

# MAINE STATE LEGISLATURE

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THE  
REVISED STATUTES

OF THE  
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED  
THE CONSTITUTIONS

OF THE  
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

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BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:  
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amount of their earnings; and the same shall be open to the inspection of the overseers. CHAP. 21.

SEC. 17. All controversies between the master of such house and the overseers of any town, relating to his official transactions, may be determined by the joint board of overseers at a general or quarterly meeting. Controversy between master and overseers, how determined. R. S. c. 21, § 17.

SEC. 18. No town shall be chargeable for the expenses of any person not committed to said house by its overseers, nor shall any person duly committed be discharged except by written order of the overseers of his town, by vote of the joint board at a quarterly meeting, or by the supreme judicial court held in the same county upon application for that purpose. Each town liable for its own commitments. Mode of discharge. R. S. c. 21, § 18.

SEC. 19. Every person committed to such work house, if able to work, shall be kept diligently employed during the term of his commitment. For idleness, obstinacy, or disorderly conduct, he may be punished as provided for by the lawful regulations of the house. Persons committed to be kept employed. R. S. c. 21, § 19.

SEC. 20. Any work house may be discontinued, or applied to any other use, when the town or towns concerned agree so to do. Work houses may be discontinued. R. S. c. 21, § 20.

## CHAPTER 22.

### FENCES, COMMON FIELDS AND DRAINAGE OF SALT MARSHES.

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  35. Proceedings on application of three or more to be set off.
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  39. Fees for services. Penalty for neglect of payment.

## DRAINAGE OF SALT MARSHES.

- SEC. 40.** Partition ditches subject to jurisdiction of fence viewers.
41. Liability of occupant or owner when constructed by complainant.
  42. Provision respecting improved lands. Exemption from maintenance of ditches when lands lie common.

## DIVISION FENCES.

**SEC. 1.** All fences, four feet high and in good repair, consisting of rails, timber, boards or stone walls; and brooks, rivers, ponds, creeks, ditches, and hedges, or other things, which in judgment of the fence viewers having jurisdiction thereof, are equivalent thereto, shall be accounted legal and sufficient fences.

**SEC. 2.** The occupants of lands inclosed with fences shall maintain partition fences between their own and the adjoining inclosures, in equal shares, while both parties continue to improve them.

**SEC. 3.** If any party neglects or refuses to repair or rebuild any such fence, which he ought to maintain, the aggrieved party may complain to two or more fence viewers of the town where the land is situated, who, after due notice to such party, shall proceed to survey it, and if they determine that it is insufficient, they shall signify it in writing to the delinquent occupant, and direct him to repair or rebuild it within such time as they shall judge reasonable, not exceeding thirty days. If the fence is not repaired or rebuilt accordingly, the complainant may make or repair it.

What are legal fences.

R. S. c. 22, § 1.

To be maintained equally by adjoining occupants.

R. S. c. 22, § 2.

If either neglect, proceedings of fence viewers on application.

R. S. c. 22 § 3.

8 Me. 81.

19 Me. 250, 371

22 Me. 541.

29 Me. 366.

33 Me. 62.

35 Me. 26.

48 Me. 373.

59 Me. 99.

Sec c. 3, § 18.

SEC. 4. When the complainant has completed such fence, and after notice given it has been adjudged sufficient by two or more of the fence viewers, and the value thereof, with the fence viewers' fees, certified under their hands, he may demand of the occupant or owner of the land, where the fence was deficient, double the value and fees thus ascertained; and in case of neglect or refusal to pay the same for one month after demand, he may recover the same by an action on the case, with interest at the rate of one per cent. a month, and if the delinquent owner or occupant repairs or rebuilds such fence without paying the fees of the fence viewers, certified by them, double the amount thereof may be recovered by the complainant as herein provided.

