It is, therefore, an unlawful restraint upon interstate commerce.

Statute Unconstitutional in Part, Saving Clause. A severability or saving clause in a statute saves the whole act from being nullified. The invalidity of a provision of a solid fuel act requiring weighmaster to weigh each vehicle empty before issuing a delivery ticket did not invalidate entire statute, under severablity section.

[1] *Contra:* Dickerson v. New Jersey State Department of Weights and Measures, 33 F. Supp. 431 (Dist. Ct. 1940), reversed on other grounds in 312 U. S. 656, 61 S. Ct. 713, 85 L. Ed. 1105. In this case the court held that relief must come from Congress under its power to regulate interstate commerce, or possibly the State from which the coal has come.

MASSACHUSETTS

126. Miller v. Post, 83 Mass. 434 (1861).

Weights and Measures in Contracts.

Sale Contrary to Statute, no Recovery for Price. If a sale is made in contravention of a weights and measure statute, which has been passed for the protection of the buyer, the sale or contract is illegal, and no action can be maintained by the seller to recover the price of the goods so sold.[1]

[1] *See also* Wheeler v. Russell, 17 Mass. 258 (1821); Libby v. Downey, 87 Mass. 299 (1862); Smith v. Arnold, 106 Mass. 269 (1871); Sawyer v. Smith, 109 Mass. 220 (1872); Palmer v. Kelleher, 111 Mass. 320 (1873); Eaton v. Kegan, 114 Mass. 433 (1874); Prescott v. Battersby, 119 Mass. 285 (1876). *But compare* Ritchie v. Boynton, 114 Mass. 431 (1874).

127. Levy v. Gowdy, 84 Mass. 320 (1861).

Public Weighing.

Failure of Town to Appoint Weigher. Under a statute requiring a commodity such as coal to be weighed before delivery by a public weigher, sales made without such weighing are unlawful. Even though no weigher had ever been appointed by the town as required by statute, a violator must suffer the penalty imposed.

128. Jones v. Hoey, 128 Mass. 585 (1880).

Weights and Measures in Contracts.

Custom and Usage. *Buying and selling tobacco by "marked weights."* If tobacco is sold by sample and by weight, without more specific agreement, evidence of a general usage in the trade is admissible in evidence to show that the tobacco was sold at the weight marked upon the box at the time of packing, and not by the actual weight at the time of sale.

Admissibility in evidence. Evidence of a general usage or custom is admissible, when a contract does not show on its face that the parties contracted contrary thereto, or contrary to any statute.

Competency of testimony of one witness. A usage or custom in trade, like any other fact, may be established by the testimony of one witness.

129. Goddard v. Rawson, 130 Mass. 97 (1881).

Public Weigher.

Burden of Proof of Legal Appointment. In an action by a public weigher for recovery of weighing fees, if the defense is that the weigher was not duly appointed and sworn as required by statute, the burden of proof is on the defendant.

130. Eldridge v. McDermott, 178 Mass. 256, 59 N. E. 806 (1901).

Weights and Measures in Contracts.

Custom and Usage. *Sale of oats by the bushel.* Oats sold in bags of 64 pounds each, in accordance with a custom requiring a bag to contain 2 bushels of 32 pounds each, constitutes a valid sale. Such a transaction is a sale by the bushel, as required by statute. The statute provided that oats shall be sold by the bushel and fixed the weight of a bushel at 32 pounds.

Admissibility in evidence. In an action for the price of oats sold "by the bag," evidence is admissible of a usage by trade through which the term "bag of oats" means 64 pounds, or 2 bushels of 32 pounds each.

131. Moneyweight Scale Co. v. McBride, 199 Mass. 503, 85 N. E. 870 (1908).

Testing of Computing Devices.

Constitutionality of Statute. A statute providing that sealers shall test all computing devices as to the correctness of both indicated weights and values, is constitutional. The court construed the statute as requiring sealers to determine only the arithmetical correctness of the values, not the commercial correctness, in which case the statute would be unconstitutional.

State Authority. It would be a proper exercise of the police power for the legislature to forbid the sale of automatic self-computing scales having incorrect tables of values.

Powers and Duties of Sealers. *Ministerial acts.* The act of a sealer in determining the correctness of a table of weights and values which is required to be arithmetically correct is ministerial in character.

Discretionary power. A sealer cannot be enjoined from deciding a question committed by statute to his decision on the ground that he may come to a wrong conclusion. The court has no power to take from him the duty of deciding the question.

132. Attorney General v. Andrew, 206 Mass. 46, 91 N. E. 892 (1910).

The Weights and Measures Official.

Civil Service Status. A city sealer, appointed by the Mayor without regard to existing civil service regulations, cannot hold his office by virtue of such appointment, which is invalid. City sealers and deputy sealers are subject to the provisions of the classified service. Whenever a vacancy exists in such service, the appointing officer must make requisition upon the civil service commission for the names of eligible persons.

133. Commonwealth of Massachusetts v. Sacks, 214 Mass. 72, 100 N. E. 1019 (1913).

Short Weight.

Liability of Employer. Under short weight statute, an employer may be convicted for the act of his employee in giving short weight in the employer's absence.

Knowledge or Intent. Knowledge or intent need not be alleged or proved in short weight prosecution brought under statute silent as to knowledge or intent. A wrongdoer acts at his peril, and the absence of guilty intent is no defense.

134. Commonwealth of Massachusetts v. Gussman, 215 Mass. 349, 102 N. E. 342 (1913).

Barrel Weight Fixed.

Effect on Interstate Commerce. A statute prescribing the weight per barrel of a commodity, such as sweet potatoes, is not a regulation of interstate commerce, and is constitutional. When the commodity is sold in the State, by the barrel, it must be of the statutory weight, even though such barrel is the original container shipped from another State.

Federal and State Authority. Congress has the power to fix the standard weights and measures, but until Congress exercises this power, the field is left open to the several States.

MICHIGAN

135. McGeorge v. Walker, 65 Mich. 5, 31 N. W. 601 (1887).

Scales.

Proving Accuracy. There is no presumption in favor of the accuracy of one scale over another, neither scale having been compared with the official standards.

136. People v. Wagner, 86 Mich. 594, 49 N. W. 609 (1891).

Standard-weight Bread Ordinance.

Constitutionality. A city ordinance prescribing standard weights for bread loaves is within the power of the city to enact and is constitutional. Such an ordinance does not take property without compensation, nor does it interfere with the right to carry on business.

137. Parker, Webb & Co. v. Austin, 156 Mich. 573, 121 N. W. 322 (1909).

Testing of Computing Devices.

Municipal Authority. The city of Detroit, under current legislative authority, could not authorize a city sealer to test and prove the accuracy of computing devices by which the value of a weighed article is determined.

138. Sachse v. Helper, 163 Mich. 369, 128 N. W. 186 (1910).

Scales.

Proving Accuracy. Although scales used by both buyer and seller to weigh goods in dispute had been tested by balancing and not by comparison with official standards, the question of the true weight of the goods is one of fact for the jury to determine from conflicting testimony.

MINNESOTA

(See also Case US 8 herein)

139. Bisbee v. McAllen, 39 Minn. 143, 39 N. W. 299 (1888).

Use of Unsealed Weights and Measures.

Effect on Sales. There can be no recovery for the price of goods sold by weights or measures not sealed as required by statute. This is true even though sealer and other officers did not comply with statutory duty relative to furnishing official standards.

140. Vega Steamship Co. v. Consolidated Elevator Co., 75 Minn. 308, 77 N. W. 973 (1899).

Weight Certificates.

Conclusive Evidence. *State authority.* State governing body has no power to legislate that a weight certificate is conclusive evidence of the correct weight of commodities.

Unconstitutionality of statute. A statute making a weighmaster's certificate conclusive evidence is unconstitutional.

141. State of Minnesota v. Shippman, 83 Minn. 441, 86 N. W. 431 (1901).

Libel.

Published Charge Regarding Use of False Weight. The following statement published in a newspaper was declared libelous:

> It is rumored that one wheat buyer's scale was also found incorrect, but he, being a banker and prominent citizen, was given time to "regulate" his scale, when it was sealed and reported all right.

The special correspondent who wrote the statement was convicted of criminal libel.

142. State of Minnesota v. Armour, 118 Minn. 128, 136 N. W. 565 (1912).

Short Weight.

Knowledge or Intent. Knowledge or intent need not be alleged in the indictment or proved at the trial, in a prosecution brought under a short weight statute silent as to knowledge or intent.

Representation. It is essential to liability under a statute prohibiting the selling of less of a quantity than is represented, that there be an actual misrepresentation as to the weight of the commodity sold. A seller must be allowed to prove, if he can, that the representation made to the buyer was true.

Sale by Gross Weight, Allowability. The purpose of a statute penalizing the selling of less than the quantity represented is to prevent misrepresentation of quantity. Such a statute does not prevent a vendor and vendee from making a special contract for the sale of a commodity, such as wrapped meat, by gross weight.

143. State of Minnesota ex rel Stone v. Eck, 121 Minn. 202, 141 N. W. 106 (1913).

Public Weighing Ordinance.

Municipal Authority. A city has power, under stautory authority to require, by ordinance, that coal for sale be weighed by the city weighmaster.

Discrimination. An ordinance which requires coal and certain other commodities to be weighed by the city weighmaster, and exempts from such weighing sales under a certain weight, is not unreasonable or discriminatory.

Purpose of Ordinance. The purpose of a public weighing ordinance is to prohibit fraud, and to provide a method by which the purchasers of commodities may be protected against short weight sales.

144. State of Minnesota v. People's Ice Co., 124 Minn. 307, 144 N. W. 962 (1914).

Short Weight.

Knowledge or Intent. Knowledge or intent need not be alleged in the indictment or proved at the trial, in a prosecution brought under a short weight statute silent as to knowledge or intent.

Liability of Corporation for Acts of Agents. Under a short weight statute silent as to knowledge or intent, a corporation is criminally liable for the acts of its agents.

A corporation is liable for its agent giving short weight even though the corporation had no knowledge of such sale and has instructed employees to give full weight.

Title of Statutes. *Scope of title of weights and measures act.* The Title of the State Weights and Measures Act reads: "An act creating a department of weights and measures, to be under the jurisdiction of the Railroad and Warehouse Commission, defining its duties and powers and providing penalties for interfering therewith." This title is broad enough to cover the provision of the act which penalizes the selling of less of a quantity than is represented.

Singleness of Subject Matter of Statutes. *Purpose of constitutional provision.* The purpose of a constitutional provision that "no law

shall embrace more than one subject, which shall be expressed in its title, is to prevent combining in one act, for logrolling or other improper purposes, matters pertaining to diverse and unconnected subjects; to provide for apprising the legislature and the public, through the title of the act, of the general subject matter with which it deals; and to secure a separate consideration of each distinct legislative measure.

Liberal construction of constitutional provisions. A constitutional provision, requiring statutes to embrace only one subject which shall be expressed in the one title, is to be construed liberally. All doubts are to be resolved in favor of the sufficiency of the title of an act adopted by the legislature.

145. St. Anthony & Dakota Elevator Co. v. Great Northern Railway Co., 127 Minn. 299, 149 N. W. 471 (1914).

State Weighing of Grain.

Records of Weighmaster. *Competent evidence.* The records in the office of the State weighmaster, made pursuant to rules established by the Railroad and Warehouse Commission, are competent evidence of the facts recorded therein.

Notations of condition of cars. The rules of the Railroad and Warehouse Commission require state weighers, at the time of weighing loaded cars, to make and enter in the record, notations as to the condition of the cars. Such notations so entered become a proper part of the record.

Admissibility in evidence of copies. Copies of the State weighmaster's records are not admissible in evidence unless duly authenticated. However, such authentication may be waived.

146. State of Minnesota v. Washed Sand and Gravel Co., 136 Minn. 361, 162 N. W. 451 (1917).

Short Weight.

Knowledge or Intent. Where a short weight ordinance contains such words as "knowingly" or "intentionally," knowledge or intent are essential elements of the offense, and must be alleged in the indictment and proved at the trial. If kowledge or intent are not alleged and proved, there can be no conviction.

147. State of Minnesota v. Grant Co., 158 Minn. 334, 197 N. W. 738 (1924).

Short Weight.

"Offer To Sell" Defined. An "offer to sell" less than the quantity represented means the same as an attempt to sell, and does not require a formal acceptance, as in contract law. Thus, where coal was intercepted while in the process of delivery to customers who had placed orders, there was an "offer" to sell within the meaning of the short weight statute.

Knowledge or Intent. Where a short weight statute does not contain such words as "knowingly" or "intentionally," knowledge or intent are not necessary elements of the offense. Therefore, knowledge or intent need not be alleged in the indictment, or proved at the trial.

Carelessness in Weighing. Carelessness in weighing (for example, guessing the weight of coal in each compartment of a coal truck), is no defense in a short weight prosecution.

148. State of Minnesota v. Inland Coal & Dock Co., 208 Minn. 216, 293 N. W. 611 (1940).

State Weighing of Coal in Carload Lots.

Fees Not Recoverable, When. A statute, relating to the State weighing of carload lots of coal, excepted from its provisions coal shipped for one's "own use or consumption." The statutory exception applies to a shipper who transports cars of his own coal, from his own dock, to his own yards where it is unloaded and resold in smaller lots to the public. The legislature did not intend to except only coal which the shipper intended to burn. Under such circumstances, the State is not entitled to recover fees for weighing such coal.

