fective date of ch. 259, Laws 1945. 35 Atty. Gen. 245.

132.02 History: 1909 c. 127; Stats. 1911 s. 1747am; 1923 c. 291 s. 3; Stats. 1923 s. 132.02.

In an action for infringement of a trademark and for unfair competition by simulating the plaintiff's trade label, findings that the defendants and the plaintiff were proprietors of neighboring orchards, that until recently the plaintiff had marketed the defendants' apples as well as its own, that recently the defendants had adopted a label for their apples which was so nearly an exact duplication of the plaintiff's label that it required an effort at recollection to say which was which, that the defendants adopted such label at the suggestion of a large buyer that thereby buyers and customers would believe they were buying the plaintiff's apples, and that the defendants' acts were calculated to deceive the public and buyers, were sufficient to warrant an accounting for profits. Kickapoo Development Corp. v. Kickapoo Orchard Co. 231 W 458, 285 NW 354.

132.03 History: 1909 c. 127; Stats. 1911 s. 1747an; 1923 c. 291 s. 3; Stats. 1923 s. 132.03; 1955 c. 366.

132.031 History: 1895 c. 151 s. 3; Stats. 1898 s. 1747b; 1923 c. 291 s. 3; Stats. 1923 s. 132.09; 1945 c. 259; 1955 c. 366 s. 23; Stats. 1955 s. 132.031; 1969 c. 154.

132.032 History: 1895 c. 151 s. 3; Stats. 1898 s. 1747c; 1923 c. 291 s. 3; Stats. 1923 s. 132.10; 1955 c. 366 s. 23; Stats. 1955 s. 132.032.

132.033 History: 1901 c. 140 s. 1; Supl. 1906 s. 1747dd; 1923 c. 291 s. 3; Stats. 1923 s. 132.12; 1955 c. 366 s. 23; Stats. 1955 s. 132.033.

132.04 History: 1901 c. 360 s. 1; Supl. 1906 s. 1747a—1; 1911 c. 663 s. 313; 1923 c. 288; 1923 c. 291 s. 3; Stats. 1923 s. 132.04; 1965 c. 163, 252; 1969 c. 154.

Statements of marks of ownership of bottles, cans, etc., filed with the secretary of state need not be recorded, as the statutes only require that they be filed with the secretary of state. 3 Atty. Gen. 897.

More than one mark of ownership may be contained in a written statement or description filed by the owner with the secretary of state. 20 Atty. Gen. 351.

The secretary of state has no authority to file or record assignments of registrations made pursuant to 132.04 and 132.11, Stats. 1949. 38 Atty. Gen. 263.

132.05 History: 1901 c. 360 s. 2; Supl. 1906 s. 1747a—2; 1919 c. 679 s. 79; 1923 c. 291 s. 3; Stats. 1923 s. 132.05.

132.06 History: 1901 c. 360 s. 3; Supl. 1906 s. 1747a—3; 1911 c. 663 s. 314; 1923 c. 291 s. 3; Stats. 1923 s. 132.06.

132.07 History: 1901 c. 360 s. 4; 1903 c. 196 s. 1; Supl. 1906 s. 1747a—4; 1911 c. 663 s. 313; 1923 c. 291 s. 3; Stats. 1923 s. 132.07.

132.08 History: 1901 c. 360 s. 5; Supl. 1906 s. 1747a—5; 1911 c. 663 s. 313; 1923 c. 291 s. 3; Stats. 1923 s. 132.08; 1929 c. 262 s. 14.

132.11 History: 1878 c. 302; R. S. 1878 s. 4470a; Stats. 1898 s. 1747d; 1917 c. 495 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 132.11; 1969 c. 154.

See note to 132.04, citing 38 Atty. Gen. 263.

132.13 History: 1897 c. 155 s. 1, 2; Stats. 1898 s. 4960a; 1919 c. 78 s. 15; Stats. 1919 s. 1747dd—1; 1923 c. 291 s. 3; Stats. 1923 s. 132.13; 1935 c. 178; 1969 c. 276 s. 584 (1) (a); 1969 c. 392 s. 87 (19).

Editor's Note: 132.13, Stats. 1933, was held invalid, because arbitrary and discriminatory in respect to commerce, in State v. Whitfield, 216 W 577, 257 NW 601; and in 1935 it was replaced by a revised section.

Ch. 178, Laws 1935, is not to be construed so as to restrict rights of the state. Prison-made binder twine must be labeled as such on each ball of twine. 24 Atty. Gen. 442.