SEC. 5. When the occupants or owners of adjacent lands disagree respecting their rights in partition fences and their obligation to maintain them, on application of either party, two or more fence viewers of the town, where the lands lie, after reasonable notice to each party, may in writing under their hands assign to each his share thereof, and limit the time in which each shall build or repair his part of the fence, not exceeding thirty days. Such assignment and all other assignments of proprietors of partition fences herein provided for, recorded in the town clerk's office, shall be binding upon the parties, and they shall thereafter maintain their part of said fence. If such fence has been built and maintained by the parties in unequal proportions, and the fence viewers adjudge it to be good and sufficient, they may, after notice as aforesaid, in writing under their hands, award to the party who built and maintained the larger portion, the value of such excess, to be recovered in an action on the case against the other party, if not paid within six months after demand. Parties to assignments under the provisions hereof shall pay the fees of the fence viewers certified under their hands, in equal proportions, and if either party neglects to pay his proportion within one month after demand, the party applying to the fence viewers may pay the same and recover in an action on the case, of said delinquent party, double the amount of his said proportion of said fees.

SEC. 6. If any party refuses or neglects to build and maintain the part thus assigned him, it may be done by the aggrieved party; and he shall be entitled to the double value and expenses ascertained, and to be recovered as provided in section four.

SEC. 7. All division fences shall be kept in good repair throughout the year, unless the occupiers of adjacent lands otherwise agree.

SEC. 8. When from natural impediments, in the opinion of the fence viewers having jurisdiction of the case, it is impracticable or unreasonably expensive to build a fence on the true line between the adjacent lands, and the occupants disagree respecting its position, on application of either party as provided in section five, and after notice

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Complainant may recover double compensation in certain cases.  
R. S. c. 22, § 4.  
22 Me. 541.  
29 Me. 366.  
33 Me. 62.  
50 Me. 86.

1864, c. 232, § 1.

Proceedings for division of partition fences.  
R. S. c. 22, § 5.  
5 Me. 356.  
8 Me. 81.  
22 Me. 541.  
29 Me. 366.  
34 Me. 332.  
35 Me. 26.  
48 Me. 373.  
53 Me. 99.

In case of neglect.  
1864, c. 232, § 2.  
How recovered.

Each party bound to build the part assigned to him.  
R. S. c. 22, § 6.

To be kept in repair.  
R. S. c. 22, § 7.

Fences may vary from the dividing line in certain cases.  
R. S. c. 22, § 8.

CHAP. 22. to both parties, and a view of the premises, they may determine, by a certificate under their hands communicated to each party, on which side of the true line, and at what distance, or whether partly on one side and partly on the other, and at what distances, the fence shall be built and maintained, and in what proportions by each party; and either party may have the same remedy against the other, as if the fence was on the true line.

Assignment of parts before fence is built.  
R. S. c. 22, § 9.

SEC. 9. When adjacent lands have been occupied in common without a partition fence, and either party desires to occupy his in severalty, or when it is necessary to make a fence running into the water, and the parties liable to build and maintain it disagree, either party may have the line divided on application to the fence viewers of the town; who shall proceed as is provided in section five; except that the fence viewers may allow a longer time than thirty days for building the fence, if they think proper, having regard to the season of the year. In other respects the remedy for the aggrieved party shall be the same as there provided.

Occupant ceasing to improve, not to remove his fence in case the other will purchase.  
R. S. c. 22, § 10.

SEC. 10. When one party ceases to improve his land, or lays open his inclosure, he shall not take away any part of his partition fence adjoining the next inclosure improved, if the owner or occupant thereof will pay therefor what two or more fence viewers, on due notice to both parties, determine to be its reasonable value.

Liability of owner beginning to improve land lying in common.  
R. S. c. 22, § 11.

SEC. 11. When any land, which has been uninclosed, is afterwards inclosed, or used for pasturing, its occupant or owner shall pay for one-half of each partition fence on the line between his land and the inclosure of any other occupant or owner, and its value shall be ascertained in writing; if the parties do not agree, by two or more of the fence viewers of the town where such fence stands; and after the value is so ascertained, on notice to such occupant or owner, if he neglects or refuses for thirty days, after demand, to pay it, the proprietor of the fence may have an action on the case for such value and the costs of ascertaining it.