149. State of Minnesota v. Houston, 210 Minn. 379, 298 N. W. 358 (1941).

Egg Ordinance.

Constitutionality of Ordinance. The Minneapolis ordinance establishing grades for retail sale of eggs according to weight and condition is reasonable and constitutional.

Concurrent Jurisdiction of State and City. A municipality, if it has properly delegated authority, and if it legislates consistently with State law, may make an act an offense against the city, even though such act is, by statute, an offense against the State.

Reasonableness of Ordinances. *Presumption of reasonableness.* When a city ordinance is within the grant of power conferred on a city, the presumption is that the ordinance is reasonable, unless an unreasonableness appears on its face.

Power of courts. Courts have no power to declare a city ordinance void as being unreasonable, unless the unreasonableness is so clear, manifest, and undoubted as to amount to an arbitrary exercise of the power vested in the city.

MISSISSIPPI

150. Gaines v. Coates, 51 Miss. 335 (1875).

Public Weighing Ordinance.

Constitutionality. An ordinance requiring certain commodities to be weighed by a public weigher, for a fee, before being sold, is constitutional, and does not restrain trade.

Public Weigher, Interference With, by Private Weigher. A corporation, not having been given by its charter exclusive weighing privileges, may be enjoined from weighing cotton for the public, to the exclusion of the city weigher.

151. Miller v. Winston County Union Warehouse Co., 94 Miss. 348, 47 So. 501 (1908).

Public Weigher Statute.

Rights of Private Weigher. An act creating the office of county weigher for Winston County, provided as follows: "Nothing herein contained shall be construed as to prevent any one from withholding his cotton from said cotton weigher, and said cotton weigher shall not be entitled to

fees on cotton not weighed by him." Under this law, the county weigher could not restrain a warehouse company from weighing, for a fee, cotton received in the course of its business. The county weigher could not recover fees for cotton not weighed by him.

152. **Illinois Central Railroad Co. v. Butterfield Lumber Co., 95 Miss. 540, 49 So. 179 (1909).**

Evidence.

Books of Weigher, Admissibility. A weigher's books cannot be introduced in evidence unless proved to be correct by the testimony of the weigher himself, or by other evidence showing that the entries are accurate.

MISSOURI

(See also Cases US 4, 10, and Fed 19 herein)

153. **Green v. Moffet, 22 Mo. 529 (1856).**

Weights and Measures in Contracts.

Hemp, Statutory Ton Governs Contracts. Evidence that by custom or usage a ton of hemp consists of 2,240 pounds, instead of the statutory ton of 2,000 pounds, is not admissible in the interpretation of contracts for sale of hemp by the "ton". The parties may otherwise agree, but when they do not, the statutory weight governs.

154. **Clifton v. Sparks, 82 Mo. 115 (1884).**

Agreement to Weigh on Seller's Scales.

Warranty of Correctness of Scales. Under a contract whereby goods are to be weighed on the vendor's scales, the vendor impliedly warrants that his scales are correct. If they are not, he must return to the buyer so much of the money received by reason of excessive weights, even though there was no pretense of actual fraud on the part of the vendor.

155. **Campbell v. Clark, 44 Mo. App. 249 (1891).**

Weights and Measures in Contracts.

Deviation From Statutory Rule by Mistake. Where parties agreed to a rule of measurement of brick walls different than the rule provided by a statute, which rule they overlooked, a mistake of law occurred, and there could be no recovery of money paid.

Recovery of Money Paid Under Mistake of Law. Money paid with a full knowledge of the facts, but under a mistake of the law, cannot be recovered in the absence of fraud, imposition, undue influence, and the like.

156. **City of Lamar v. Weidman, 57 Mo. App. 507 (1894).**

Public Weighing.

Municipal Authority. A city of the fourth class has power, under statute, to establish and regulate markets and scales, appoint a weighmaster, and require certain commodities for sale to be weighed by such weighmaster.

Regulation of Articles not Sold in the City. A city cannot require that products be weighed on the public scales where such products are not to be sold or offered for sale within the limits of the city. Such a provision is unreasonable and void.

Ordinance Void in Part. The valid sections of an ordinance will stand, if a void section can be rejected without changing the intent of the ordinance.

Reasonableness of Ordinances. An ordinance may be declared void if it is oppressive, unequal, unjust, or altogether unreasonable. However, a clear case must be made before the courts will interfere on the ground of unreasonableness. Where there is doubt, it must be resolved in favor of the validity of the ordinance.

157. Sylvester Coal Co. v. City of St. Louis, 130 Mo. 323, 32 S. W. 649 (1895).

Regulation of Retail Coal Dealers.

Validity of Ordinance. An ordinance requiring retail coal dealers to furnish official weight certificates to consumers, the blank certificates to be purchased from the city, is valid under city charter authorizing the city to provide for weighing of coal and to regulate and tax retailers.

Purpose of Ordinance. The purpose of an ordinance regulating retail coal dealers is to protect the citizens from being imposed upon by false weights and measures.

Wisdom of Ordinance. Whether the mayor and assembly have selected the best means to accomplish the purpose of an ordinance is not a matter for the courts to determine.

158. City of St. Charles v. Elsner, 155 Mo. 671, 56 S. W. 291 (1900).

Public Weighing Ordinance.

Municipal Authority. *Implied power to maintain city scales.* The power granted by statute to a city of the third class to provide for the weighing of coal and to fix the fees therefor, necessarily implies the power to maintain public scales.

Fees. A city of the third class has power by statute to regulate the business of a coal dealer by requiring his coal to be weighed, for a fee, on the public scales. Such charge is not limited to the actual expense of maintaining the scales.

Discrimination. An ordinance requiring certain commodities to be weighed on the city scales is not discriminatory because sales under a certain weight are excluded from its provisions. Such a classification is reasonable.

159. City of Springfield v. Starke and Jones, 93 Mo. App. 70 (1902).

Testing of Devices.

Fees for Testing. *Invalidity of ordinance.* An ordinance is unreasonable which compels every merchant in a city to pay fees twice a year for the testing and sealing of the weights and measures used in his business, when no such power has been expressly granted to the city.

Municipal authority. A city of the third class has no power to exact a fee for the testing and sealing of commercial weights and measures.

160. State of Missouri v. City of Vandalia, 119 Mo. App. 406, 94 S. W. 1009 (1906).

Scales in Street.

Nuisance. The occupancy of a street by a platform scale, cornshellers operated by steam, and other machinery, constitutes a public nuisance, even though such occupancy is with the consent of the city.

161. State of Missouri v. Goffee, 192 Mo. 670, 91 S. W. 486 (1906).

State Weighing of Grain.

Limitation Upon. The statute providing for the State weighing of grain was interpreted by the court as limiting such weighing to grain going into and out of public warehouses.

State Authority. Under its police power, the State can regulate the weighing of all grain in the markets of the State other than that at public warehouses. However, in this instance, the State had not done so.

162. City of Fulton v. Sims, 127 Mo. App. 677, 106 S. W. 1094 (1908).

Public Weighing Ordinance.

Inapplicability to State Institutions. The city cannot require parties selling coal or other commodities to a State institution located in the city, to have the same weighed on the city scales.

163. Stegmann v. Weeke, 279 Mo. 140, 214 S. W. 137 (1919).

Standard Containers.

Validity of Ordinance Fixing Capacity and Dimensions. An ordinance establishing and fixing the capacity and dimensions of standard containers for fruits and vegetables is constitutional. Such an ordinance does not impair the obligation of contracts, although it makes unlawful the use of boxes of a lesser capacity which have been in general use for many years.

NEBRASKA

(See also Cases US 11 and 12 herein)

164. State of Nebraska v. Kellner, 22 Neb. 668, 35 N. W. 891 (1888).

Use of False Weights and Measures.

Knowledge or Intent, Proof of. Evidence that a defendant, in weighing commodities, used a loaded weight heavier than other and correct weights kept by him is competent to prove guilty knowledge.

165. State of Nebraska v. Swift & Co., 84 Neb. 244, 120 N. W. 1127 (1909).

Wrapped Meat.

Not a Package.[1] A wrapped ham, or a wrapped piece of bacon, is not a package. Therefore, compliance with the weight marking provisions of the package-marking statute is not required in these instances. Such a

statute does not prevent a vendor and vendee from making a special contract for the sale of a commodity, such as wrapped meat, by gross weight.

[1] The Federal Food, Drug and Cosmetic Act of 1938 defines wrapped meats as in package form.

166. Freadrich v. State of Nebraska, 89 Neb. 343, 131 N. W. 618 (1911).

Net-Content Marking of Packages.

Constitutionality of Statute. A net-content marking statute which regulated specified foods only, and which excluded packages put up by retailers from marking requirements, is not discriminatory, is a valid exercise of the police power, and is constitutional.

Wisdom of Police Laws. The courts do not sit to review the wisdom of legislative acts.

Rectifying Evils Piecemeal, State Authority. It is within the police power of the State to require all foods put up in packages to bear upon such packages the net weights or measurements of the contents. However, the mere fact that the statute so regulates certain food products only, rather than all foods, does not render the statute invalid. The constitution does not forbid cautious advance, step by step.

167. In Re Agnew, 89 Nebr. 306, 131 N. W. 817 (1911).[1]

Net-Content Marking of Packages.

Constitutionality of Statute. A statute requiring the net-content marking of packages of food is constitutional. It regulates intrastate commerce only, and imposes no obligation upon the manufacturer in a foreign State.

Interstate Commerce. *"Original package" defined.* An "original package" in interstate commerce is that which is delivered by the vendor or shipper to the carrier at the initial point of shipment, and retains its form and contents until received by the consignee in the same condition as when shipped.

Where an aggregation of articles or packages is packed and shipped in a larger shipping package or receptacle, such larger package or receptacle, and not the individual articles or packages comprising the larger unit constitutes the "original package" in interstate commerce.

When package ceases to be an "original package". When property in interstate commerce is shipped to and enters the body of the property of the State, the original package being broken and the contents offered and sold to retailers or consumers, its interstate quality is lost. Such property ceases to be subject to federal control, but immediately becomes subject to State laws.[2]

[1] *See also* In Re King, 89 Neb 298, 131 N. W. 820 (1911), and In Re Page, 89 Neb. 299, 131 N. W. 820 (1911).

[2] For effect of the Federal Food, Drug, and Cosmetic Act upon State authority and upon the original package doctrine, *see* McDermott v. Wisconsin, Case No. 7, herein.

168. State of Nebraska v. Thorp, 94 Nebr. 310, 143 N. W. 202 (1913).

Overreading Babcock Test.

Knowledge or Intent. An indictment need not allege that the act of overreading a cream test was committed with intent to defraud, such intent not having been made by statute an element of the offense.

NEW HAMPSHIRE

169. Pray v. Burbank, 10 N. H. 377 (1839).

Weights and Measures in Contracts.

Sale Contrary to Statute, No Recovery for Price. There can be no recovery for the price of wood sold without being measured by a surveyor as required by statute. Such a sale is illegal.

170. Pike v. Jenkins, 12 N. H. 255 (1841).

Standards.

Furnishing or Procuring. An act imposing a penalty on the selectmen of a town if they neglect to procure scale beams and weights and measures for the town, gives them the full term of their office to comply with the law. For the neglect of such duty, they can be liable only in one penalty.

Replacing. Under a law requiring that the selectmen of every town shall provide one complete set of weights and measures, the supply of standard weights and measures must be permanent; if lost, they must be replaced.

Construction of Penal Statutes. Courts should construe a penal statute according to its plain and obvious meaning. Where the meaning of the words used is doubtful, the court should adopt the sense that best harmonizes with the context of the apparent policy and objects of the legislature.

171. Alcutt v. Lakin, 33 N. H. 507 (1856).

Measurement of Standing Timber.[1]

Circumference. In determining the circumference of standing timber, the bark is included in the measurement.

[1] For detailed annotation and discussion, *See* 39 American Law Reports 1314, "Measurement of Standing Timber;" *also* 54 Corpus Juris Secundum, Logs and Logging, Secs. 40–44.

NEW JERSEY

172. Joralemon v. Pomeroy, 22 N. J. L. 271 (1849).

Libel and Slander.

Charging Merchant With Using False Weights or Measures. To falsely charge a merchant with the use of false weights or measures in his business constitutes libel or slander.

An oral statement made by defendant to another that "short weights and measures paid for" the storekeeper's horses, was actionable as slander.

173. City of Newark v. East Side Coal Co., 77 N. J. L. 732, 73 Atl. 484 (1909).

Short Weight.

Honest Mistake. When a sale to one person is attempted to be completed by the delivery of another person's order, resulting from an honest mistake, the short weight statute does not apply, and a judgment of conviction cannot be sustained. This is true though knowledge or intent are not necessary elements of the offense under the statute.

174. Bowlby v. Board of Chosen Freeholders of the County of Morris, 83 N. J. L. 346, 85 Atl. 229 (1912), affirmed 85 N. J. L. 725, 91 Atl. 1068 (1914).

The Weights and Measures Official.

Removal From Office. The Board of Chosen Freeholders, under statutory authority, was empowered to remove from office a county superintendent of weights and measures without making or sustaining charges, or granting a hearing.