132.16 History: 1933 c. 129; Stats. 1933 s. 132.16; 1949 c. 262; 1965 c. 163.

132.17 History: 1887 c. 401; 1889 c. 360; Ann. Stats. 1889 s. 4423b, 4423c; Stats. 1898 s. 4423a; 1907 c. 8; 1919 c. 666; 1921 c. 330; 1923 c. 199; 1925 c. 4, 123; Stats. 1925 s. 343.251; 1949 c. 50; 1951 c. 629; 1953 c. 568; 1955 c. 696 s. 87; Stats. 1955 s. 132.17; 1967 c. 211 s. 21(2); 1969 c. 276 s. 587.

132.17, Stats. 1957, does not prohibit the use of a name where such use began before the enactment of the statute. Red Cedar Lodge, I.O.O.F. Bldg. Asso. v. Trustees, 7 W (2d) 500, 96 NW (2d) 828.

132.18 History: 1939 c. 136; Stats. 1939 s. 343.33; 1955 c. 696 s. 93; Stats. 1955 s. 132.18.

132.19 History: 1901 c. 201 s. 1; Supl. 1906 s. 4463a; 1925 c. 4; Stats. 1925 s. 343.651; 1955 c. 696 s. 130; Stats. 1955 s. 132.19.

132.20 History: 1861 c. 155 s. 2; R. S. 1878 s. 4464; 1891 c. 280; 1893 c. 14, 104; 1895 c. 151 s. 1 to 3; Stats. 1898 s. 4464; 1925 c. 4; Stats. 1925 s. 343.66; 1955 c. 696 s. 132; Stats. 1955 s. 132.20.

CHAPTER 133.

Trusts and Monopolies.

133.01 History: 1893 c. 219 s. 1, 2, 5; Stats. 1898 s. 1747e; 1921 c. 458; 1921 c. 590 s. 102; 1923 c. 291 s. 3; Stats. 1923 s. 133.01; 1945 c. 33; 1947 c. 263; 1955 c. 696 s. 29; 1957 c. 397; 1969 c. 276.

Editor's Note: Murray v. Buell, 74 W 14, 41 NW 1010, which had to do with a conspiracy to control and monopolize the sale of coal in Milwaukee and to drive the plaintiff out of the business, was decided prior to the enactment of ch. 219, Laws 1893.

On co-operative contracts see notes to 185.41.

Under the patent laws the patentee has the right to make stipulations regarding the sale of a patented article; and this right cannot be interfered with by a state. Butterick P. Co. v. Rose, 141 W 533, 124 NW 647.

A condition in a deed "that the premises hereby conveyed be used for saloon purposes at all future times when the same may be legally maintained, and the beer sold therein shall be beer which has been manufactured

by the R. Brewing Co." is contrary to the legislative declaration, in sec. 1747e, Stats. 1911, of public policy and void. Ruhland v. King, 154 W 545, 143 NW 681.

Sec. 1747e is substantially a copy of the federal antitrust act (26 U.S. Stats. at Large, 209), restricted in operation to this state and with a lesser penalty, and it should receive the same interpretation that has been placed upon the federal act by the U.S. supreme court. Pulp Wood Co. v. Green Bay P. & F. Co. 157 W 604, 147 NW 1058. See also Pulp Wood Co. v. Green Bay P. & F. Co. 168 W 400, 170 NW 230.

A lease of a saloon providing that during the term (less than 3 years) the lessee should sell no beer on the premises except such as was sold by the lessor was valid at common law and is not illegal under sec. 1747e, Stats. 1913. Rose v. Gordon, 158 W 414, 149 NW 158.

An arrangement between an Illinois brewing company and a local dealer in its beer, pursuant to which the company obtained leases of saloon buildings and assigned such leases to the dealer, who then sublet the premises to tenants with covenants that the latter should sell no beer on the premises except such as was bought from the dealer, did not constitute a conspiracy by a foreign corporation in violation of sec. 1747e, Stats. 1913, since it involved no contract in unlawful restraint of trade. Rose v. Gordon, 158 W 414, 149 NW 158.

In an action by a private party for damages because of the violation of sec. 1747e, Stats. 1919, the offending corporation cannot lawfully refuse to produce its books and papers. Nekoosa-Edwards P. Co. v. News P. Co. 174 W 107, 182 NW 919.

The covenant in a deed of conveyance of a hotel that another hotel in the same locality, owned and operated by the grantor, should not, for 15 years, be used as a hotel, was not an illegal restraint of trade. Huntley v. Stanchfield, 174 W 565, 183 NW 984.