If fence be on town line, how divided.  
R. S. c. 22, § 12.

SEC. 12. If the line on which a partition fence is to be made or to be divided, is the boundary between two or more towns, or partly in one town, and partly in another, a fence viewer shall be taken from each town.

Division of fences, when binding.  
R. S. c. 22, § 13.

SEC. 13. When a fence between the owners of improved lands is divided either by fence viewers, or by the written agreement of the parties recorded in the town clerk's office, where the land lies, the owners shall erect, and support it accordingly; but if any person lays his lands common, and determines not to improve any part of them adjoining such fence, and gives six months notice to all occupants of adjoining lands, he shall not be required to maintain such fence while his lands so lie common and unimproved.

SEC. 14. Nothing herein extends to house lots, the contents of which does not exceed half an acre; but if the owner of such lot improves it, the owner of the adjacent land shall make and maintain one-half of the fence between them, whether he improves or not; nor shall the provisions of this chapter make void any written agreement respecting public fences.

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Provisions not applicable to house lots, nor agreements.  
R. S. c. 22, § 14.  
2 Me. 72.

## FENCES OF COMMON FIELDS.

SEC. 15. When several lots or pieces of land are inclosed and fenced in one common field, or when all the proprietors of such lands agree to inclose them in that manner, said proprietors may hold regular meetings when they judge proper, make such rules for managing their common concerns, and adopt such equitable modes of improvement as their common interest requires; but in all other respects each proprietor may, at his own expense, inclose, manage and improve his own land as he thinks best, maintaining his proportion of fence inclosing the general field.

Inclosure of lots lying together by a general fence.  
R. S. c. 22, § 15.

SEC. 16. Upon the application of any two or more proprietors to any justice of the peace for the county, where such land lies, he shall issue his warrant to one of the applicants, or to the clerk of the proprietors, requiring him to call a meeting of the proprietors, and expressing in the warrant the time, place and purpose thereof.

Manner of calling meetings of proprietors.  
R. S. c. 22, § 16.

SEC. 17. Notice of the meeting shall be served at least fourteen days previous to the time appointed, when all the proprietors reside in the town where the land lies, by reading the warrant to each proprietor, or giving him a copy in hand, or by leaving it at his usual place of abode, if the proprietors have not been previously organized for the aforesaid purpose, or if no other mode of notice has been fixed by their standing rules; and in such case if one or more of the proprietors reside without the town or plantation, notice shall be given to them by publishing a copy of said warrant in some newspaper printed in the county, or in the state paper, three weeks successively, the last publication to be at least fourteen days before the time appointed. When the standing rules of the proprietors determine the mode of serving notices for their meetings, it may be observed in service of said warrant, at the election of the party serving it.

How notice is to be given.  
R. S. c. 22, § 17.

SEC. 18. At all meetings of the proprietors, each may vote according to the relative amount or value of his interest, if known; if not, they shall all vote equally, and absent proprietors may vote by written proxy.

How they may vote.  
R. S. c. 22, § 18.

SEC. 19. They may raise money from time to time for defraying their common charges and for managing their affairs, which shall be assessed upon the several proprietors, in proportion to their interests, by their assessors; and any person aggrieved by such assessment may

May raise and assess money. Abatements.  
R. S. c. 22, § 19.

**CHAP. 22.** apply to the county commissioners, who may abate his part of it in whole or in part, if they see cause.

Choice of officers.  
R. S. c. 22, § 20.

**SEC. 20.** They may, at their annual or other meeting, duly notified, choose a clerk, three or five assessors, a collector, and such other officers as they shall find necessary, to continue in office until removed by them, or others are chosen and qualified in their stead. The clerk and assessors shall be sworn.

Clerk to issue warrant to collect taxes.  
R. S. c. 22, § 21.

**SEC. 21.** Such clerk shall issue his warrant to the collector, requiring him to collect all money so assessed, and to pay it over to the clerk or other proper officer according to the orders of the proprietors; and the collector shall collect it as collectors of towns are authorized to collect town taxes.