175. State of New Jersey v. Mor, 85 N. J. L. 558, 89 Atl. 755 (1914).

Short Weight.

Evidence of Other Short Weight Sales. In a prosection for selling by short weight with intent to defraud, evidence that defendant made other short weight sales by the same scales at or about the same time, is competent only to prove that the sale charged was not made as a result of accident or mistake.

176. Burtis v. Haines, 91 N. J. L. 4, 102 Atl. 355 (1917), affirmed in 92 N. J. L. 248, 103 Atl. 1054 (1918).

The Weights and Measures Official.

Validity of Appointment. The appointment by a board of county freeholders, of a member of the board, to the office of county superintendent of weights and measures was in violation of law. Such an appointment conferred no right to the office upon the appointee.

Holding Office by Sufferance. A county superintendent of weights and measures, continuing in office purely by sufferance of the appointing power after the expiration of his term of office, had no right to continue in office after his successor had qualified and had been appointed.

177. De Mol v. Mayor and Common Council of Clifton, 6 N. J. Misc. 669, 142 Atl. 551 (1928).

The Weights and Measures Official.

Invalid Appointment to Office. The term of office of a city sealer being "during good behavior" under State statute, the city had no power to fix a definite term by ordinance. Appointing a sealer for a fixed term was a nullity, the office was considered vacant, and the appointee was a mere intruder to be ousted or replaced at the pleasure of the governing body. Further, a sealer's act of accepting an appointment for a fixed term amounts to a contract with the city, and he cannot complain when another is appointed in his stead at the end of the term.

178. Gessler v. Passaic County, 113 N. J. L. 6, 172 Atl. 390 (1934).

Suit for Salary by Sealer.

Exhaustion of Appropriation No Defense. Exhaustion of appropriation is no defense for failure of county to pay salary of sealer who was a civil service employee, and who had performed his duties faithfully and without challenge until he sued for salary due him.

179. Marks v. Monmouth County, 13 N. J. Misc. 560, 180 Atl. 215 (1935).

The Weights and Measures Official.

Abolishment of Office for Economy Reasons. The County Board of Freeholders may abolish the positions of assistant superintendents of weights and measures for reasons of economy. Such positions were authorized, rather than created, by the Legislature.

180. Neilley v. City of Passaic, 13 N. J. Misc. 283, 177 Atl. 855 (1935).

The Weights and Measures Official.

Abolishment of Office, for Economy Reasons. Assistant municipal superintendents of weights and measures, who were not appointed by the municipal superintendent, on resolution of the municipal body, as contemplated by the State statute, are not within the tenure clauses of said statute. Hence, the city could properly dismiss the assistant superintendents and abolish their offices for reasons of economy.

181. City of Newark v. Lafer, 14 N. J. Misc. 185, 183 Atl. 905 (1936).

Penalties.

Invalidity of Ordinance Fixing Minimum Penalty. A short weight ordinance fixing penalty "at not less than $25.00" nor more than $50.00 is invalid as fixing a minimum penalty contrary to Home Rule Act. Such an ordinance improperly deprives the magistrate of any discretion in fixing a minimum penalty.

182. Van Brookhaven v. Kennedy, 125 N. J. L. 178, 14 Atl. 2d 789 (1940), affirmed in 125 N. J. L. 507, 17 Atl. 2d 152 (1941).

The Weights and Measures Official.

Invalidity of Appointment. Under statute, the only way in which the office of municipal assistant superintendent of weights and measures may be created is by ordinance. An office created, or an appointment made, in any other way is invalid. An assistant superintendent, ousted from such office, not having a valid or true title to the office, cannot prevail in his quo warranto proceedings to test the title of another person appointed to the office in his stead.

Quo Warranto. Under New Jersey law (N. J. S. A. 2:84–7), an information in the nature of quo warranto may be filed as a matter of right by one who contends that he has title to a municipal office which is being usurped, intruded into, or unlawfully held by another. The person bringing quo warranto must show title to the office in himself; otherwise, he cannot prevail in his suit.

NEW MEXICO

183. King v. Tabor, 15 N. Mex. 488, 110 Pac. 600 (1910).

Weights and Measures in Contracts.

Statutory Rule Governs Contracts, When. In the absence of any specific agreement between the parties for the measurement of hay in stacks, the statutory rule of measurement governs the contract.

184. Reinecke v. Mitchell, 54 N. Mex. 268, 221 Pac. 2d 563 (1950).

Weight Certificates.

Admissibility of Carbon Copies in Evidence. In an action to recover the value of goods sold, it was proper to admit into evidence carbon copies of weight slips, under controlling statute (Sec. 20–219, 1941 Comp).

NEW YORK

(See also Case Fed 17 herein)

185. Stokes and Gilbert v. City of New York, 14 Wend. 87 (1835).

Public Weighing Ordinance.

Constitutionality. An ordinance is reasonable, constitutional, and not in restraint of trade which requires that coal, before sale, be weighed by a public weigher and that a fee be charged for such weighing.

186. Bayard v. Smith, 17 Wend. 88 (1837).

Use of False Weights and Measures.

Statute Silent as to Knowledge or Intent, Effect of. A person who uses false weights or measures does so at his peril, under statute silent as to knowledge or intent. Under such a statute knowledge is not a necessary element of the offense, and a person is bound to see that the weights used by him are at all times conformable to the standard weights prescribed by law.

187. Milk v. Christie & Todd, 1 Hill's Reports 102 (1840).

Weights and Measures in Contracts.

Statutory Unit Governs, When. Unless the parties have otherwise agreed, the bushel-weight statute governs sales by the bushel, of the regulated commodities.

188. Paige, Chamberlain, etc. v. Fazackerly, 36 Barbour's Rep. 392 (1862).

Bread Ordinance.

Municipal Authority. A city ordinance regulating the weight of bread is a valid police regulation.

189. Kennedy v. Oswego & Syracuse R. R. Co., 67 Barbour's Rep. 169 (1867).

Weights and Measures in Contracts.

Usage Governs Contract, When. Where usage has prescribed the number of feet each cord of wood shall contain, such usage applies to and controls a contract, in the absence of an agreement or statute contrary thereto.

190. Dibble v. Hathaway, 18 N. Y. Sup. Ct. (11 Hun.) 571 (1874).

Branding of Containers.

"To Brand" Defined. "To brand," means the same as "to stamp," or "to mark."

Construction of Statutes. *Penal laws.* Penal statutes must be strictly construed. At the same time, they are to receive such construction by the courts as will render them effectual according to the intention of the legislature. Such result must be obtained without doing violence to the language employed by the legislature.

Meaning of words. A statute must be read and understood according to the natural and most obvious import of its language. No resort should be made to subtle or forced construction for the purpose of either limiting or extending the operation of the statute.

191. Hettenbach v. New York Central and Hudson River Railroad Co., 18 Hun. (25 Sup. Ct. Reports) 129 (1879).

Inspection and Test of Devices.

Scales of Railroad Not Subject to Test. Where a city's authority is limited by statute to the inspection and sealing of "vendor's" scales, a railroad company, not being a vendor, is not subject to such inspection and sealing. The sealer cannot recover for services rendered in inspecting such scales.

Municipal Ordinances, Enforcement of Restricted. If a city is empowered by statute to enforce its ordinances in a prescribed manner, the city cannot adopt any other method of enforcement.

192. People ex rel Gould v. City of Rochester, 45 Hun. 102, 52 Sup. Ct. Rep. 102 (1887).

Inspection and Test of Devices.

Validity of Ordinance. *Discretionary power of sealer.* An ordinance is reasonable and valid which confers upon sealers authority to inspect and examine apparatus "at least once in every six months, and as much oftener as he thinks proper."

Place of inspection. An ordinance is valid which gives a sealer authority to require merchants to deliver weights and measures found incorrect to such place in the city, as the sealer shall direct, for the purpose of being sealed.

Exhibiting Apparatus for Inspection and Test. A merchant is bound to exhibit his weights and measures to the sealer, as required by city ordinance.

193. Robinson v. Grannis, 33 N. Y. Supp. 291 (1895).

Weights and Measures in Contracts.

Cord of Stone Measured in the Wall, Cubic Feet. Where parties contract for the sale of building stone by the cord measured in the wall, both knowing that a cord of rough stone (128 cubic feet) makes only 99 cubic feet of masonry, the stone should be measured in the wall at the rate of 99 cubic feet per cord.

194. Ford v. N. Y. Central & Hudson River R. R. Co., 33 App. Div. 474, 53 N. Y. Supp. 764 (1897).

Inspection and Testing of Devices.

Municipal Authority. *Fees for unsolicited services of sealer.* In the absence of an express statutory provision, a city does not have power to require payment of fees for unsolicited services of sealers in inspecting weights and measures.[1]

Extent of municipal power. It is a general and undisputed proposition of law that a city possesses and can exercise the following powers, and no others: (1) Those granted by the legislature in express words; (2) Those necessarily or fairly implied in or incident to the powers expressly granted; and (3) those essential to the declared objects and purposes of the municipal corporation. Any fair and reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.

[1] *See also* Fausnaugh v. Rogers, 62 App. Div. 535, 71 N. Y. Supp. 125 (1901).

195. Ford v. Standard Oil Co., 32 App. Div. 596, 53 N. Y. Supp. 48 (1898).

Inspection of Oil by Sealer.

Excessive Fees. An ordinance relating to the inspection of oil by the sealer of weights and measures, which permits him to exact a fee of 8⅓ percent of the entire value of the oil inspected, and establishes no rules regulating his conduct, is unreasonable and oppressive.

196. City of New York v. Bruns, 23 N. Y. Misc. 635, 5 N. Y. Supp. 1120. (1898).

Delivery Tickets.

Failure to Deliver Tickets With Coal. A delivery ticket must accompany a delivery of coal, as required by statute. The fact that full weight is given is no defense. Failure to furnish the ticket is a violation of law.

197. City of Buffalo v. Collins Baking Co., 39 App. Div. 432, 57 N. Y. Supp. 347 (1899), affirming 24 Misc. 745, 53 N. Y. Supp. 968 (1898).

Standard Weight Bread Ordinance.

Invalidity of Ordinance. An ordinance providing that bread for sale shall be made into loaves weighing not less than 1½ pounds is in restraint of trade and is invalid, if there is a demand for one pound loaves.

198. City of New York v. Hewitt, 91 App. Div. 445, 86 N. Y. Supp. 832 (1904).

Use of False Weights and Measures.

Knowledge or Intent. Knowledge or intent need not be alleged or proved in prosecution brought under short-weight ordinance silent as to knowledge or intent. Proof of the use of a false weight is sufficient.

199. City of New York v. Biffle, 91 N. Y. Supp. 737 (1905).

Use of False Weights and Measures.

Mistake No Defense. Under short weight ordinance, silent as to knowledge or intent, a dealer is bound to use correct scales. If he uses incorrect ones, no matter for what reason, he is liable to the penalty which the law imposes. It is no defense that the scales inadvertently got out of balance. It is the dealer's business to see that the scales remain in balance and that correct accessories are used.

200. City of New York v. Marco, 58 Misc. 225, 109 N. Y. Supp. 58 (1908).

Short Weight Ordinance.

Municipal Authority. A short weight ordinance, passed pursuant to statutory authority, has the force of law, and is as obligatory as if it was enacted by the legislature.

Municipal and State Authority. A city ordinance, forbidding the sale of coal at a greater weight or measure than the true weight or measure thereof, does not conflict with a State law forbidding the sale of coal at less than 2,000 pounds to the ton. The ordinance is not invalid because it superadds a penalty for acts penalized by the State statute.

201. City of New York v. International Provision Co., 144 App. Div. 290, 129 N. Y. Supp. 212 (1911).

Use of False Weights or Measures.

Evidence Sufficient to Warrant Conviction. Proof that the scale or other apparatus in use is incorrect is sufficient to sustain a conviction, where the short weight statute is silent as to knowledge or intent. The intention of the defendant is immaterial.

Scale With Two Dials, One Being Inaccurate. It is no defense against prosecution for using false scales, that, though the dial facing the customer was inaccurate, the dial facing the salesman was accurate. It is not necessary to prove that short weight was given. Proof that the scale was incorrect will warrant conviction.

202. People v. Goldberg, 146 App. Div. 950, 131 N. Y. Supp. 481 (1911).

Short Weight Statute.

Delivery Not Proved. Where a statute penalizes the "delivery" of less than the quantity represented, an attempt to deliver will not warrant a conviction. If a transfer of the goods is not made, there is no delivery.

203. City of New York v. Frank, 143 App. Div. 587, 127 N. Y. Supp. 963 (1911).

Use of False Weights or Measures.

Evidence, Insufficient to Prove Use. Proving possession only of a false weight is insufficient to warrant a conviction under an ordinance merely prohibiting the use of incorrect apparatus.

204. City of New York v. Fredericks, 206 N. Y. 618, 100 N. E. 419 (1912), affirming 150 App. Div. 83, 134 N. Y. Supp. 796 (1912).

Packaged Commodities.

Inapplicability of Short Weight Ordinance to Packaged Goods. Short weight ordinance, requiring all provisions to be weighed or measured over tested and sealed scales or measures, does not apply to sales of goods by the can or jar. The ordinance relates solely to such articles as are customarily sold by weight or by measure. It does not prohibit sale of food in sealed packages.