There is no misjoinder of causes of action in a complaint seeking to enjoin all of the defendants from acts and contracts in restraint of trade, to recover of each the penalty it imposes, to cancel the charter of the defendant domestic corporation for violation of 133.21, and to cancel the license of the defendant foreign corporation for violation of 226.07, all the acts being violations of sec. 1747e, Stats. 1921, and constituting a single cause of action. The complaint for such injunction must allege that the defendants are continuing or threatening to continue their unlawful acts. State v. P. Lorillard Co. 181 W 347, 193 NW 613.

A malicious interference by tobacco buyers to cause dissatisfaction among the members of a co-operative tobacco growers' pool by offering them more than the market price to induce them to breach their contracts to deliver their tobacco to the pool, and by offering to pay the cost of all such breaches, may not only give a right of action for damages but may also justify restraint by injunction. Northern Wisconsin Co-op. T. Pool v. Bekkedal, 182 W 571, 197 NW 936.

One engaged in private business may freely exercise his discretion as to the parties with whom he will deal. A method of sale of products exclusively through agents, who acquire no title to the products and who are authorized to dispose of them only at prices and upon terms fixed by the manufacturer, does not deprive the manufacturer of equitable protection; and such manufacturers may maintain an action for damages and for injunction against one who maliciously induces an agent to breach his contract of agency. Singer S. M. Co. v. Lang, 186 W 530, 203 NW 399.

Evidence that a dealers association issued bulletins recommending prices, that when such prices were not followed they were supplemented by personal solicitation of the dealers by individual defendants, and that the prices in the county changed promptly in accord with such recommendations but ceased fluctuating when a preliminary injunction brought the bulletins to an end, sustained findings that the association and certain individual defendants combined and conspired to fix the retail price of gasoline in the county and did in fact fix the price thereof. State v. Retail Gasoline Dealers Asso. 256 W 537, 41 NW (2d) 637.

A complaint by the state against milk distributors alleging an oral agreement among the defendants, sufficiently alleged the existence of an unlawful agreement so as to state a cause of action on a charge of a combination and conspiracy in restraint of trade. State v. Golden Guernsey Dairy Co-operative, 257 W. 254, 43 NW (2d) 31.

Contracts between the air lines using Milwaukee county's airport and authorized by the county to furnish ground transportation, and the only cab company in the county that would enter into a contract to provide transportation service between the airport and the city for all passengers using such air lines, but not limiting passengers to using the service provided by such cab company, and airport regulations as to the location and use of cab stands, are not illegal, are not monopolistic, and do not violate 27.05, ch. 114 or ch. 133, Stats. 1949. Milwaukee County v. Lake, 259 W 208, 47 NW (2d) 87.

A service station lease which did not require the dealer to sell only lessor's products and which permitted him to do other work on the premises was not in restraint of trade under 133.01 (1). Johnson v. Shell Oil Co. 274 W 375, 80 NW (2d) 426.

See note to 103.465, citing Lakeside Oil Co. v. Slutsky, 8 W (2d) 157, 98 NW (2d) 415.

There is no language in the federal enactments (Sherman, Clayton, Robinson-Patman, and Federal Trade Commission Acts) that preempts the field of regulation and enforcement in the U.S. government or that precludes the states from enacting effective legislation dealing with such unlawful practices as combinations and conspiracies in restraint of trade and unfair methods of competition. Action by the federal trade commission, in exercising jurisdiction dealing in part with acts alleged by the complaint herein to be a violation of the Wisconsin statutes, does not amount to a preemption and does not preclude the state from acting under its police powers in making and enforcement of the state statutes in question. State v. Allied Chemical & Dye Corp. 9 W (2d) 290, 101 NW (2d) 133.

133.01, Stats. 1965, is not limited to restraint of trade in regard to articles or commodities, but cannot be applied to professional baseball.

fective date of ch. 259, Laws 1945. 35 Atty. Gen. 245.

132.02 History: 1909 c. 127; Stats. 1911 s. 1747am; 1923 c. 291 s. 3; Stats. 1923 s. 132.02.

In an action for infringement of a trademark and for unfair competition by simulating the plaintiff's trade label, findings that the defendants and the plaintiff were proprietors of neighboring orchards, that until recently the plaintiff had marketed the defendants' apples as well as its own, that recently the defendants had adopted a label for their apples which was so nearly an exact duplication of the plaintiff's label that it required an effort at recollection to say which was which, that the defendants adopted such label at the suggestion of a large buyer that thereby buyers and customers would believe they were buying the plaintiff's apples, and that the defendants' acts were calculated to deceive the public and buyers, were sufficient to warrant an accounting for profits. Kickapoo Development Corp. v. Kickapoo Orchard Co. 231 W 458, 285 NW 354.