Apportionment of the general fence.  
R. S. c. 22, § 22.

**SEC. 22.** The whole fence inclosing such general field, as far as convenient, shall be apportioned amongst the proprietors according to the number of acres held and cultivated or otherwise used by each; and the part to be maintained by each shall be set out and assigned to him by any two or more fence viewers of the town, unless they agree on an apportionment of the fence among themselves. The proportion of fence so assigned to each shall be recorded by the clerk in the books of the proprietors; and if there is no such clerk, by the clerk of the town on the town records.

Proprietors not liable, who do not occupy their lots.  
R. S. c. 22, § 23.

**SEC. 23.** If any proprietor of land in such general field declines to cultivate his land, or to use it for pasturing, and gives written notice of his intention to the clerk of the proprietors, he shall not be required to maintain any part of the fence, nor to pay any tax or assessment on account of his land while he neglects to cultivate or use it as aforesaid.

Apportionment of expenses according to interest.  
R. S. c. 22, § 24.

**SEC. 24.** The expense of apportioning the fence, and of making and maintaining such part thereof as cannot conveniently and justly be assigned to any one proprietor, shall be borne by all the proprietors, to be taxed in proportion to their interests; and the part assigned to each shall be made and maintained by him while he uses his part of the general field for pasturing, planting, mowing, or otherwise.

Manner of repairing fences of delinquents.  
R. S. c. 22, § 25.  
29 Me. 866.

**SEC. 25.** If any part of the fence assigned to a proprietor become deficient, and he does not repair it within three days after notice of such deficiency given to him or his tenant by a fence viewer of the town, it may be repaired by any other proprietor; and such repairs may be examined by any two or more fence viewers, and if adjudged by them, after notice, to be sufficient, they shall ascertain their cost, and make a statement thereof, and of the amount of their fees, in writing under their hands.

Delinquent liable for double the expense.  
R. S. c. 22, § 26.

**SEC. 26.** The person making such repairs may demand of the deficient proprietor, or of his tenant, double the costs of such repairs and the fees thus ascertained; and if they are not paid within one



month after notice and demand thereof, he may recover them in an action on the case. CHAP. 22.

SEC. 27. If part of the fence is suddenly blown down, or carried away by a flood or tempest, when the crops in the field are thereby exposed to immediate destruction or injury, the proprietor to whom it was assigned shall repair it within twenty-four hours after notice thereof given him by a fence viewer. If he fails so to do, it may be repaired by any other proprietor; and he may recover double the costs thereof, and fees, as provided in the preceding section. The fence viewers may allow a longer time than twenty-four hours, if they think proper.

Proceedings if any part be suddenly destroyed.  
R. S. c. 22, § 27.

SEC. 28. The proprietors may choose one or more field drivers, who shall have and exercise the same powers with respect to the general fields, as are exercised by field drivers chosen by a town.

Choice of field drivers and their powers.  
R. S. c. 22, § 28.

SEC. 29. If a proprietor puts into the general field any horses, cattle, or other beasts contrary to the regulations of the proprietors, either by putting in more than the number allotted him, or before the day fixed for that purpose, or by keeping them therein longer than the time limited, he shall be considered a trespasser; and his beasts may be impounded, as taken doing damage, as if he owned no land in the general field.

No proprietor to put in stock contrary to regulations.  
Penalty.  
R. S. c. 22, § 29.

SEC. 30. If any proprietor is injured in his lands by the beasts of a stranger, he shall have the same remedy therefor as if his land had been inclosed and used separately. When damage happens to a proprietor through the insufficiency of the fence of a co-proprietor, he or the occupant of his land shall be liable to pay it.

Remedy if a proprietor injured by beasts of a stranger.  
R. S. c. 22, § 30.

SEC. 31. Every proprietor of land lying unfenced in a general field shall once in every two years, if requested by the owner of the adjoining land, run lines with him between their lots, and establish boundaries by sufficient mete stones, at their joint expense; and if he fails so to do, after at least six days notice, he shall forfeit two dollars, to be recovered by such adjoining owner to his own use in an action on the case.

