

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

THE  
**REVISED STATUTES**

OF THE  
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

**THE CONSTITUTIONS**

OF THE

*United States and of the State of Maine,*

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

**APPENDIX.**

---

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

---

**Augusta:**

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....  
1841.

CHAP. 163. to be recovered on complaint before a justice of the peace, to the use of the town or city in which the offence shall be committed.

Lotteries.  
1826, 327, § 1, 2,  
3, 4.  
5 Pick. 42.

SECT. 4. If any person shall make, or aid in making, any lottery, or shall hereafter advertise, or make public, any scheme for any lottery, or shall advertise or offer for sale any ticket or part of a ticket in any lottery, or shall sell or give away, negotiate or dispose of, or shall purchase or receive the same, or shall have in his possession any ticket or paper, purporting to be the number of any ticket, or part of a ticket of any lottery, with intent to sell or dispose of the same, on his own account, or as agent for another, he shall be punished by a fine, not less than one hundred dollars, and not exceeding one thousand dollars; one half of which fine shall be for the use of the person, who shall inform and prosecute for the same, and the other half to the use of the state.

## CHAPTER 164.

### OF NUISANCES.

SECT. 1. Certain nuisances described.

2. Places to be assigned for unwholesome employments.
3. Proceedings when places, so assigned, become offensive.
4. When buildings for the manufacture of gunpowder, shall be deemed nuisances.
5. Burning bricks in parts of a town, prohibited by vote, nuisances.
6. Water mills and dams on streams, and fences and buildings fronting on public ways, in certain cases, not nuisances.
7. Punishment for nuisances, on conviction. Abatement thereof.

SECT. 8. Action for damages, whether nuisance be public or private.

9. Process for abatement of a nuisance.
10. Warrant to be stayed, if defendant give security to discontinue the nuisance.
11. Expenses of abatement to be defrayed from the materials, if sufficient; otherwise, as in cases of execution.
12. Equity jurisdiction of supreme judicial court. Injunction may issue from any court, where a suit for nuisance is pending.

Certain nuisances described.  
1821, 24, § 5.

SECTION 1. The erecting, continuing or using any building or other place for the exercise of any trade, employment or manufacture, which, by occasioning noxious exhalations, offensive smells, or other annoyances, become[s] injurious and dangerous to the health, comfort, or property of individuals, or the public, the causing or suffering any offal, filth, or noisome substance to be collected, or to remain in any place to the prejudice of others, the obstructing or impeding, without legal authority, the passage of any navigable river, harbor, or collection of water, or the corrupting, or rendering unwholesome or impure, the water of any river, stream or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others, and the obstructing or encumbering by fences, buildings or otherwise, the public highways, private ways, streets, alleys, commons, common landing places, or burying grounds, shall be deemed nuisances, within the limitations and exceptions hereafter mentioned.

## CHAP. 164.

SECT. 2. The selectmen of any town, or the mayor and aldermen of any city, may, when they judge it necessary, assign some certain place or places in such town or city, for the exercise of any trade, employment or manufacture, injurious as aforesaid, to the health, comfort, or property of individuals or the public, and forbid the exercise of them in places not so assigned, under penalty of their being deemed public or common nuisances, and liable to be prosecuted and abated as such. All such assignments shall be entered in the records of such town or city, and may be revoked, when said town or city officers shall judge proper.

Places to be assigned for unwholesome employments. 1821, 24, § 1, 2.

SECT. 3. When any place or building, so assigned, shall become a nuisance, offensive to the neighborhood, or injurious to the public health, any person may make complaint thereof to the district court, and if, after notice to the party complained of, the truth of said complaint shall be admitted by the defendant by default, or otherwise made to appear to a jury on trial, the court may revoke such assignment, and prohibit the further use of such place or building for the offensive purposes aforesaid, under a fine, not exceeding one hundred dollars, for each month the same shall be so continued after such prohibition, to be recovered on indictment, to the use of said town or city; and may order the same to be abated, and issue a warrant therefor, or stay the same, as hereafter provided: and, if the jury on said trial shall acquit the defendant, he shall recover his costs of the complainant.

Proceedings, when places, so assigned, become offensive. 1821, 24, § 3.

SECT. 4. If any person shall carry on the business of manufacturing gun powder, or of mixing or grinding the composition therefor, in any building within eighty rods from any valuable building, erected at the time when such business may be commenced, the building, in which such business may be carried on as aforesaid, shall be deemed a public nuisance; and such person shall be liable to be prosecuted and indicted accordingly.

When buildings for the manufacture of gun powder shall be deemed nuisances. 1834, 96.

SECT. 5. Any city or town, at their annual meeting, may prohibit, by a vote, the burning of any bricks, or the erecting of any brick kiln for the purpose of burning the same, within such parts of said city or town, as they may deem for the safety of the citizens or their property. And, if any person, by himself or others, shall burn any bricks or erect any brick kiln for that purpose, in any place prohibited as aforesaid, it shall be the duty of the mayor and aldermen of such city, or of the selectmen of such town, to cause said bricks or brick kiln to be forthwith removed, at the expense of the owners thereof; and the offender shall also be further liable on indictment to be punished by a fine, not exceeding two hundred dollars, to the use of said city or town; and, if said bricks or brick kiln shall not have been, before a conviction on such indictment, removed, the court may issue a warrant for the removal of the same, or stay such warrant as hereafter provided.

Burning bricks in parts of a town prohibited by vote, nuisances. 1827, 353.

SECT. 6. The erecting and maintaining of water mills, and dams to raise water for working the same, upon or across streams not navigable, as provided in the one hundred and twenty sixth chapter, shall not be deemed nuisances, unless the same shall become offensive to the neighborhood or injurious to the public health, as mentioned in the preceding first section, or unless the

Water mills, and dams on streams, and fences and buildings fronting on public ways, in certain cases, not nuisances. 1836, 238, § 1.