132.03 History: 1909 c. 127; Stats. 1911 s. 1747an; 1923 c. 291 s. 3; Stats. 1923 s. 132.03; 1955 c. 366.

132.031 History: 1895 c. 151 s. 3; Stats. 1898 s. 1747b; 1923 c. 291 s. 3; Stats. 1923 s. 132.09; 1945 c. 259; 1955 c. 366 s. 23; Stats. 1955 s. 132.031; 1969 c. 154.

132.032 History: 1895 c. 151 s. 3; Stats. 1898 s. 1747c; 1923 c. 291 s. 3; Stats. 1923 s. 132.10; 1955 c. 366 s. 23; Stats. 1955 s. 132.032.

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132.07 History: 1901 c. 360 s. 4; 1903 c. 196 s. 1; Supl. 1906 s. 1747a—4; 1911 c. 663 s. 313; 1923 c. 291 s. 3; Stats. 1923 s. 132.07.

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CHAPTER 133.

Trusts and Monopolies.

133.01 History: 1893 c. 219 s. 1, 2, 5; Stats. 1898 s. 1747e; 1921 c. 458; 1921 c. 590 s. 102; 1923 c. 291 s. 3; Stats. 1923 s. 133.01; 1945 c. 33; 1947 c. 263; 1955 c. 696 s. 29; 1957 c. 397; 1969 c. 276.

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An arrangement between an Illinois brewing company and a local dealer in its beer, pursuant to which the company obtained leases of saloon buildings and assigned such leases to the dealer, who then sublet the premises to tenants with covenants that the latter should sell no beer on the premises except such as was bought from the dealer, did not constitute a conspiracy by a foreign corporation in violation of sec. 1747e, Stats. 1913, since it involved no contract in unlawful restraint of trade. Rose v. Gordon, 158 W 414, 149 NW 158.

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One engaged in private business may freely exercise his discretion as to the parties with whom he will deal. A method of sale of products exclusively through agents, who acquire no title to the products and who are authorized to dispose of them only at prices and upon terms fixed by the manufacturer, does not deprive the manufacturer of equitable protection; and such manufacturers may maintain an action for damages and for injunction against one who maliciously induces an agent to breach his contract of agency. Singer S. M. Co. v. Lang, 186 W 530, 203 NW 399.

Evidence that a dealers association issued bulletins recommending prices, that when such prices were not followed they were supplemented by personal solicitation of the dealers by individual defendants, and that the prices in the county changed promptly in accord with such recommendations but ceased fluctuating when a preliminary injunction brought the bulletins to an end, sustained findings that the association and certain individual defendants combined and conspired to fix the retail price of gasoline in the county and did in fact fix the price thereof. State v. Retail Gasoline Dealers Asso. 256 W 537, 41 NW (2d) 637.

A complaint by the state against milk distributors alleging an oral agreement among the defendants, sufficiently alleged the existence of an unlawful agreement so as to state a cause of action on a charge of a combination and conspiracy in restraint of trade. State v. Golden Guernsey Dairy Co-operative, 257 W. 254, 43 NW (2d) 31.

Contracts between the air lines using Milwaukee county's airport and authorized by the county to furnish ground transportation, and the only cab company in the county that would enter into a contract to provide transportation service between the airport and the city for all passengers using such air lines, but not limiting passengers to using the service provided by such cab company, and airport regulations as to the location and use of cab stands, are not illegal, are not monopolistic, and do not violate 27.05, ch. 114 or ch. 133, Stats. 1949. Milwaukee County v. Lake, 259 W 208, 47 NW (2d) 87.

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See note to 103.465, citing Lakeside Oil Co. v. Slutsky, 8 W (2d) 157, 98 NW (2d) 415.

There is no language in the federal enactments (Sherman, Clayton, Robinson-Patman, and Federal Trade Commission Acts) that preempts the field of regulation and enforcement in the U.S. government or that precludes the states from enacting effective legislation dealing with such unlawful practices as combinations and conspiracies in restraint of trade and unfair methods of competition. Action by the federal trade commission, in exercising jurisdiction dealing in part with acts alleged by the complaint herein to be a violation of the Wisconsin statutes, does not amount to a preemption and does not preclude the state from acting under its police powers in making and enforcement of the state statutes in question. State v. Allied Chemical & Dye Corp. 9 W (2d) 290, 101 NW (2d) 133.

133.01, Stats. 1965, is not limited to restraint of trade in regard to articles or commodities, but cannot be applied to professional baseball.