205. People v. Sheffield Farms-Slauson-Decker Co., 206 N. Y. 79, 99 N. E. 181 (1912), affirming 149 App. Div. 923, 133 N. Y. Supp. 1138 (1912).

Short Weight.

Purpose of Statute. The purpose of a short weight statute is to enforce honest dealing by punishing fraud.

Single Misdemeanor Created. A statute forbidding the use of false weights, or the delivery of less quantity than represented, creates only one crime, not two. The statute punishes cheating, which may be committed in either or both of the two ways.[1]

Alleging Name of Injured Party in Indictment. By New York statute, where an intent to defraud constitutes part of a crime, it is not necessary to allege in the indictment or prove at the trial an intent to defraud any particular person.

[1] Violating such an act by doing one or all of the forbidden acts incurs only one penalty. *See* City of Chicago v. Hiltwein, Case No. 70, herein.

206. City of New York v. Wilkinson Bros. & Co., 151 App. Div. 660, 136 N. Y. Supp. 219 (1912), affirmed without opinion in 208 N. Y. 549, 101 N. E. 1098 (1912).

Sale of Twine by Gross Weight.

Short Weight Law Not Violated, When. A short weight ordinance does not prevent a vendor and vendee, in the absence of fraud or deception, or in the absence of any law forbidding sales by gross weight, from making a special contract for the sale of a commodity such as twine by gross weight. Such a sale is not in violation of the short weight law.

207. People v. Delaware, L. & W. Ry. Co., 81 Misc. 253, 143 N. Y. Supp. 159 (1913).

Delivery Tickets.

Sale by Wholesaler to Retailer. A statute forbidding the delivery of coal without a weight ticket requires the delivery of the ticket not only where a sale is made to the ultimate consumer, but also where it is made by a wholesaler to a retail dealer.

208. City of New York v. Sulzberger & Sons Co., 80 Misc. 660, 141 N. Y. Supp. 876 (1913).

Sale of Meat by Gross Weight.

Short Weight Law Not Violated, When. A vendor and vendee have a right to contract for the sale of meat by gross weight. In the absence of an express statutory prohibition of such sale, or of any fraud or deception, such a transaction is not in violation of the short weight law.

209. People v. Armour & Co., 176 App. Div. 161, 162 N. Y. Supp. 621 (1916).

Sale of Meat by Gross Weight.

Legality. A statute requiring meat to be sold by weight is not violated by selling bacon by gross weight to an informed and willing customer. Under such a statute the vendor may not be punished for including the wrapper.

Wrapper Constitutes "Container." The wrapper on bacon constitutes a "container" within the meaning of a statute stating that the term "container" includes wrapper.

Marking Requirements for Wrapped Meat. Wrapped bacon must be marked with its net weight as required by the package-marking statute. The statute specifically included a wrapper within the definition of a container.

210. Chemung Iron & Steel Co. v. Mersereau Metal Bed Co., 179 N. Y. Supp. 577 (1920).

Weights and Measures in Contracts.

Statutory Unit Governs Contracts, When. Where a sales contract calls for tons, the statutory ton of 2,000 pounds governs the contract, unless the parties otherwise agree.

211. Stoffregen v. N. Y. Dock Co., 187 N. Y. Supp. 61 (1921).

Public Weigher.

Liability for Theft of Goods. A weigher was not responsible for the theft of goods weighed by him and placed aside on a dock for pick-up by customer. There was no evidence to show that the weigher was under any obligation to care for the goods after he had weighed them.

212. Glanzer v. Shepard, 233 N. Y. 236, 35 N. E. 275 (1922), affirming 194 App. Div. 693, 186 N. Y. Supp. 88 (1921), which reversed 182 N. Y. Supp. 178 (1920).

Public Weigher.

Liability To Third Person for Weights Certified. A public weigher is liable for the weights certified to a third party who is not the one with whom he had immediate dealings.

Thus, where a public weigher was requested by the seller to weigh goods and furnish a weight certificate to the buyer who accepted and paid for the merchandise on the faith of the certificate, and the buyer later found that the weight certificate was erroneous, the weigher is liable to the buyer for any amount overpaid by reason of the incorrect certificate.

213. People v. Visconti, 234 N. Y. 165, 136 N. E. 330 (1922), affirming 201 App. Div. 863, 19 N. Y. Supp. 947 (1922).

Short Weight.

Payment for Commodity Not Necessary. It is immaterial whether or not goods alleged to be short in weight are paid for.

Proving Guilty Knowledge. Evidence showing that defendant delivered a commodity short in weight representing it to be full weight, and that he had the weighmaster's slip showing the lesser weight, was sufficient to prove that he knowingly delivered less than the quantity he represented.

Purpose of Statute. The purpose of a short weight statute is to enforce honest dealing by punishing fraud, and the protection of the public against false weight or measure.

Single Misdemeanor Created. A short weight statute forbidding the use of false weights and selling less than the quantity represented relates to a single misdemeanor which may be committed in either of the above two ways.

214. Abounader v. Strohmeyer & Arpe Co., 243 N. Y. 458, 154 N. E. 309 (1926), affirming 217 App. Div. 43, 215 N. Y. Supp. 702 (1926).

Sale of Misbranded Goods.

Right of Action by Ultimate Purchaser Against Manufacturer. Under package-marking statute, a retail merchant may recover damages from manufacturer whose sale of misbranded goods was not directly to the retailer. This is true even though the statute does not expressly give to an ultimate purchaser of falsely labeled containers a right of action against the manufacturer. In the absence of such express provision, the question becomes one of the intent of the legislature in passing the statute. Since the purpose of the package-marking statute is to protect the public from fraud and misrepresentation, it confers a right of action upon an ultimate purchaser against the manufacturer who failed in his duty to correctly label his product.

Recovery of Counsel Fees. The retailer may recover legal fees and expenses incurred by him in defending himself from prosecution, or threatened prosecution, for having falsely labeled goods in his possession.

215. Connelly v. Department of Agriculture and Markets et al, 162 Misc. 73, 293 N. Y. Supp. 711 (1937).

Licensed Weighmaster.

Decrease in Business Because of Solid Fuel Act. A solid fuel act, which requires a driver conveying coal into the State to proceed to the licensed weighmaster's scale nearest the border, cannot be attacked, as to constitutionality, by a licensed weighmaster whose business had decreased or ceased because of the unfavorable location of his scales. The statute in no way restricts or changes the rights or authority of the complaining weighmaster, but in regulating a business with which he is not directly connected or concerned, the statute does adversely affect his business. Because the complaining weighmaster is not directly affected by such statute, he cannot qualify as a party in interest, and therefore cannot raise the question of constitutionality under either the Federal or State constitutions.

Who May Plead the Unconstitutionality of a Law. It is a well-established general rule, applying in criminal as well as civil actions, that no one can plead the unconstitutionality of a law, except a person directly affected by the provisions thereof.

216. People v. Rueffer, 279 N. Y. 389, 18 N. E. 2d 633 (1939), affirming 168 Misc. 45, 6 N. Y. Supp. 2d 103 (1938).

Solid Fuel Act.

Applicability to Interstate Truckloads. A provision of a solid fuel act prescribing the manner in which vehicles should be marked is applicable to a retailer transporting coal by truck from another State for delivery direct to a consumer in the State. Such a provision is not in violation of the interstate commerce clause of the Federal Constitution. The statute remains effective until Congress occupies the field by contrary enactment.[1]

Constitutionality of Statute. *Depriving a person of trial by jury.* A solid fuel act which provides that a violation thereof shall be a misdemeanor and that certain courts shall have jurisdiction to try a prosecution without a jury, is constitutional, since the offense is merely a misdemeanor.

Burdening interstate commerce. A solid fuel act, applicable to coal coming into the State, and prescribing markings for all vehicles used in transporting coal, is a valid exercise of the police power of the State. The fact that interstate commerce is indirectly or incidentally involved or interfered with does not render the statute invalid.

[1] *See also* Rueffer v. Department of Agriculture & Markets, 279 N. Y. 16, 17 N. E. 2d 407 (1938), reversing 254 App. Div. 388, 5 N. Y. Supp. 2d. 778, which affirmed 166 Misc. 430, 2 N. Y. Supp. 2d. 545.

217. People v. Berman, 278 N. Y. 408, 16 N. E. 2d 384 (1938), affirming 254 App. Div. 98, 3 N. Y. Supp. 2d 946 (1938).

Short Weight.

"Delivery" Defined. Some short weight statutes penalize the "delivery" of less quantity than represented. "Delivery" is defined as a physical tender of possession by one person to another who accepts such possession. Payment for the goods is not necessary at the time of such delivery, but a delivery must be proved in order to warrant a conviction.

Delivery Not Proved. Evidence showing that the alleged short weight article was seized after weighing but before the dealer tendered possession to the customer, is insufficient to prove a delivery. Consequently, there could be no conviction under a statute penalizing the delivery of less quantity than represented.[1]

[1] *See also* People v. Rotter, 255 App. Div. 803, 7 N. Y. Supp. 270 (1938); People v. Kaminsky, 245 App. Div. 768, 280 N. Y. Supp. 900 (1935).

218. People v. Abruzzese, 278 N. Y. 411, 16 N. E. 2d 386 (1938), affirming 254 App. Div. 709, 3 N. Y. Supp. 2d 818 (1938).

Short Weight.

Delivery Proved. Evidence that an article, after being weighed and its weight stated, was handed to a customer who then reweighed it, is sufficient to prove a delivery under short weight statute, even though no money was paid.[1]

[1] *See also* People v. Ring, 278 N. Y. 413, 16 N. E. 2d 386 (1938), affirming 254 App. Div. 709, 3 N. Y. Supp. 2d 817 (1938).

219. People v. Capitol Fuels of Queens, Inc., 170 Misc. 769, 11 N. Y. Supp. 2d 26 (1939).

Delivery Tickets for Solid Fuel.

Effect of Law Requiring Use in Consecutive Order. A solid fuel provision in the Administrative Code of New York City, requiring that delivery tickets be serially numbered and used only in consecutive order, prohibits the use of two ticket machines, as the tickets must be used in consecutive order. For two machines to be lawfully used, the provision must be amended.

220. People v. Capitol Fuels of Queens, Inc., 170 Misc. 763, 11 N. Y. Supp. 2d 22 (1939), affirming 168 Misc. 912, 6 N. Y. Supp. 2d 243, affirmed in 281 N. Y. 728, 23 N. E. 2d 547.

Solid Fuel.

Constitutionality of Law. *Sale by ton or multiples thereof.* A provision of the Administrative Code of New York City requiring the sale of solid fuel in quantities of one ton or multiples thereof, is not an arbitrary interference with fundamental rights, and is constitutional.

Exemption of particular county. A solid fuel provision of the Administrative Code of New York City, which exempts a certain county from its operation is not discriminatory, and is constitutional. Such an exemption is within the discretion of the legislative authority.

221. People v. Mishkin et al, 170 Misc. 889, 11 N. Y. Supp. 2d 77 (1939), affirmed in 281 N. Y. 765, 24 N. E. 2d 22 (1939).

Solid Fuel.

Knowledge or Intent in Giving Short Weight. Knowledge or intent need not be alleged or proved in prosecution for giving short weight, brought under solid fuel provision of New York City code, the first part of which is silent as to knowledge or intent, though the word "knowingly" does appear in the second part.[1]

[1] See People v. Reynolds Corp., Case No. 225, holding that a defendant's guilt can be predicated upon either, or both parts of the provision, depending upon the facts.

222. Devito v. Moss, 170 Misc. 170, 9 N. Y. Supp. 2d 730 (1939).

Regulation of Ice by Standard Size or Weight.

Power of Administrative Officer. The Commissioner of Public Markets of the City of New York has power to prescribe standard sizes and weights for the sale of ice. He is authorized by statute to adopt any reasonable regulations to insure that the customer receives full value in the ordinary course of business.

Invalid Restriction on Sale of Ice. The action of the Commissioner of Public Markets of the City of New York, in limiting to ice cubes the size of ice to be sold by a particular licensed ice dealer, was invalid as an arbitrary discrimination among ice dealers.

223. People v. Masback Hardware Co., 175 Misc. 177, 22 N. Y. Supp. 2d 987 (1940).

Sale of Rope by Gross Weight.

Sales by Gross Weight Lawful, When. In the absence of any law prohibiting sales by gross weight, the sale of rope by gross weight is lawful, provided there is no misrepresentation as to weight which is in violation of short weight statute.

Misrepresentation of Weight. A misrepresentation occurred where the invoice merely stated the total weight of the rope and its price. The fact that the container delivered to the purchaser was properly marked as to gross and tare weight, raised a doubt in the court's mind whether or not the defendant should be found guilty. The defendant was found guilty so that an appeal could be taken to a higher court. However, the court suspended sentence because the matter was in the nature of a test case.

224. People v. Marcello, 25 N. Y. Supp. 2d 533 (1941).

Solid Fuel.

