

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

and damages thereby caused, to the use of the town, where it is located, in addition to all other legal penalties therefor.

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SEC. 14. When a person, at his own expense, lays a common drain or sewer, all, who join or enter it, shall pay him their proportion of such expense; and the expense of opening and repairing shall be paid by all benefited, to be determined in each case by the municipal officers subject to appeal to the county commissioners.

All who enter a private drain, pay their proportion.

R. S., c. 24, § 3, 4.

SEC. 15. The municipal officers shall notify each person to whom he is to pay, and the amount; and if not paid in ten days, he shall pay double the amount with cost.

To be paid in ten days after notice.

R. S., c. 24, § 5.

SEC. 16. Before any such drain is opened for repairs, all persons interested shall have seven days notice thereof, given as the municipal officers direct; and if any one objects to it, and said officers think his objection reasonable, he shall not be liable to any expense thereof; if not reasonable, or none is made within three days, they may give written permission to proceed.

Notice given before opened for repair.

R. S., c. 24, § 6.

CHAPTER 17.

NUISANCES.

- SEC. 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 nuisance.
 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.
 8. Action for damages, whether nuisances 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 materials, if sufficient; otherwise, as in case of execution.
 12. Equity jurisdiction of supreme judicial court. Injunction may issue from court where a suit for nuisance is pending.
 13. Stationary steam engine not to be used without license.
 14. Duty of town officers on application for a license.
 15. Such engine erected without license to be deemed a nuisance.
 16. Power of town officers to remove such engine.
 17. Steam boilers to be provided with fusible safety plug.
 18. Penalty for removing such plug, or using steam boiler without such plug.
 19. Blasting rocks; notice to be given.
 20. Violation, penalty for.
 21. Notice for construction of wharves.

SEC. 1. The erection, continuance or use of any building or other place for the exercise of a trade, employment, or manufacture, which, by occasioning noxious exhalations, offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals, or the public; causing or suffering any offal, filth, or noisome substance to be col-

Certain nuisances described.
37 Maine, 361.
R. S., c. 164, § 1.

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lected, or to remain in any place to the prejudice of others; obstructing or impeding, without legal authority, the passage of any navigable river, harbor, or collection of water; corrupting, or rendering unwholesome, or impure, the water of a river, stream, or pond; unlawfully diverting it from its natural course or state to the injury or prejudice of others; and the obstructing or incumbering by fences, buildings, or otherwise, the highways, private ways, streets, alleys, commons, common landing places, or burying grounds, shall be deemed nuisances within the limitations and exceptions hereafter mentioned.

Places to be assigned for unwholesome employments.
34 Maine, 36.
R. S., c. 164,
§ 2.

SEC. 2. The municipal officers of a town, when they judge it necessary, may assign some place or places therein for the exercise of any trade, employment, or manufacture aforesaid, and forbid their exercise in other places, under penalty of being deemed public or common nuisances and liable to be dealt with as such. All such assignments shall be entered in the records of the town and may be revoked, when said officers judge proper.

Proceedings when places so assigned become offensive.
R. S., c. 164,
§ 3.

SEC. 3. When any place or building so assigned becomes a nuisance, offensive to the neighborhood, or injurious to the public health, any person may complain thereof to the supreme judicial court, and if after notice to the party complained of, the truth of the complaint is admitted by default, or 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 such purposes, under a penalty not exceeding one hundred dollars for each month's continuance after such prohibition, to the use of said town; and may order it to be abated, and issue a warrant therefor, or stay it as hereafter provided; and if the jury, on said trial, acquits the defendant, he shall recover costs of the complainant.

When buildings for the manufacture of gunpowder shall be deemed nuisances.
R. S., c. 164,
§ 4.

SEC. 4. If a person carries on the business of manufacturing gunpowder, or of mixing or grinding the composition therefor, in any building within eighty rods of any valuable building erected when such business was commenced, the former building shall be deemed a public nuisance; and such person may be prosecuted accordingly.

Burning bricks in parts of a town prohibited by vote; nuisances.
R. S., c. 164,
§ 5.

SEC. 5. A town, at its annual meeting, may prohibit the burning of bricks, or the erecting of brick kilns within such parts thereof as they deem for the safety of the citizens or their property. And if any person, by himself or others, violates such prohibition, the municipal officers shall cause said bricks or brick kiln to be forthwith removed, at the expense of the owner thereof; and the offender shall be liable to a fine not exceeding two hundred dollars to the use of said town; and if said bricks or brick kiln are not removed before a conviction, the court may issue a warrant for the removal thereof, or stay it as hereafter provided.

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

SEC. 6. The erecting and maintaining of water mills and dams to raise water for working them upon or across streams not navigable, as provided in the chapter relating thereto, shall not be deemed nuisances, unless they become offensive to the neighborhood or injurious to the public health, or unless they occasion injuries or annoyances of a kind not authorized by said chapter. Fences and buildings fronting on public ways, com-

mons, or lands appropriated to public use, shall not be deemed nuisances, when they have been erected for the times and in the manner provided in section seventy-two chapter eighteen.

SEC. 7. Whoever is convicted of erecting, causing or continuing a public or common nuisance, as herein described or at common law, where no other punishment 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 issue a warrant therefor as hereafter provided.