State v. Milwaukee Braves, Inc. 31 W (2d) 699, 144 NW (2d) 1.

See note to 939.31, citing 1908 Atty. Gen. 267.

An organization among egg dealers to buy eggs on a loss-off basis is a violation of the antitrust law. 6 Atty. Gen. 479.

A proposed "fair price cheese board" will not violate the antitrust law so long as no coercive measures are used to maintain price and the board reflects the fair judgment of experts and others representing various classes interested in price. 13 Atty. Gen. 27.

An agreement between the state brewers association and brewers, being a voluntary contract, providing for posting prices with the association but not attempting to fix prices, the brewers being free to change their prices at any time, is a valid trade agreement. 24 Atty. Gen. 654.

The conservation commission has no authority to enter into an agreement with the fishermen of any county whereby said fishermen will be permitted to fish for carp during closed season if they enter into an agreement to hold all carp for a given price and to refrain from selling except at such price or higher. Such agreement violates ch. 133, Stats. 1937. 28 Atty. Gen. 165.

Proposed articles of incorporation of a trade association, composed of retailers, wholesalers, jobbers and manufacturers of food products, which state that the object of the association is to oppose direct sales to consumers by any persons other than retail food dealers, violate this section and the secretary of state may refuse to file them. 38 Atty. Gen. 313.

See note to sec. 1, art. I, on exercises of police power, citing 42 Atty. Gen. 137, 141.

Co-operative marketing contracts and restraint of trade. Goldberg, 12 MLR 270.

The Wisconsin minimum fee schedule: a problem of antitrust. Pietz v. Nolden, 1968 WLR 1237.

133.02 History: 1893 c. 219 s. 3, 4; Stats. 1898 s. 1747f; 1923 c. 291 s. 3; Stats. 1923 s. 133.02; 1965 c. 453; 1969 c. 276.

That an action was brought by the district attorney "on the advice of the attorney general, who may appear as counsel," sufficiently appears by the summons and complaint, if they are signed by both. State v. P. Lorillard Co. 181 W 347, 193 NW 613.

133.03 History: 1893 c. 219 s. 6, 7; Stats. 1898 s. 1747g; 1917 c. 646 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 133.03; 1945 c. 34.

133.04 History: 1893 c. 219 s. 8, 9; Stats. 1898 s. 1747h; 1919 c. 278; 1923 c. 291 s. 3; Stats. 1923 s. 133.04.

The provision that nothing in 133.01 shall be construed to affect associations or organizations "intended to legitimately promote the interests of trade, commerce or manufacturing," does not exempt an association merely because its charter expresses a legitimate intent; the intent of the association can be determined from its actions and, if such actions show an intent to promote by illegitimate means the interests of the actors' trade, commerce or manufacturing, 133.04 provides no shield behind which they may conspire by methods and for ends prohibited to others. State v. Retail Gasoline Dealers Asso. 256 W 537, 41 NW (2d) 637.

133.05 History: 1919 c. 211; Stats. 1919 s. 1747ee; 1921 c. 9 s. 2; Stats. 1921 s. 1747h—1; 1923 c. 291 s. 3; Stats. 1923 s. 133.05.

Secs. 1747h, 1747h-1, 1747h-3 and 1747h-4, Stats. 1919, having been enacted before, were no inducement to the enactment of 133.01 and 133.02, and did not affect the constitutionality of the latter enactment. State v. P. Lorillard Co. 181 W 347, 193 NW 613.

133.06 History: 1917 c. 646 s. 1; Stats. 1917 s. 1747e—1; 1919 c. 628 s. 11; 1921 c. 9 s. 2; Stats. 1921 s. 1747h—2; 1923 c. 291 s. 3; Stats. 1923 s. 133.06; 1945 c. 34; 1949 c. 643; 1951 c. 578; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 55 s. 113.

133.07 History: 1919 c. 211; Stats. 1919 s. 1747ff; 1921 c. 9 s. 2; Stats. 1921 s. 1747h—3; 1923 c. 37, 208; 1923 c. 291 s. 3; Stats. 1923 s. 133.07; 1931 c. 56.

Ch. 211, Laws 1919, prohibiting restraining orders in disputes "concerning terms or conditions of employment," is not applicable to a strike purely and simply for a closed shop. A. J. Monday Co. v. Automobile, A. & V. Workers, 171 W 532, 177 NW 867. But see discussion of case in American F. Co. v. I.B. of T.C. and H. of A. 222 W 338, 268 NW 250.