Certificate of Origin, Unconstitutionality of Ordinance. A provision of the Administrative Code of New York City requiring a certificate of origin for anthracite only, brought into the city by motor vehicle from outside the State, but excepting anthracite delivered in the city from places not more than five miles beyond the city boundaries, is unconstitutional for the following reasons:

1. The ordinance is capricious, arbitrary, discriminatory and is class legislation.
2. It violates the commerce clause of the Federal Constitution, and is not a valid inspection law.
3. It violates the principle that a person is presumed to be innocent until proven guilty.

225. People v. Reynolds Corp., 178 Misc. 138, 33 N. Y. Supp. 2d 314 (1942), affirmed in 289 N. Y. 598, 43 N. E. 2d 830 (1942).

Solid Fuel, Short Weight.

Liability of Corporation for Conversion by Agent. Where it is proved that an agent of a corporation had converted a part of a load of coal to his own use, a judgment of conviction for giving short weight was not sustained against the corporation.

Knowledge or Intent. Where the word "knowingly" appears in the second part of the penalty section of a solid fuel ordinance, and not in the first part, a defendant's guilt can be predicated upon either, or both, parts of the section, depending upon the facts.

226. Marquardt v. Castoro, 68 N. Y. Supp. 2d 327 (1947).

Solid Fuel.

Inapplicability of Law to Dealers, When. The solid fuel provisions of the New York City Administrative Code relating to delivery tickets, marking of trucks, and the weighing of coal at official scales are not

applicable to a dealer who transports his own coal, purchased in another State, in his own truck, to his own yard, for his own purposes. Such provisions are intended to protect the ultimate purchaser. They apply when a dealer sells and delivers coal directly to a consumer.

Constitutional Provisions. The provisions of the New York City Administrative Code requiring that anthracite be weighed on official scales, that certain information be marked on trucks, and that delivery tickets accompany loads, are constitutional as reasonable, necessary, and proper under the police power.

Unconstitutional Provision. A provision of a solid fuel ordinance requiring that anthracite brought into the City of New York by motor vehicle be accompanied by a certificate of origin, except that anthracite sold and delivered from yards outside of, but within 5 miles of the city, need not be accompanied by a certificate, is unconstitutional as discriminatory.

227. People v. Snyder, 274 App. Div. 371, 85 N. Y. Supp. 2d 281 (1948).

Solid Fuel.

Unsigned Certificate of Origin, Not a Forgery. A certificate of origin which is not signed is void on its face, and is not a subject of forgery.

NORTH CAROLINA

(See also Case US 7 herein)

228. City of Raleigh v. Sorrell, 46 N. C. 49 (1853).

Public Weighing Ordinance.

Constitutionality. An ordinance requiring that certain commodities be weighed by a public weighmaster before being sold, is constitutional, and does not restrain trade.

229. State of North Carolina v. Perry, 50 N. C. 252 (1858).

False Toll-dish.

Definition of False Toll-Dish. A "false toll-dish" is one measuring more than one-eighth of a half bushel.

Sufficient Proof of Keeping False Toll-Dishes. Evidence that a mill owner kept a measure containing 1/7th, and another 1/6th, of a half-bushel, though these were correctly marked, is sufficient to prove the keeping of false toll-dishes. A false toll-dish is one containing more than 1/8th of a half-bushel.

230. State of North Carolina v. Nixon, 50 N. C. 257 (1858).

Keeping of False Toll-Dish.

Insufficient Proof. Evidence that a mill owner took 1/6th part of each half-bushel of corn with a half-gallon toll-dish, is insufficient to prove the keeping of a false toll-dish, the half-gallon being the true measure of the toll-dish.

231. State of North Carolina v. Tyson, 111 N. C. 687, 16 S. E. 238 (1892).

Public Weighing Ordinance.

Constitutionality. An ordinance requiring that cotton, when bought or sold, be weighed by the public weigher for a fee, the buyer and seller each to pay one-half of the fee, is constitutional. Such an ordinance is reasonable and does not restrain trade.

Municipal Authority. A city has power, under statutory authority, to enact a public weighing ordinance.

Fees, Reasonableness. A reasonable fee for weighing for the public is not considered a tax. Charging a fee is a proper mode of providing for the compensation of the weigher, and the payment of any expenses incidental to regulating a market.

232. Sutton v. Phillips, 116 N. C. 502, 21 S. E. 968 (1895).

Penalties.

Recovery of Penalties by Private Persons, Constitutionality. It is well established that statutes permitting the recovery of penalties by private persons are constitutional. A statute permitting equal division of a penalty between weights and measures official and the school fund is not in conflict with the State Constitution which provides that the net proceeds from all penalties shall go to the school fund.

233. Nance v. Southern Railway, 149 N. C. 366, 63 S. E. 116 (1908).

Inspection and Testing of Devices.

Inapplicability of Statute to Railroads. Scales used by a railroad for weighing freight were not required to be inspected and tested by sealer. The weights and measures statute applied only to persons buying and selling by weights and measures.

234. North Carolina Cotton Co. v. Wilson, 159 N. C. 141, 74 S. E. 884 (1912).

Public Weighers.

Liability for Loss of Goods Weighed. A public weigher is not responsible for the loss or theft of goods set aside by him after weighing. Where a city ordinance did not make the weigher a bailee, the weigher's only duty is to weigh the goods brought to him for that purpose.

235. State of North Carolina v. Salisbury Ice & Fuel Co., 166 N. C. 366, 81 S. E. 737 (1914).

Short Weight.

Liability of Corporations. A corporation may be convicted of crimes involving a criminal intent [1] and may be held criminally liable for the acts of its agents in giving short weight.

Punishment of Corporations. Punishment of a corporation is by way of fine. The fact that the penalty provided for by statute is fine or imprisonment, or both, does not render the statute inapplicable to a corporation.

Method of Obtaining Evidence. Where a coal dealer ordered, in the name of a fictitious person, a ton of coal from a competitor, with a view to ascertaining whether the competitor was selling by short weight, the competitor cannot complain against the method employed to ascertain his guilt. If the coal is found short in weight, the defendant is guilty of a violation of law.

[1] *See also* Golden Guernsey Farms v. State of Indiana, 223 Ind. 606, 63 N. E. 2d 699 (1945).

236. Moose v. Barrett, 223 N. C. 524, 27 S. E. 2d 532 (1943).

Public Weigher.

Procedure for Collecting Compensation. A county cotton weigher could not recover compensation in an action of debt against the buyer of cotton. The statute required that every purchaser of baled cotton pay the weigher ten cents for every bale bought or weighed within the county, gave the weigher a lien on any cotton weighed by him or other person, and made a criminal offense any wilful and wanton failure to settle with or report to the weigher. All of the weigher's rights and remedies are statutory. Where a right is given and a specific remedy provided by statute, the remedy so provided must be pursued. The remedies provided by the statute are exclusive, and no other means for collection of compensation is created.

NORTH DAKOTA

(See Case US 9 herein)

OHIO

(See also Cases US 3, 7 and 11 herein)

237. Yeazill v. State of Ohio, 10 Ohio Cir. Dec. 794 (1898).

Standard Measure for Wheat.

State Authority. It is within the power of the legislature, in order to prevent fraud and imposition, to provide that in the purchase and sale of wheat, but one standard measure shall be used, and to select as that standard the United States standard half-bushel.

Discriminatory Statute. A statute requiring all persons, when purchasing wheat from the farmer, to use the standard half-bushel measure, is discriminatory. The farmer only is protected. All persons buying or selling wheat are entitled to the same protection of law. Since the statute is unequal and does not apply uniformly to all citizens of the State, it is unconstitutional.

238. Costello v. Henkel, 1 Sup. Ct. Dec. (Unrep.) 752 (1898).

Weights and Measures in Contracts.

Loosely Piled Stone, Volume of Cubic Yard. As used in a contract to purchase loosely piled stone, the term "cubic yard" means 27 cubic feet of stone regularly laid. When it appears that it would take a greater number of cubic feet of such loosely piled stone to make a cubic yard when regularly laid, such number is to be taken into consideration in computing the number of cubic yards of stone purchased.

239. Gates v. City of Cleveland, 18 Cir. Ct. 349 (1911).

Use of Unsealed Measures.

Municipal Authority. *Use of unsealed measures.* A city has power, under the general law, to make it an offense to expose for sale a commodity in an unsealed measure.

Use of unsealed receptacles not used as measures. A city does not have power, under the general law, to make it an offense to expose for sale a commodity in "a receptacle" not tested, marked or sealed by the city sealer, when such receptacle is not used as a measure.[1]

[1] *See also* State of Ohio v. Burns, 18 Cir. Ct. Rep. 526 (1911).

240. In Re Steube, 91 Ohio St. 135, 110 N. E. 250 (1914).

Method of Sale of Commodities.

Sale by Weight or Count, Invalidity of Statute. A statute requiring that food and other commodities be sold by weight or count, and not by measure, unless the contract of sale is in writing, or the articles are in sealed packages, is an unconstitutional invasion of the liberty to contract.

The right to use measures as a means of trade and commerce has been long established. To require the vendor and purchaser to enter into a written agreement each time a sale is made by measure conflicts with the right to make contracts.

Reasonableness of Police Laws. While it is within the power of the State to guard the public morals, the public safety and the public health, as well as promote the public convenience and the common good, yet in devising means for such purpose the provisions made must be reasonable. Legislation which places an unreasonable and burdensome obligation upon persons engaged in a lawful business is an unwarranted exercise of the police power.

241. Williams v. Sandles, 93 Ohio St. 92, 112 N. E. 206 (1915), writ of error dismissed in 245 U. S. 680, 38 S. Ct. 222, 62 L. Ed. 544 (1917).

Standard Measures.

Dimensions and Capacities Fixed, Validity. A statute prescribing the dimensions and capacities of dry measures is a valid and constitutional enactment.[1]

Federal and State Authority. Since the authority to prescribe a standard of weights and measures is not vested by the Federal Constitution exclusively in Congress, it is within the power of the legislatures of the several States to enact laws fixing and regulating standards of weights and measures in all respects in which Congress has not legislated upon the subject.[1]

Condemnation and Confiscation of False Weights and Measures. A statute authorizing the condemnation and confiscation of false weights or measures is within the police power of the State, and is constitutional.[1]

[1] See also Eppinger v. City of Cincinnati, 16 Nisi Prius 257 (1914).

242. City of Steubenville v. Bougher, 10 Ohio App. 178 (1916).

The Weights and Measures Official.

Removal of City Sealer. *Authority of mayor.* The authority to appoint and remove a city sealer rests in the mayor. Removal by the Director of Public Service is a usurpation of such power, and is void.

Application of civil service act. Where a city sealer has been appointed by the mayor, such sealer is subject to the rules of the civil service. He can only be suspended or removed in accordance with the provisions of the civil service act. He has the right to an explanation of any charge made against him, and to a trial in accordance with the further provisions of the act.

Removal because of shortage of funds. The civil service act does not authorize or permit the removal or suspension of a city sealer merely because no funds are available to pay his salary.

243. State of Ohio v. Minshall et al, 10 Ohio App. 86 (1917).

The Weights and Measures Official.

Tenure and Removal of Holdover City Sealer. The office of city sealer may be discontinued by a mayor by refusing to make an appointment and by removing the holdover appointee of a previous administration. No action is required by the city council. By statute, it is optional with the mayor whether or not there shall be a sealer, and the sealer's term of office is coextensive with that of the mayor who made the appointment.

Civil Service Status, Effect on Term of Office. A city sealer's term of office, which is coextensive with that of the mayor appointing him, is not extended by the fact that he passed a non-competitive civil service examination. A city sealer, as head of a principal department, is in the unclassified service. He is not subject to civil service examination.

244. Alion v. City of Toledo, 99 Ohio St. 416, 124 N. E. 237 (1919).

Standard-weight Bread Ordinance.

Constitutionality. A city ordinance fixing standard weights for bread loaves is constitutional and within the power of the city to enact.

245. State of Ohio v Weisberg, 74 Ohio App. 91, 55 N. E. 2d 870 (1943).

Short Weight.

Liability of Employer. A statute penalized "whoever, in buying or selling any property, or directing or permitting an employee so to do, makes or gives a false or short weight . . ." Under such a statute, an employer is liable for the acts of his employee in giving short weight irrespective of intent. The words "directing or permitting" refer to the phrase "buying or selling." Such words do not require the State to prove knowledge or intent on the part of an employer who has been charged with a violation of the statute because of the acts of one of his employees.

Sufficiency of Affidavit. All of the necessary elements of an offense must be alleged in the affidavit charging an offense. However, it is not necessary that the allegations be in the exact words of the statute.

Weight Ascertained From the Price Charged. In this case, the testimony showed that the weight of the alleged short weight article was ascertained from the price charged. There was no question raised, or ruling made by the court, concerning this method of determining the weight. Such method was assumed by all parties concerned to be proper and logical, and was accepted in evidence by the court.[1]

Misconduct of Prosecutor. A statement by a prosecutor in his opening argument to the jury that, "in these weight cases, if a person is going to overcharge, they overcharge them a little bit and put it on each customer," was held to be prejudicial error depriving the defendant of a fair trial, and not warranted by the evidence. Judgment of conviction was reversed and the case remanded to the lower court.

[1] *See also* Ex parte Marley, Case No. 47, and Great Atlantic and Pacific Tea Co. v. District of Columbia, Case No. 52, herein. In the latter case the court ruled that ascertaining the weight from the price charged was a proper method, and constituted a representation of weight.