SEC. 8. Any person injured in his comfort, property, or the enjoyment of his estate by a common and public, or a private nuisance, may maintain against the guilty party an action on the case to recover his damages, unless it is otherwise specially provided by law.

SEC. 9. When, on indictment, complaint, or action, any person is adjudged guilty of a nuisance, the court, in addition to the fine imposed, if any, or to the judgment for damages and costs, for which a separate execution shall issue, may order the nuisance 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 thereof, the 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 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 said sums, 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 such sums or is 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 is upon an action before a justice of the peace, and no appeal is made, the justice, after estimating

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7 Greenl. 155.
24 Maine, 232.

R. S., c. 164,
§ 6.

Punishment
for nuisances,
on conviction;
abatement
thereof.

21 Maine, 9,
84.

30 Maine, 65.
R. S., c. 164,
§ 7.

Action for
damages,
whether nu-
sances be pub-
lic or private.

R. S., c. 164,
§ 8.

Process for
abatement of
a nuisance.

R. S., c. 164,
§ 9.

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Warrant to be stayed, if defendant give security to discontinue the nuisance.
R. S., c. 164, § 10.

the sum necessary to defray the expense of removing or abating the nuisance, may issue a like warrant, making corresponding alterations in its form.

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

Expenses of abatement to be defrayed from materials, if sufficient; otherwise, as in case of execution.
R. S., c. 164, § 11.

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

Equity jurisdiction of S. J. Court, &c.
R. S., c. 164, § 12.

SEC. 12. Any court of record, before which an indictment, complaint, or action for a nuisance is pending, may, in any county, issue an injunction to stay or prevent such nuisance, and make such orders and decrees for enforcing or dissolving it, as justice and equity require.

Stationary steam engine not to be used without license.
1846, c. 191, § 1.

SEC. 13. No stationary steam engine shall be erected in a town, unless the municipal officers have previously granted license therefor, designating the place where the buildings therefor shall be erected, the materials and mode of construction, the size of the boiler and furnace, and such provisions as to height of chimneys or flues, and protection against fire and explosion, as they judge proper for the safety of the neighborhood. Such license is to be granted on written application, and recorded in the town records, and a certified copy of it furnished, without charge, to the person or persons applying for the license.

Duty of town officers on application for a license.
1846, c. 191, § 2.
Such engine erected without license to be deemed a nuisance.
1846, c. 191, § 3.

SEC. 14. When application is made for such license, said officers shall assign a time and place for its consideration, and give public notice thereof at least fourteen days beforehand as they think proper, at the expense of the applicant, that all persons interested may be heard before granting a license.

SEC. 15. Any such engine erected without license shall be deemed a common nuisance without any other proof than its use.

SEC. 16. Said officers shall have the same authority to abate

and remove a steam engine, erected without license, as is given to the health committee or health officer in chapter fourteen for the removal or discontinuance of the nuisances therein mentioned.

SEC. 17. No person or corporation shall use or cause to be used any steam boiler in this state, unless it is provided with a fusible safety plug, made of lead or some other equally fusible material, not less than half an inch in diameter, which shall be placed in the roof of the fire-box, when a fire-box is used; and in all cases, shall be placed in a part of the boiler fully exposed to the action of the fire, and as near the top of the water line, as any part of the fire surface thereof; and for this purpose it shall be lawful to use Ashcroft's "protected safety fusible plug."

SEC. 18. If any person without just and proper cause removes from the boiler the safety plug, or substitutes any material more capable of resisting the action of the fire, or if any person or corporation uses or causes to be used, for six consecutive days, a steam boiler unprovided with such safety fusible plug, the offender shall be punished by a fine not exceeding one thousand dollars.

SEC. 19. Persons engaged in blasting lime-rocks or other rocks, before each explosion shall give seasonable notice thereof, so that all persons or teams approaching shall have time to retire to a safe distance from the place of said explosion; and no such explosion shall be made after sunset.

SEC. 20. Whoever violates the provisions of the preceding section, shall pay five dollars for each offence, in an action of debt to the use of the person suing therefor, and all damages caused by any explosion; and if the persons engaged in blasting rocks are unable, or after judgment and execution, avoid payment of the fine, damages and costs, by the poor debtors' oath, the owners of the quarry, in whose employment they were, shall be liable for the same.

SEC. 21. When the construction or extension of a wharf in tidal waters in any city is desired by the permission of the city authorities, they shall require the applicant to give fourteen days notice thereof by publication in two newspapers before acting upon it.

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Power of town officers to remove such engine.

1846, c. 191, § 4.

Steam boilers to be provided with fusible safety plug.

1850, c. 189, § 1.

Penalty for removing such plug, or using steam boiler without such plug.

1850, c. 189, § 2, 3.

Blasting rocks; notice to be given.

1852, c. 257, § 1.

Violation, penalty for.

1852, c. 257, § 2.

Notice for construction of wharves.

1856, c. 215.

CHAPTER 18.

WAYS.

LOCATION, ALTERATION, AND DISCONTINUANCE OF HIGHWAYS.

- SEC. 1. Commissioners' power; petition how framed.
2. Notice how given, proved, recorded.
3. Costs paid by petitioners on failure. Distress warrant may be issued.
4. Duties of commissioners at time of hearing, and in laying out or altering ways.
5. Return when made, disposition of it. Petitions for increase of damages, when presented. Damages awarded under first seventeen sections, to be paid into county treasury.