Where the complaint discloses the facts required by ch. 211, Laws 1919, and secs. 2774 and 2776, Stats. 1921, anything further should be sought by a motion for a bill of particulars or to make the complaint more definite and certain. Trade P. P. Co. v. Milwaukee T. Union, 180 W 449, 193 NW 507.

A complaint by a labor union to restrain an employer from interfering with the rights of its employes freely to associate, self-organize and designate representatives of their own choosing for the purpose of collective bargaining states a cause of action. Trustees of Wis. S. F. of Labor v. Simplex S. M. Co. 215 W 623, 256 NW 56.

Collective bargaining rights of unions and individuals. 18 MLR 251.

133.08 History: 1919 c. 399; Stats. 1919 s. 1747h—1; 1921 c. 9 s. 2; Stats. 1921 s. 1747h—4; 1923 c. 291 s. 3; Stats. 1923 s. 133.08; 1961 c. 335.

133.17 History: 1913 c. 165; Stats. 1913 s. 1791n—9; 1923 c. 291 s. 3; 1923 c. 406 s. 3; 1923 c. 449 s. 50; Stats. 1923 s. 133.17.

A company operating a group of retail stores does not violate the law in cutting its price at one store to meet that of a competitor across the street. 13 Atty. Gen. 133.

The facts stated do not establish violation of this section. 14 Atty. Gen. 306.

Price discrimination merely for the purpose of meeting local competition does not constitute an offense under this section. 22 Atty. Gen. 348.

133.18 History: 1913 c. 165; Stats. 1913 s. 1791n—10; 1923 c. 291 s. 3; 1923 c. 406 s. 3; 1923 c. 449 s. 50; Stats. 1923 s. 133.18.

133.185 History: 1935 c. 52; Stats. 1935 s. 133.185.

133.19 History: 1913 c. 165; Stats. 1913 s. 1791n—11; 1923 c. 291 s. 3; Stats. 1923 s. 133.19; 1935 c. 52, 486; 1969 c. 276.

133.20 History: 1913 c. 165; Stats. 1913 s. 1791n—12; 1923 c. 291 s. 3; Stats. 1923 s. 133.20; 1935 c. 52, 486; 1961 c. 335; 1969 c. 276.

133.21 History: 1897 c. 357; Stats. 1898 s. 1791j; 1905 c. 507 s. 7; Supl. 1906 s. 1791j; 1907 c. 562; 1923 c. 291 s. 3; Stats. 1923 s. 133.21; 1939 c. 134; 1947 c. 263; 1955 c. 696 s. 30, 31; 1961 c. 335.

Section 1791j, Stats. 1909, does not condemn the purchase, by one rural telephone company from another, of certain lines that are parallel to its own lines, with an option to purchase the remaining rural lines of the seller, and providing against future duplications, for restricting their respective fields of operation, one to rural lines and the other to the city in which both were connected, and for free connection by each to the patrons on the other's lines, and containing other provisions tending to increase public convenience and lessen the cost of the service—such contract being in accord with the public policy of the state as evinced in the public utilities act. McKinley T. Co. v. Cumberland T. Co. 152 W 359, 140 NW 38.

A contention of a defendant foreign corporation, that it has reached such a size and does so much business that its ouster from doing business in this state as a penalty for violation of the state's antitrust laws would unduly burden interstate commerce and thereby render the penalty statute unconstitutional as to it under the commerce clause of the U.S. constitution, is rejected as arrogance presenting a challenge to the state's sovereignty which the state must meet. State v. Golden Guernsey Dairy Co-operative, 257 W 254, 43 NW (2d) 31.

133.22 History: 1897 c. 357; Stats. 1898 s. 1791k; 1923 c. 291 s. 3; Stats. 1923 s. 133.22; 1969 c. 276.

133.23 History: 1897 c. 357; Stats. 1898 s. 1791L; 1905 c. 507 s. 8; Supl. 1906 s. 1791L; 1917 c. 646 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 133.23; 1961 c. 335 ss. 4, 6; 1969 c. 276.

The word "shall" cannot be construed to mean "may," and judgment decreeing the forfeiture of its charter is mandatory when a defendant corporation has been adjudged a violator of 133.01, Stats. 1947. State v. Retail Gasoline Dealers Asso. 256 W 537, 41 NW (2d) 637.

See note to 133.21, citing State v. Golden Guernsey Dairy Co-operative, 257 W 254, 43 NW (2d) 31.