OKLAHOMA

246. City of Oklahoma City v. Colt, 40 Okla. 202, 137 Pac. 359 (1913).

Public Weighing.

Municipal Authority. Under charter and statutory authority, the city of Oklahoma City has the power to install municipal scales and to appoint a city weighmaster.

City and County Weighers, Rights of Each to Weigh in the City. A city weighmaster has a right to weigh articles on the city scales without interference from the county weigher. The county weigher has the right to weigh, in the same city, products offered to him for such purpose.

247. Taylor v. Anderson, 40 Okla. 316, 137 Pac. 1183 (1914).

Weighmaster's Certificate as Conclusive Evidence.

Unconstitutionality of Statute. It is beyond the power of the legislature to make a weigher's certificate conclusive evidence of the weight of commodities weighed or reweighed by him. Such a statute is unconstitutional because it denies due process of law to the party sued, whether buyer or seller. "A law which closes a person's mouth absolutely when he comes into court is the same, in effect, as the law which deprives him of his day in court."

248. Inland Compress Co. v. Lee, 47 Okla. 101, 147 Pac. 775 (1915).

Public Weigher Statute.

Rights of Private Weighers. A compress company is not prohibited by the public weigher statute from weighing without charge cotton brought to it for compressing. The company may charge the purchaser or owner of the cotton a storage fee, when such charge is in good faith, and not for the purpose of obtaining cotton to weigh, or otherwise to compete with the public weigher. An injunction will not be allowed at the instance of the county weigher to prevent such weighing by the company.

249. Oklahoma Hay and Grain Co. v. Randall & Co., 66 Okla. 277, 168 Pac. 1012 (1917).

Weighmaster's Certificate.

Admissibility in Evidence. In controversy between shipper and weighing association as to correctness of weights, weight tickets are not admissible in evidence unless they are identified and verified by competent testimony.

250. Lockhart v. Anderson, 62 Okla. 209, 162 Pac. 946 (1917).

Compelling Public Weighing at Compresses.

Unconstitutionality of Statute. A statute compelling the county weigher to weigh all cotton at compresses before it is compressed, and requiring the purchaser to pay a weighing fee, is not within the police power of the State and is unconstitutional. It interferes with the right to contract. It denies the equal protection of the law. And it deprives the purchaser of his property without due process of law.

251. Snyder Cooperative Association v. Brown, 70 Okla. 13, 172 Pac. 789 (1918).

Public Weighing by Dealer in Cotton.

Liability to Public Weigher for Damages. Dealers or speculators in cotton are prohibited by statute from weighing cotton for the public and charging a fee therefor. A dealer advertised in various ways that he weighed cotton for the public without charge. However, the dealer charged ten cents per bale for insurance. This charge for insurance was held to be a subterfuge by means of which a weighing fee was collected, and constituted a violation of law, rendering the dealer civilly liable to the county weigher for the penalty provided by the statute.

252. Interstate Compress Co. v. Colley, 88 Okla. 42, 211 Pac. 413 (1922).

Holding One's Self Out As Public Weigher.

Public Weigher Statute Not Violated, When. In order for a county weigher to collect a penalty from a private weigher for holding himself out as a public weigher or deputy, in violation of statute, it must be proved that the private weigher held himself out as the "official" public weigher or deputy.

253. Hollis v. Adams Gin Co., 115 Okla. 25, 241 Pac. 744 (1925).

Public Weigher Statute.

Right of Cotton Gins to Weigh Cotton. Under the public weigher statute and its amendment of 1919, a gin company may weigh on its own scales cotton bought and sold by it. Such cotton need not be weighed by the county weigher.

OREGON

(See also Case US 13 herein)

254. McLaughlin v. Helegerson, 116 Oreg. 310, 241 Pac. 50 (1926).

Picking of Hops.

Determining Quantity by Weight Only, Constitutionality. A statute requiring the quantity of hops picked to be ascertained by weight only, for the purpose of determining the compensation of pickers, is a valid exercise of the police power, and is constitutional. Such a statute does not interfere with freedom to contract.

Wisdom of Police Regulations. Whether the legislature acted wisely or not in the passage of legislation, is a matter over which the courts have no control or concern.

Statutes. *Title of amending act, sufficiency of.* It is only necessary under the State constitution,[1] that the title of an amendatory act refer to special sections of the act to be amended. It is not necessary to indicate the subject matter of the section to be amended. Under such a title, any legislation is proper which could have been included in the original act.

Comprehensiveness of title. The title of the original weights and measures act read, in part, as follows: "An act relating to weights and measures . . . providing a standard size hop measure for picking purposes; providing a penalty," etc. Such a title does not violate the State Constitution.[1] Notwithstanding the provision in the title, "providing a standard size hop measure for picking purposes," the title is sufficiently comprehensive to permit amendatory legislation requiring that the quantity of hops picked shall be determined by weight only.

[1] Art. IV, Sec. 20, providing as follows: "Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title."

255. State of Oregon v. Sommer, 71 Oreg. 206, 142 Pac. 759 (1914).

Indictment or Complaint.

Sufficiency of. An indictment is sufficient if it alleges the offense in the language of the statute creating the offense, or sets forth all of the necessary elements of the crime, though not in the words of the statute.

PENNSYLVANIA

(See also Cases US 3 and 7 herein)

256. Evans v. Myers, 25 Pa. 114 (1855).

Weights and Measures in Contracts.

Statutory Unit. *Governs contracts, when.* Where parties contract for the sale of goods by a unit of weight or measure, such as a ton, which is undefined by the contract, but fixed by statute, the statutory unit governs the contract.[1]

Custom non-controlling, when. The statutory unit of weight or measure governs contracts, unless the parties otherwise agree. Proof of a custom opposed to the statute is inadmissible in evidence.[1]

[1] *See also* Weaver v. Fegely, Case No. 257, herein, and The Farmer's High School v. Potter, 43 Pa. 134 (1862); Godcharles v. Wigeman, 113 Pa. 431 (1886); Harrison, Frazier & Co. v. Mora, Ona & Co., 8 Pa. C. C. Rep. 224 (1890).

257. Weaver v. Fegely, 29 Pa. 27 (1857).

Weights and Measures in Contracts.

Statutory Unit Governs Contracts, When. Where goods are sold by a unit of weight or measure, such as a ton, which is undefined in the contract, but fixed by statute, the statutory unit governs the contract.[1]

Federal and State Authority in Regulating Weights and Measures. The power given to the Congress by the Federal Constitution to fix the standard of weights and measures does not extinguish the right of the States over the same subject. Until Congress exercises its power, the States may regulate weights and measures for themselves.

[1] *See also* Evans v. Myers, Case No. 256, herein.

258. Phillips v. Allen, 41 Pa. 481 (1862).

Forfeiture of Containers.

Municipal Authority. A city does not have power to authorize the seizure and forfeiture of unmarked containers and contents, unless such authority is expressly given to the city by the State legislature.

259. Forsyth v. North American Oil Co., 53 Pa. 168 (1866).

Weights and Measures in Contracts.

Statutory Unit Non-Controlling, When. The statutory unit of weight or measure does not govern a contract which shows on its face that the parties intended a sale by a unit different than that fixed by the statute.

260. O'Maley v. Borough of Freeport, 96 Pa. 24 (1880).

Public Weighing Ordinance.

Municipal Authority. A city, under a statute conferring upon it all powers necessary "for the well ordering and better government of said borough," has power to enact a public weighing ordinance.

Validity of Ordinance. An ordinance requiring coal sold in the city to be weighed for a fee on the public scales is reasonable and constitutional.

Validity of Fee Provisions. A fee which merely covers the expense of weighing coal on the public scales, is reasonable and is not a tax.

261. Godwin v. City Council of Bradford, 248 Pa. 435, 94 Atl. 139 (1915).

The Weights and Measures Official.

Minimum Salary Fixed in Certain Counties, Constitutionality. A statute requiring appointment of inspectors of weights and measures in certain classes of cities and in counties, and which fixes a minimum salary in counties having a population of over 15,000, is constitutional. The act is not a local law. The classification based upon the population of counties is reasonable and valid. A reasonable classification of counties, on the basis of population, has always been sustained, where those with less than the stipulated population have been enabled to come within the provisions of the legislation when their population has increased to the stated minimum.

Salary. *Compelling payment of.* When the appointment of a city inspector has been duly made by the mayor, it is the duty of the city council, under statute, to fix his salary by ordinance and appropriate the money. The council may be compelled by mandamus [1] to perform this duty.

Insufficient funds for payment of. It is immaterial that there is no money in the treasury from which an appropriation can be made. The city has the right to raise the needed funds by taxation.

Character of Office. The office of city inspector of weights and measures is a municipal office. The mere fact that the inspector must report to the State does not change his status.

[1] For definition of mandamus, see Case No. 107, herein.

262. Commonwealth of Pennsylvania v. Hoyt, 254 Pa. 45, 98 Atl. 782 (1916).

The Weights and Measures Official.

Character of Office. The office of inspector of weights and measures is a constitutional one, within the meaning of Art. VI, Sec. 4 of the Constitution of Pennsylvania, providing that "appointed officers * * * may be removed at the pleasure of the power by which they shall have been appointed."

Removal From Office. A county inspector of weights and measures, under the State Constitution, may be removed at the pleasure of the power which appointed him without cause being shown for such removal. The Act of July 24, 1913, P. L. 960, insofar as it provides that inspectors cannot be removed except for the causes specified in the act, violates the Constitution of Pennsylvania and is void.[1]

[1] *See also* Commonwealth of Pennsylvania v. Leary, 63 Pa. Super. 434 (1916).

263. Pfeifly v. Henry, 269 Pa. 533, 112 Atl. 768 (1921).

Libel or Slander.

Charging Merchant With Use of False Weights or Measures. A statement that a merchant either gave short weight or measure or that he tampered with his scale may constitute libel or slander.

264. Nowling v. Newell, 65 Pa. Super. 67 (1916).

The Weights and Measures Official.

Right to Salary. A city inspector of weights and measures, who accepted an appointment without his salary having been fixed by ordinance, was not entitled to receive any salary until an ordinance was enacted for that purpose and an appropriation made.

Compelling Payment of Salary. The right to receive salary may be enforced by a writ of mandamus.[1]

[1] For definition of mandamus, see Case No. 107 herein.

265. Murphy v. Atlantic Refining Co., 74 Pa. Super. 166 (1920).

Regulation of Weights and Measures.

Effect of General State Statute. The State, in creating a uniform and mandatory state-wide system for the weighing and measuring of all commodities, repealed any local statutes, or city ordinances, in conflict therewith.

266. Commonwealth of Pennsylvania v. Cohen, 103 Pa. Super. 496, 157 Atl. 216 (1931).

Short Weight.

Evidence. *Proving accuracy of method used in reweighing.* The method used in reweighing a commodity can be established by any competent evidence. The scales used need not be tested by an official sealer. The testimony of various qualified witnesses as to methods used and tests applied is legally competent.

Exclusion of character evidence. Evidence concerning the good character and general reputation of the defendant was properly excluded in short weight prosecution brought under a statute not making knowledge or intent an element of the offense.

Admissibility of character evidence. Where intent is a necessary element of a crime, evidence of the defendant's previous good reputation is admissible.

Knowledge or Intent. Knowledge or intent need not be alleged or proved in prosecution brought under short weight statute silent as to knowledge or intent.

267. Domestic Fuel Co. v. Thomas, 318 Pa. 320, 178 Atl. 477 (1935).

Weighing of Coal.

Municipal Authority. A city of the third class has statutory authority to pass an ordinance regulating the weighing of coal sold in the city.

Constitutionality of Ordinance as Applied to Non-Resident Dealers. An ordinance requiring all coal delivered in the city to be weighed by a licensed weighmaster, but not providing for city scales or weighmasters, is constitutional as applied to outside dealers. The ordinance does not deprive non-resident mine owners or truckers, having no scales in the city, of equal protection of the law where privately owned weighing facilities are available in the city at moderate charge.

268. Commonwealth of Pennsylvania v. Great Atlantic and Pacific Tea Co., 35 D. & C.[1] 288 (1938).

Method of Sale of Commodities.

Sale of Chickens by Numerical Count. Chickens could be sold by numerical count under statute providing that dry commodities shall be sold by weight, dry measure, or numerical count.[2]

[1] District and County Reports.

[2] The statute has been amended and now requires poultry and meat to be sold by weight only. (76 P. S. 242).

269. Carolene v. Harter, 329 Pa. 49, 197 Atl. 627 (1938).

Standardized Sizes or Weights.

Filled Milk, Size of Cans Limited. A statute limiting the size of cans for the sale of skimmed milk to five pounds, or over, with the object of preventing the sale of filled milk for use as a diet for infants, is a reasonable exercise of the police power, and is constitutional. The statute is not dis-

criminatory because other products containing skimmed milk or cocoanut oil are not so regulated. The fact that the product is wholesome is immaterial.

270. Phillipsburg Supply Co. v. Morrison, 27 North. 271 (1940).

Regulation of Coal Dealers.

Validity of Ordinance Licensing Outside Dealers. A solid fuel ordinance requiring the payment of a license fee of $100.00 by outside coal dealers doing business within the city is a valid exercise of the police power and is constitutional. The amount of the license fee is not unreasonable.