## CHAP. 164.

11 Mass. 364,  
462.  
7 Greenl. 155.

same shall occasion injuries or annoyances of a kind not within the purview of the said chapter. And fences and buildings fronting on public ways, commons or land appropriated to public use, shall not be deemed nuisances, when they have been erected for the times, and shall be justified, as mentioned in the one hundredth section of the twenty fifth chapter.

Punishment for  
nuisances, on  
conviction. A-  
batement there-  
of.  
21 Pick. 344.

SECT. 7. Whoever shall be convicted, upon indictment, of erecting, causing or continuing a public or common nuisance, as described in this chapter, or at common law, when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, may be punished by a fine, not exceeding one hundred dollars; and the court, with or without such fine, may order such nuisance to be discontinued or abated, and may issue a warrant therefor, as hereafter provided.

Action for dam-  
ages, whether  
nuisance be  
public or pri-  
vate.  
1821, 24, § 4.

SECT. 8. Any person, injured in his comfort, property, or the enjoyment of his estate, by any nuisance, as before described, or at common law as aforesaid, whether the same be a common and public nuisance, or a private nuisance, being one that is an injury to particular individuals only, may maintain, against the party guilty thereof, an action on the case for the recovery of the damages, which he has thereby sustained, unless it be otherwise specially provided by law.

Process for a-  
batement of a  
nuisance.  
1821, 24, § 8.  
11 Pick. 452.

SECT. 9. When, upon indictment, complaint, or action, any person shall be adjudged guilty of a nuisance, the court, before whom such conviction shall be had, may, in addition to the fine imposed, if any, or to the judgment for damages and costs, for which a separate execution shall issue, order that the said nuisance be abated or removed, at the expense of the defendant; and, after inquiring into and estimating, as nearly as may be, the sum necessary to defray the expense of such abatement, the said court may issue a warrant therefor, substantially in the form following:

“STATE OF MAINE.

L., ss. To the sheriff of our county of L. or either of his deputies,  
Greeting.

Whereas, by the consideration of our ——— court, ——— begun and held at ———,” (describing the court, and the term), “upon indictment,” (or, “complaint,” or, “action in favor of A. B.,” as the case may be), “C. D. of ———, &c., was adjudged guilty of erecting,” [“causing,” or, “continuing”] “a certain nuisance, being a building in said ———, and for ———,” (or, “fence,” or other thing, describing particularly the nuisance and the place), “which said nuisance was ordered by said court to be abated and removed: We therefore command you, forthwith, to cause said nuisance to be abated and removed: and also that you levy of the materials by you so removed, and of the goods, chattels and lands of the said C. D., a sum sufficient to defray the expense of removing and abating the same, not to exceed the sum of ——— dollars,” (the sum estimated by the court), “together with your lawful fees, and thirty three cents more for this writ. And, for want of such goods and estate to satisfy the sums aforesaid, we command you to take the body of the said C. D. and him commit unto our jail in W. in said county, and there detain till he pay the sums aforesaid, or be

legally discharged. And make return of this warrant, with your doings thereon, within thirty days. Witness A. R., Esq., at —, this — day of —, in the year of our Lord, —.

J. S., Clerk.”

And, when the conviction shall be had upon an action before a justice of the peace, and no appeal being made, the said justice, after estimating, as aforesaid, the sum necessary to defray the expense of removing or abating the nuisance, may issue a like warrant, making corresponding alterations in the form thereof.

SECT. 10. Instead of issuing the said warrant, the court or justice may order the same to be stayed, upon motion of the defendant, and upon his entering into recognizance, in such sum and with such surety as the court or justice shall direct, in case of an indictment, to the state, or, in case of a complaint or action, to the plaintiff, conditioned, either that the defendant will discontinue said nuisance, or that, within a time limited by the court, and not exceeding six months, he will cause the same to be abated and removed, as either shall be directed by the court: and, upon his default to perform the condition of the recognizance, the same shall be deemed forfeited, and the said court, or any justice thereof, in term time or in vacation, or said justice of the peace, upon being satisfied of such default, may order such warrant forthwith to issue, and scire facias to issue on said recognizance.

Warrant to be stayed, if defendant give security to discontinue the nuisance.

SECT. 11. The expense of abating a nuisance, by virtue of a warrant, shall be collected by the officer in the same manner as damages and costs are collected on execution; except that the materials of any buildings, fences or other things, that shall be removed as a nuisance, may be first levied upon and sold by the officer, and, if any of the proceeds remain after satisfying the expense of removal, such balance shall be paid by the officer, on demand, to the defendant or the owner of the property levied upon; and, if said proceeds shall not be sufficient to satisfy said expenses, the officer shall collect the residue thereof, as before mentioned. Any person, committed to jail on such warrant, may be admitted to the privilege of the oath for the relief of poor debtors, in the same manner, as if he had been committed on execution. And, if said expense cannot be collected of the defendant, it shall be paid in the same manner, as costs in criminal prosecutions.

Expenses of abatement to be defrayed from the materials, if sufficient, otherwise, as in other cases of execution. 1821, 24, § 2.

SECT. 12. The supreme judicial court may hear and determine, in equity, all matters concerning nuisances, in which there is not a plain, adequate and complete remedy at law; and may direct any fact to be determined by a jury, when they shall deem it necessary. And any court of record, before whom an indictment, complaint or action for a nuisance may be pending, may, in any county, issue an injunction to stay or prevent any such nuisance, and make such orders and decrees for enforcing or dissolving the same, as justice and equity may require.

Equity jurisdiction of the supreme judicial court. Injunction may issue from any court, where a suit for nuisance is pending. 21 Pick. 344.