133.24 History: 1897 c. 357; Stats. 1898 s. 1791m; 1923 c. 291 s. 3; Stats. 1923 s. 133.24; 1961 c. 335.

The provision that witnesses shall be denied the usual privilege of declining to give incriminating evidence, oral or documentary, but shall be immune to prosecution upon such evidence, applies only to a proceeding by the state against a monopoly. Where a private person defends an action for the purchase price of goods on the ground that the plaintiff corporation is creating and maintaining a monopoly, an officer of such corporation called as a witness may claim his privilege. The person pleading such defense has the burden of proving that the corporation and its officers are protected from prosecution by the statute of limitations, if the statute has run in their favor. Nekoosa-Edwards P. Co. v. News P. Co. 174 W 107, 182 NW 919.

133.245 History: 1949 c. 369; Stats. 1949 s. 133.245.

133.25 History: 1935 c. 52; 1935 c. 477; Stats. 1935 s. 133.25; 1943 c. 229 s. 1; 1943 c. 275 s. 42; 1945 c. 22; 1947 c. 143; 1969 c. 276 s. 583(1).

Editor's Note: As to the validity of a "nonsigner" clause like that in 133.25 (5), see Schwegmann Bros. v. Calvert Distillers Corp. 341 US 384.

On delegation of power see notes to sec. 1, art. IV; and on regulation of trading stamps see notes to 100.15.

The provisions of the fair trade act, 133.25, Stats. 1937, except 133.25 (8), constitute a complete law for accomplishing the legislative intent and purpose and are valid. Weco Products Co. v. Reed Drug Co. 225 W 474, 274 NW 426.

Under the fair trade act, a retailer is guilty of unfair-trade competition which is actionable only if he wilfully and knowingly sells products of a manufacturer at less than the price stipulated in a fair-trade contract, but the act contains no provisions making it inapplicable to products in the possession of a retailer which were purchased by him prior to his receiving notice of their being sold pursuant to the terms of the act. Calvert Distillers Corp. v. Goldman, 255 W 69, 37 NW (2d) 859.

A complaint is not subject to demurrer on the ground that the plaintiff lacked legal capacity to sue under 180.847, it not appearing from the complaint, nor from the copy of the contract attached thereto, that either the contracting retailer, or the defendant, was acting as agent for the plaintiff in selling watches, or that the plaintiff was otherwise transacting business in Wisconsin. Bulova Watch Co. v. Anderson, 270 W 21, 70 NW (2d) 243.

Since 133.27 requires a liberal construction of 133.25, an injunction should issue to prevent defendant from violating the contract price on the basis of a strained construction of the pricing notice. Fromm & Sichel, Inc. v. Ray's Brookfield, Inc. 33 W (2d) 98, 146 NW (2d) 447.

One making a contract which is unfair and unreasonable is liable irrespective of the fact that the department has not ruled the same to be unfair and unreasonable. 25 Atty. Gen. 307.

Contracts between a manufacturer and his jobber whereby the jobber agrees that the manufacturer's products will not be sold below certain specified maximum discounts are countenanced, authorized and encouraged by 133.25, Stats. 1937, and there is no exception in favor of the state when purchasing from said jobber. 28 Atty. Gen. 179.

The non-signer clause as a valid exercise of state legislative power. Boden, 35 MLR 183.

Fair trade acts. Laurent, 12 WLR 226.

133.26 History: 1935 c. 52, 486; Stats. 1935 s. 133.26.

133.27 History: 1935 c. 52, 486; Stats. 1935 s. 133.27.

133.28 History: 1947 c. 520; Stats. 1947 s. 133.28.

CHAPTER 134.

Miscellaneous Trade Regulations.

134.01 History: 1887 c. 287; Ann. Stats. 1889 s. 4466a; Stats. 1898 s. 4466a; 1925 c. 4; Stats. 1925 s. 343.681; 1955 c. 696 s. 134; Stats. 1955 s. 134.01.

On exercises of police power see notes to sec. 1, art. I; and on legislative power generally see notes to sec. 1, art. IV.

In a civil action for damages instituted against members of a conspiracy, the gist of the action is the damage; in a criminal prosecution for the offense of conspiring, the gist of the action is the conspiracy. Martens v. Reilly, 109 W 464, 84 NW 840.

The complaint stating that 3 persons, naming them, concerted together for the purpose of maliciously injuring another in his business describes conspiracy under sec. 4466a, Stats. 1898. An agreement between independent newspaper publishers to compel a fourth person engaged in the same business to reduce his rates for advertising or lose customers comes within this section. State ex rel. Durner v. Huegin, 110 W 189, 85 NW 1046; Aikens v. State, 113 W 419, 89 NW 1135.