Municipal Authority. Cities of the third class have statutory authority to pass ordinances regulating the sale, delivery, and weighing of coal.

Reasonableness of License Fee. The imposition of a license fee will not be declared invalid when plainly intended as a police regulation. The revenue derived therefrom must not be wholly out of proportion to the expenses of the municipality in issuing licenses and regulating the business licensed. Requiring coal dealers to pay a license fee of $100.00 is not unreasonable.

271. Dunkle v. County of Perry, 41 D. & C.[1] 89 (1941).

The Weights and Measures Official.

Diminishing Statutory Salary by Contract. *General rule.* The amount fixed by statute, to be paid a public officer for services rendered by him in connection with his office, cannot be diminished by contract. Such a contract is against public policy and is void.

Expenses not part of salary. Under a statute fixing the minimum salary of sealers, and authorizing payment of expenses incurred in performance of duties, the expenses are considered a part of the compensation. A county sealer's agreement with the appointing power to perform his duties at the statutory minimum salary, said salary to include all expenses incident to his office, is a contract to pay the expenses out of his salary and thereby accept compensation less than that fixed by law. The contract is void as against public policy, and the sealer is entitled to be reimbursed for expenses paid by him.

Expenses. *Failure to render periodical bills.* The failure of a county sealer to render bills for his expenses periodically during his term of office does not defeat his right to recover such expenses.

Improperly itemized bill. A county sealer is required by statute to render itemized and properly sworn bills for his expenses. A bill reciting only the amount of the expenses incurred or paid each month, together with the annual total, is insufficient, and payment and cannot be allowed.

[1] District and County Reports.

272. Commonwealth of Pennsylvania v. Kuhn, 90 Pitts. L. Jour. 585 (1942).

Solid Fuel Act.

Improper Weight Certificate. By statute, the sale and delivery of coal must be accompanied by a weight certificate issued by a licensed weighmaster. A weight certificate of the coal company does not meet the statutory requirements.

273. Commonwealth of Pennsylvania v. Snyder, 44 D. & C.[1] 264 (1942).

Coal Passing Through County.

Inapplicability of Solid Fuel Act. Where a solid fuel act prohibits the sale, delivery, or starting out for delivery of solid fuel without an accompanying weight certificate, no violation thereof can occur in a county through which a loaded coal truck merely passes.

[1] District and County Reports.

274. Commonwealth of Pennsylvania v. Clodoveo, 47 D. & C.[1] 329 (1944).

Standard Containers.

Inapplicability of Bushel Weight Statute. The bushel weight statute exempted from its provisions fruits and vegetables sold in approved containers or measures which are the original unbroken containers or measures filled in accordance with good commercial practice.

Loosely grown cabbages sold in bushel basket containers, which had stamped thereon the stamp of the United States Government, were declared by the court to be exempt from bushel weight requirements. These cabbages, being loosely grown, weighed substantially less than 50 pounds per bushel, as provided by the bushel weight statute, but the baskets were filled in accordance with good commercial practice, as required.

[1] District and County Reports.

275. Commonwealth of Pennsylvania v. Chalfant, 156 Pa. Super. 307, 40 Atl. 2d 153 (1944).

Solid Fuel Act.

Weight Ticket, Issuance Requirements at Yards. Under the solid fuels act, all deliveries of coal must be accompanied by an official weight certificate. When a buyer purchases coal at the dealer's yards, and removes it in his own vehicle, a delivery occurs, and he must be given an official weight certificate.

Delivery Defined. "Delivery" as used in the solid fuel act, means the transfer of physical control over solid fuel from the seller to the buyer, regardless of the place at which the transfer occurs. If a customer purchases fuel at the dealer's yards and transports his fuel in his own truck, a delivery occurs at the yards.

276. Commonwealth of Pennsylvania v. Heyd & Co., 352 Pa. 194, 42 Atl. 2d 621 (1945), reversing 156 Pa. Super. 428, 41 Atl. 2d 63 (1945).

Short Weight.

Insufficient Evidence To Sustain Conviction. A wholesaler who sells to a distributor a commodity (such as butter) in a lot made up of individual packages, cannot be held in violation of short weight statute solely on the evidence of shortages in individual packages. There must be proof that the whole lot was short in weight, in order to sustain a conviction of the wholesaler.

Construction of Penal Statutes. A penal law is to be strictly construed by the courts, but it need not be given its narrowest meaning if the plain intention of the legislature is otherwise.

277. Otto Milk Co. v. City of Washington, 363 Pa. 243, 69 Atl. 2d 399 (1949).

Milk Bottles.

Paper Containers as Bottles. Paper milk containers are "bottles" within the meaning of resolutions of board of health requiring use of "bottles" for milk.

Construing the Meaning of Words in Statutes. Words and phrases in a city ordinance should be construed according to rules of grammar and according to their common and approved usage.

SOUTH CAROLINA

278. City of Charleston v. Rogers, 13 S. C. L. (2 M'Cord) 485 (1823).

Public Weighing or Measuring.

Validity of Fee Provision. An ordinance requiring coal to be measured by the city inspector before sale, and authorizing the charging of a reasonable fee for the service, is constitutional. Such a fee, as applied to imported coal, does not tax or burden interstate commerce.

279. Barfield v. Stevens Mercantile Co., 85 S. C. 186, 67 S. E. 158 (1910).

Public Weighing Statute.

Invalid as Special Legislation. A State law providing for a public cotton weigher at certain places only is invalid as a special law. Such a statute makes private weighing unlawful in one place, but lawful in other similar markets. It is in violation of the State Constitution which forbids the enactment of a special law where a general one can be made applicable.

280. Weatherly v. Marlboro Warehouse Co., 167 S. C. 68, 165 S. E. 790 (1932).

Public Weighing

Rights of Private Weighers. In the absence of a mandatory provision in a public weighing statute, weighing may be done by private weighers. The public weigher has no right to collect a weighing fee for goods weighed by a private weigher.

281. O'Neal v. Manhattan Produce Exchange, 176 S. C. 228, 180 S. E. 25 (1935).

Weights and Measures in Contracts.

Statutory Unit Governs, When. A contract for the sale of goods by a unit of weight or measure is governed by the statutory unit, unless the parties otherwise agree.

Bushel Weights. The words "per standard bushel, hamper, or basket tight and freely clear of basket," as used in contract, mean that the contract called for standard weight of 48 pounds per bushel of cucumbers as provided by statute.

282. Hay Cotton Co. v. McLeod, 185 S. C. 127, 193 S. E. 438 (1937).

Public Weigher.

Responsibility for Loss or Theft. *Actual redelivery.* When cotton is placed aside on the platform after weighing, and the purchaser who requested the weighing takes a sample and the weight tag therefrom, an actual redelivery from the weigher to the purchaser occurs. The public weigher is not responsible for the theft of the cotton thereafter.

Constructive redelivery. When cotton, after being weighed by public weigher, is placed aside on his platform with other cotton belonging to the purchaser who requested the weighing, a constructive redelivery from the weigher to the purchaser occurs. The public weigher is not responsible for the theft of the cotton thereafter.

TENNESSEE

(See also Case US 7 herein)

283. Mays v. Jennings, 23 Tenn. 102 (1843).

Weights and Measures in Contracts.

Statutory Unit. *Governs contracts, when.* The statutory unit of weight or measure governs contracts for the sale of goods so regulated, unless the parties otherwise agree.

Custom non-controlling, when. Proof of a neighborhood custom cannot alter the law. The statutory unit governs contracts for the sale of goods by such unit.

Quantity of Corn in a Barrel. A barrel, dry measure, is by law fixed at five bushels, and not at 260 pounds. If a contract is made for so many barrels of corn, the purchaser is entitled to receive it by the bushel, unless he contracts otherwise. Proof of a neighborhood practice cannot alter the law.

284. State of Tennessee v. Woodson, 24 Tenn. 55 (1844).

Indictment for Short Weight.

Alleging "Divers Persons." An indictment for selling by false weights and measures must specify the person to whom the sale was made. It is too indefinite and insufficient in a criminal offense to charge that the defendant sold to "divers persons."

285. Gass and Vestal v. City of Greenville, 36 Tenn. 61 (1856).

Public Weighing Ordinance.

Inapplicability to Sales Made Outside City. A public weighing ordinance cannot apply to commodities bought and paid for outside the city and hauled by the owner to his place of business in the city.

Municipal Authority. The by-laws of a city are binding upon its own members and those persons within its jurisdiction. Persons coming voluntarily within the jurisdiction of a city and offering goods for sale there, are subject to municipal regulations passed for the benefit and protection of city residents.

286. State of Tennessee v. Cooperative Store Co., 123 Tenn. 399, 131 S. W. 867 (1910).

Standard-Weight Packages.

Constitutionality of Statute. A statute fixing standard weights for packages of cornmeal is a valid exercise of the police power and is constitutional. Such a statute does not deprive a person of his right to contract.

287. Rugg v. State of Tennessee, 141 Tenn. 362, 210 S. W. 630 (1918).

Short Weight or Measure.

Sufficiency of Indictment. *Allegation of intent.* If a statute makes intent to defraud an element of the offense of using false weights or measures, such intent must be alleged in the indictment. Failure to so allege renders the indictment subject to dismissal.

Alleging name of injured party. An indictment must allege the name of the person or persons to whom the alleged short weight sale or sales were made. If the indictment fails to do this, it will be dismissed as being too vague and indefinite.

TEXAS

288. Johnson v. Martin, Wise and Fitzhugh, 75 Tex. 33, 12 S. W. 321 (1889).

Public Weigher Statute.

Constitutionality of Election Provision. A public weigher statute, conferring upon the Commissioners Courts of counties, the discretionary authority to create the office of public weigher by ordering an election therefor, is constitutional. Giving to the Commissioners Courts the discretion of ordering elections is not a delegation of legislative power, nor is it unconstitutional.

Title of Statutes, and Singleness of Subject Matter. The constitutional provision, "that a bill shall not contain more than one subject, which shall be expressed in its title," requires only the general or ultimate object of the law to be stated in the title, and not the details by which the object is to be attained.

289. Sacks v. State of Texas, 83 Tex. Cr. R. 560, 204 S. W. 430 (1918).

Cord of Wood.

Measurement, Customary and Alternate. Although the customary measurement for a cord of wood is a pile eight feet long, four feet high, and four feet wide, it is not necessary that the required volume of 128 cubic feet be restricted to these dimensions. Any other measurement or pile that contains a full cord would be sufficient.

290. Ex parte Humphrey, 92 Tex. Cr. R. 502, 244 S. W. 822 (1922).

Tolerances for Packaged Commodities.

Mandatory Effect of Permissive Statute. A package-marking statute provided that reasonable variations "may" be permitted, and

tolerances and exemptions allowed under such rules and regulations as "may" be made by a designated administrative officer. Though the permissive word "may" was used in the statute, the court held that the authority conferred upon the officer was mandatory, and that he must prescribe variations and tolerances.

"May" Means Must, When. The rule is universally established in the courts of common law that the word "may" in a statute will be construed by the courts to mean must whenever third persons, or the public, have an interest in having the act done.

291. Overt v. State of Texas, 97 Tex. Cr. R. 202, 260 S. W. 856 (1924).

Package-marking Statute.

Unconstitutional for Lack of Tolerance Provision. A statute which required the net-content marking of packages of all commodities, and made no provision for variations and tolerances, was declared to be harsh and oppressive, unenforceable, and unconstitutional.[1]

[1] *See also* Ex parte Lysaght, 97 Tex. Cr. R. 244, 260 S. W. 860 (1924). *Contra:* City of Seattle v. Goldsmith, see Case No. 299, herein.

292. McCraw v. Sewell, 20 S. W. 2d 235 (Civ. App. Waco 1929).

Public Weigher Statute.

Rights of Private Weighers. *Warehouseman.* Under the public weigher statute,[1] a warehouseman has the right to weigh cotton or other commodities accepted for storage, though there is a duly elected and qualified public weigher in the precinct, and though the law [2] requires factors and commission merchants to employ a public weigher.[3]

Other private citizens. A private citizen can engage in the occupation of public weigher as defined by the public weigher statute,[1] though there is a duly elected and qualified public weigher within the precinct. The provision [2] which makes it unlawful for any factor, commission merchant, "or other person" to employ other than a public weigher in the city or precinct having a public weigher, applies only to factors and commission merchants or other persons engaged in a like business. It does not apply to other private individuals.[4]

[1] Art. 5680, Rev. St. 1925.

[2] Art. 5703, Rev. St. 1925.

[3] *See also* Whitfield v. Terrell Compress Co., 26 Tex. Civ. App. 235, 62 S. W. 116 (1901); Galt v. Holder, 32 Tex. Civ. App. 564, 75 S. W. 568 (1903); Hedgepeth v. Hamilton Warehouse Co., 104 Tex. 496, 140 S. W. 1084 (1911).

[4] *See also* Watts and Weidemeyer v. State of Texas, 61 Tex. 184 (1884); Ex parte Hunter, 34 Tex. Cr. R. 114, 29 S. W. 482 (1895); Martin v. Johnson, 11 Tex. Civ. App. 628, 33 S. W. 306 (1895); Smith v. Wilson, 18 Tex. Civ. App. 24, 44 S. W. 556 (1898); Whitfield v. Terrell Compress Co., 26 Tex. Civ. App. 235, 62 S. W. 116 (1901); Galt v. Holder, 32 Tex. Civ. App. 564, 75 S. W. 568 (1903); Davis v. McInnis, 35 Tex. Civ. App. 594, 81 S. W. 75 (1904); Gray v. Eleazer, 43 Tex. Civ. App. 417, 94 S. W. 911 (1906); Hedgepeth v. Hamilton Warehouse Co., 104 Tex. 496, 140 S. W. 1084 (1911), affirming 128 S. W. 709; Paschal v. Inman, 106 Tex. 128, 157 S. W. 1158 (1913), affirming 151 S. W. 569 (1912), and disapproving Perry v. Carlisle, 151 S. W. 1155 (1912); Martin v. Foy, 234 S. W. 698 (1921). *Contra:* Davidson v. Sadler, 23 Tex. Civ. App. 600, 57 S. W. 54 (1900).

293. Smith v. State of Texas, 135 Tex. Cr. R. 488, 121 S. W. 2d 347 (1938).

Use of False Weights and Measures.

Mistake of Fact as a Defense. A conviction for using false scales was not sustained, where the evidence showed that the accused used the scales under a mistake of fact not arising from a want of proper care.

294. Gandy v. State of Texas, 139 Tex. Cr. R. 140, 139 S. W. 2d 275 (1940).

Short Weight.

Liability of Employer. Under short weight statute, an employer is liable for the act of his employee in giving false weight, although the employer is not present when the illegal sale is made.

Establishing Identity of Defendant. A conviction for violating the weights and measures law at a place of business allegedly operated by accused under a trade-name, will be reversed if there is a failure to establish, by direct evidence, the identity of the accused with the person who operated the business under a trade-name.

295. City of Dallas v. Taystee Baking Co., 163 S. W. 2d 687 (Civ. App. 1942).

Standard-weight Bread Law.

Tolerances in Excess. A State standard-weight bread statute and a like city ordinance, both providing that the variance in the weight of a loaf of bread shall not exceed one ounce per pound, over or under the legal standard within 24 hours after baking, are reasonable and constitutional.

State Authority. The State legislature has the authority to enact a statute regulating and prescribing the weight of loaves of bread.

Police Regulations. *Wisdom.* In determining whether statutes or ordinances are unreasonable, a court is not concerned with their wisdom or want of wisdom, nor with the burden required to comply therewith.

Hardship. When the subject lies within the police power of the State, debatable questions as to reasonableness are not for the courts, but for the legislature to decide. The action of the legislature within its range of discretion cannot be set aside because compliance is burdensome.

296. Culpepper v. State of Texas, 146 Tex. Cr. R. 188, 172 S. W. 2d 697 (1943).

Short Weight.

Jurisdiction of Courts. Since the short weight statute allowed a possible fine of no more than $100.00 for the first offense, the jurisdiction was in the County or Justice Court and not in the Criminal District Court.

Persons Liable Under False Weight Statute. The statute relating to false weights and measures includes all persons who may have had any connection with the act forbidden thereby. The act provides for the prosecution of the agent, as well as the person for whom the agent is working. The mere fact that the agent may have been required by the principal to perform the criminal act does not prevent the agent from being liable therefor.

VERMONT

297. State of Vermont v. Gladstone, 112 Vt. 233, 22 Atl. 2d 490 (1941).

Tolerances and Rules.

Judicial Notice of. The court will take judicial notice of tolerances and rules and regulations promulgated by an administrative officer under statutory authority, since such tolerances and rules must be given the force of law.

WASHINGTON

298. Barnard & Co. v. County of Wahkiakum, 7 Wash. 210, 34 Pac. 920 (1893).

Standards.

Procuring. Under a statute authorizing each county auditor to procure for and at the expense of his county, a full set of weights and measures, the county is liable for the cost of such weights and measures. This is true even though the county commissioners may not have authorized, nor subsequently ratified, the purchase.

299. City of Seattle v. Goldsmith, 73 Wash. 54, 131 Pac. 456 (1913).

Package-marking Ordinance.

Constitutional Though Lacking Tolerance Provisions. An ordinance is valid which requires the true net weight or measure to be marked on containers, but fails to make allowances for loss of weight by evaporation. Under such an ordinance the loss merely falls upon the packer instead of the consumer.[1]

Municipal Authority. *Police power to regulate weights and measures.* It is within the general police power of a city, under the State statutes and Constitution, to legislate upon the subject of weights and measures.

Implied power to enact package-marking ordinance. The power to require the true weight or measure to be marked on containers is implied in, and incident to, the statutory power conferred on cities "to provide for the weighing, measuring, and inspection of all articles of food and drink."

Scope of Police Power. Laws providing for the detection and prevention of imposition and fraud in the sale and purchase of food and other commodities are as much within the general police power as the regulation of public health, safety, and welfare.

[1] *Contra*: Overt v. State, see Case No. 291, herein.

300. City of Spokane v. Arnold, 73 Wash. 256, 131 Pac. 815 (1913).

Standardized Weights and Sizes.

Applicability of Package-Marking Requirements. An ordinance requiring the sale of a given food item, such as butter, by a standard weight, and requiring also that packaged goods be marked with gross and tare or net weight, does not forbid the sale of the given item in weights other than the standard weight—provided that the non-standard packages are properly labeled. The standard weight would apply only to unlabeled packages of such food item.

301. City of Seattle v. Yocum, 94 Wash. 194, 162 Pac. 56 (1917).

Sale by Gross Weight.

Applicability of Short-Weight and Package-Marking Laws. Two parties may contract, without deception, for the exchange by gross weight of a commodity such as wrapped meat, under a short-weight ordinance which includes net-weight marking requirements. The ordinance is not violated by such a transaction unless the ordinance expressly or impliedly prohibits the making of special contracts. The power to make a special contract between the vendor and vendee will not be denied by the courts, unless plainly prohibited by the statute or ordinance involved.

302. Tacoma Bread Co. v. Mankertz, 186 Wash. 302, 57 Pac. 2d 1056 (1936).

Rules and Regulations.

Power of Administrative Officer. The power of an administrative officer to make rules and regulations is a power which must be delegated to him by the legislature. A rule or regulation made without statutory authority is invalid.

WEST VIRGINIA

(See also Case US 3 herein)

303. Buchanan v. Louisville Coal and Coke Co., 98 W. Va. 470, 127 S. E. 335 (1925).

Weights and Measures in Contracts.

Statutory Unit. *Governs contracts, when.* In the absence of a special contract, the statutory unit governs contracts which make use of the statutory term without defining it.

Custom non-controlling, when. If a statute has given a definite meaning to any particular word, no evidence of custom will be admitted in evidence to attach any other meaning to it.

304. State of West Virginia v. Great Atlantic and Pacific Tea Co., 111 W. Va. 148, 161 S. E. 5 (1931).

Short Weight.

Knowledge or Intent. Under a short weight statute making knowledge or intent a necessary element of the offense, there can be no conviction unless knowledge or intent are alleged in the indictment and proved at the trial.

The statute in this instance contained the word "knowingly" only in the first part of the statute, so that it was not absolutely clear whether such word applied both to the use of a false weight and to the selling of less quantity than represented. The court ruled that the word knowingly applied to both and all parts of the statute, and that knowledge would have to be alleged and proved in order to obtain a conviction.

WISCONSIN

(See also Case US 7 herein)

305. Yates v. City of Milwaukee, 12 Wis. 752 (1860).

Public Weighing Ordinance.

Constitutionality. An ordinance requiring hay for sale to be weighed upon the city scales, and providing for payment of a fee for the service, is within the power of the city to enact, is reasonable, does not restrain trade, and is otherwise constitutional.

306. Peeters v. State of Wisconsin, 154 Wis. 111, 142 N. W. 181 (1913).

Sale.

What Constitutes a Sale. To constitute a sale of an article, it is not necessary that any words be spoken. If a customer in a store takes an article, knows its price, hands the clerk the price, and departs with the article, the transaction constitutes a sale.

307. Brittingham and Hixon Lumber Co. v. City of Sparta, 157 Wis. 345, 147 N. W. 635 (1914).

Public Weighing Ordinance.

Concurrent Jurisdiction of State and City. A city, operating under general charter law, may enact an ordinance not in conflict with a State statute on the same subject. A city ordinance requiring all coal for sale in the city, except in carload lots, to be first weighed at the city scales, and a weight ticket furnished to the owner, but not requiring the delivery of such ticket to the purchaser, does not require the dealer to make his sales on the basis of the weights ascertained by the city weighmaster. Thus, such ordinance does not conflict with the State statute which contemplates that coal may be weighed on any tested scales and sold on the basis of such weight.

Constitutionality of Ordinance. *Classification of coal dealers.* A city has the right to place coal dealers in a class by themselves and legislate for the class. So long as the legislation is reasonable, there is no denial of the equal protection of the law.

Expense in complying with law. The fact that the expense of complying with the terms of an ordinance regulating the weighing and sale of coal will be large cannot affect its validity. If no more than a reasonable profit is being realized by the dealer, the expense must fall on the consumer.

Reasonableness of fee provision. A public weighing fee is not excessive where its purpose is to provide a fund sufficient to defray the expense of executing the law, and not a tax for raising revenue.

Regulation of Weights and Measures. The authorities are numerous and practically uniform that weights and measures may be regulated by State and local governments under the police power.

Ordinance Void in Part, How Construed by the Courts. The courts should not declare an ordinance void in its entirety because some of its provisions are deemed unreasonable, unless the court can say that the

valid and void parts cannot be separated, and that the former would not have been enacted except in conjunction with the others. It is essential, however, to the sustaining of an ordinance in part that the portion upheld, independently of the invalid portion, form a complete law in some reasonable aspect. It must be fairly concluded that the city council would have enacted the ordinance without the invalid parts.

308. City of Milwaukee v. Locher and Schefrin Co., 164 Wis. 167, 159 N. W. 815 (1916).

Use of False Weights and Measures.

Purpose of Ordinance. The purpose of a short weight ordinance prohibiting all use of false or unsealed weights or measures, is to require the use of weights and measures which themselves correctly express their value so that neither party to a transaction shall be compelled to rely upon the representations of the other.

Injury or Fraud Not Necessary to Sustain Conviction. Under an ordinance forbidding the use of any false or unsealed weight or measure, the use of a falsely marked weight is a violation of law, even though the weight was correctly used with the knowledge of both parties to the transaction, and no fraud or deception resulted from its use. The ordinance is intended to prohibit not only fraud, but the use of false weights and measures.

Single Use of False Weight as Violation of Law. An ordinance, imposing a penalty upon any person who uses any false or unsealed weight or measure, makes each false use a violation thereof. Such an ordinance does not require the city to establish customary delinquency before the penalty can attach. The single use of an old weight marked with a different denomination from that which it represented on the scale on which it was used, constituted a violation, although no unjust weight was given and both parties to the transaction knew that the weight was being used.

309. Carpenter Baking Co. v. Department of Agriculture and Markets, 217 Wis. 196, 257 N. W. 606 (1934).

Wrapped Bread.

Applicability of Standard-Weight Bread Statute to Wrapped Bread. The standard-weight bread statute applies to all bread loaves whether sold wrapped or unwrapped. Enclosing loaves of bread in a wrapper marked in accordance with the package-marking statute, does not eliminate the necessity of conformance to the standard-weight bread statute.

Wrapped Bread Not a Package. A loaf of bread in a wrapper, whether sliced or unsliced, is not a package within the meaning of the package-marking statute which defines a package as follows: "The term 'package' as applied to articles of food shall mean a closed receptacle of any kind in which an article of food is kept in stock and which with its contents is sold to the public." While in popular language the word "package" is applied indiscriminately to articles wrapped in loose paper, and to those in a solid container, the statutory term excludes a mere sheet of wrapping paper which cannot be called a receptacle. In general a "wrapper" conforms to the shape of the article wrapped, and a "package" retains its own shape while containing the article therein.

310. State of Wisconsin v. Land O'Lakes Ice Cream Co., 247 Wis. 26, 18 N. W. 2d 325 (1945).

Milk Bottles.

Insufficiency of Statute to Prevent Use of Non-Conforming Bottles. A statute provided that bottles used for the sale of milk and cream shall be of certain specified capacities, and that a dealer using different sized bottles shall be guilty of using false and insufficient measures. Such a statute does not prevent a dealer from using gallon or other bottles of non-conforming sizes which are in fact correct measures. To justify a conviction for using false measures, there would have to be allegation and proof that the bottles used were in fact false measures.

The statute fails in its purpose to prevent the use of bottles of sizes other than those specified therein, for two reasons: (1) It does not expressly prohibit such use, and (2) it would make the user of a gallon or other bottle of non-conforming size guilty of using a false measure when the measure was in fact true.

Merely saying in the statute that a bottle not named in the statute is a false measure cannot make it so; nor can declaring that the user of such a bottle is guilty of using a false measure, make one so guilty, when the bottle is in fact a correct measure.

Construction of Criminal Statutes. Criminal statutes are strictly construed by the courts in favor of the accused.

INDEX

[The abbreviations appearing before the case number identifies the jurisdiction in which the case was heard. The number refers to the identification of the case in this publication.]

D

E

F

O

P

Q

R

T

U

V

W