Where persons conspire together to prevent another person from performing her marital duties, from living with her husband, from receiving at his hands that support to which she was entitled, from obtaining a divorce in her home jurisdiction which should fully protect her rights and by reducing her to penury, compel her to allow her husband to obtain a divorce upon false and fraudulent allegations in a foreign jurisdiction, a criminal conspiracy exists within sec. 4466a, Stats. 1898. Randall v. Lonstorf, 126 W 147, 105 NW 663.

It is not necessary in an action for damages for a consummated conspiracy to state all the essentials of a criminal conspiracy under sec. 4466a, Stats. 1898, if the complaint shows a conspiracy at common law. Allegations that 2 or more persons, naming them, have maliciously combined to produce separation between husband and wife, causing the former to desert the latter when she desired their marriage contract to continue, states a conspiracy, and where the conspiracy has been consummated to the damage of the wife, a cause of action is stated. White v. White, 132 W 121, 111 NW 1116.

Surveillance by private individuals to prevent a suspect from leaving the state until they can determine whether or not to have him arrested, if maliciously done, is a violation of sec. 4466a, Stats. 1911, and gives the injured person a right of action. Schultz v. Frankfort M. A. & P. G. Ins. Co. 151 W 537, 139 NW 386.

A contract by employing printers with a union that there should be only collective bargaining on the question of a closed shop does not show a purpose to unlawfully interfere with, impair or impede the individual members of a typographical union or other individual workmen so as to require a holding that it was in violation of public policy and was not violative of 133.01, 343.681, 343.682, or 348.40, Stats. 1953. Trade Press Pub. Co. v. Milwaukee Typo. Union, 180 W 449, 193 NW 507.

In an action for damages for wrongful conspiracy of defendants, whereby plaintiff was required to give up a retail cleaning and dyeing business, the evidence was sufficient to show such conspiracy, as against a motion for nonsuit. Boyce v. Independent Cleaners, Inc. 206 W 521, 240 NW 132.

A complaint which contains no allegation that the defendants conspired to do the acts complained of does not state a cause of action under this section. The existence of a conspiracy is essential to create civil liability for violation of the statute. Judevine v. Benzies-Montanye F. & W. Co. 222 W 512, 269 NW 295.

A strike is not unlawful nor are injuries caused by it criminal under this section where the betterment of labor conditions is the main object sought, even though the strikers secure all of the available laborers. Allis-Chalmers Co. v. Iron M. Union, 150 F 155.

Milk producers who threaten a cheese manufacturer with loss of their patronage if he buys milk from certain other producers are guilty of violating 134.01 or 133.01, Stats. 1921, depending on whether their purpose is malicious injury or prevention of competition. 10 Atty. Gen. 1031.

Picketing for an unlawful objective might constitute a violation under 134.01, Stats. 1947, but picketing for a proper purpose would not constitute such a violation. (24 Atty. Gen. 613 discussed.) 38 Atty. Gen. 17.

134.02 History: 1887 c. 349; Ann. Stats. 1889 s. 4466b; 1895 c. 240; Stats. 1898 s. 4466b; 1925 c. 4; Stats. 1925 s. 343.682; 1955 c. 696 s. 135; Stats. 1955 s. 134.02.

134.03 History: 1887 c. 427 s. 1; Ann. Stats. 1889 s. 4466c; Stats. 1898 s. 4466c; 1923 c. 55; 1925 c. 4; Stats. 1925 s. 343.683; 1955 c. 696 s. 136; Stats. 1955 s. 134.03.

The complaint stated facts sufficient to constitute a cause of action under sec. 4466c, Stats. 1898. Fischer v. State, 101 W 23, 76 NW 594.

The defendant's admission, "I would just as soon kill my own brother if he went into that shop. We did a good job on a few old fellows," made shortly after a codefendant, and then the defendant, had assaulted a nonstriking employe, constituted an admission as to the defendant's own motives and purposes in committing the assault, and was probative of his own guilt under 343.683, Stats. 1945. State v. Jakubowski, 251 W 74, 27 NW (2d) 742.

Peaceable picketing is the mere act of inviting attention to the existence of a strike as by signs or banners, and seizure or destruction of property or use of force or threats and calling of vile names is not peaceable picketing. 22 Atty. Gen. 340.

See note to 103.53, citing 23 Atty. Gen. 279.

Responsibility in tort of voluntary unincorporated associations. Laurent, 12 WLR 523.

134.04 History: 1939 c. 129, 490; Stats. 1939 s. 348.54; 1951 c. 266; 1955 c. 696 s. 286; Stats. 1955 s. 134.04.