Lines between proprietors to be run once in two years.  
R. S. c. 22, § 31.

SEC. 32. A major part in interest in any common or general field, at any legal meeting called for the purpose, may discontinue their association; not to take effect until six months after the vote for that purpose, unless all the proprietors consent to an earlier period.

Association may be discontinued.  
R. S. c. 22, § 32.

SEC. 33. Nothing contained in this chapter shall prevent the proprietors of any such common field fenced, who had been duly organized previous to February twenty-fourth, eighteen hundred and twenty-one, from making and maintaining their fences according to rules and orders before that date agreed on by them at any legal meeting.

Certain proprietors not subject to these regulations.  
R. S. c. 22, § 33.

SEC. 34. Portions of common fields inclosed under the provis-

Waste portions of lots

## CHAP. 22.

ions hereof, which are unoccupied and unimproved by their owners on account of their being rocky or barren, shall be excluded in all estimates for assessments under section nineteen, or for apportionments of fence under section twenty-two.

excluded from estimates and assessments. R. S. c. 22, § 34.

Proceedings on application of three or more to be set off. R. S. c. 22, § 35.

SEC. 35. Any three or more proprietors of lots within one general fence or inclosure, by a petition in writing to the proprietors of such field, at any meeting thereof, legally warned for that purpose, may request to have their lots, either alone, or jointly with any other lots in said field, divided from the remainder, to be inclosed in one common fence, and occupied by them as an entire field separately from the other proprietors of the general field; and if the majority of the proprietors in interest, present at such meeting, refuse their assent to such division, the county commissioners may, upon the like application, appoint three or five disinterested and suitable persons within the county where such general field is situated, to make such division thereof, if they deem it expedient; and to assign to each field its proportion of the partition fence, which shall become necessary by reason of such division, to be kept up and maintained by each proprietor of said general field; and such persons shall, as soon as may be after their appointment, make return of their doings under their hands to such commissioners; and after the acceptance thereof by them, the fields so divided shall be deemed separate general fields, and the proprietors of the field so set off and the remaining proprietors of the original shall be distinct and separate proprietary bodies, having all the like powers and privileges, and subject to all the duties and liabilities, as the proprietors of the original general field before such division was made; but no order for such division shall be made, nor any committee appointed as aforesaid, until the other proprietors have had notice of the petition for such division; which shall be given by serving the clerk of the proprietors with a copy of the petition, thirty days at least before such order or appointment is made.

Proceedings for organizing to enclose a common field. R. S. c. 22, § 36.

SEC. 36. When the major part in interest of the proprietors of any tract of land consisting of five or more allotments are desirous of inclosing them in one general field, they may apply to the supreme judicial court in the county where such land lies, and when such land lies in different counties, then to such court to be holden in either; and the court may order such notice to all parties interested, as they may deem reasonable, and after hearing the parties appearing, may order the land to be so enclosed.

After establishment of a common field, proprietors to proceed as provided in this chapter. R. S. c. 22, § 37.

SEC. 37. After a common or general field is so established by order of court, the further proceedings in relation thereto shall be the same as are provided when a field is so enclosed by the consent of all the proprietors; and the proprietors shall be entitled to all the privileges, and subject to all the duties, before provided with respect to the proprietors of fields inclosed by consent.

SEC. 38. Any fence viewer, who, when requested, unreasonably neglects to view any fence, or to perform any other duties herein required of him, shall forfeit three dollars to any person suing therefor, within forty days after such neglect. He shall also be liable for all damages to the party injured.

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Penalty if fence viewers neglect their duty.  
R. S. c. 22, § 38.

SEC. 39. Each fence viewer shall be paid by the person employing him at the rate of one dollar a day for the time he is so employed. If the party liable neglects to pay the same for thirty days after demand, each of such fence viewers may recover double the amount in an action on the case, and be mutually witnesses for or against each other.

Fees for services.  
Penalty for neglect of payment.  
R. S. c. 22, § 39.

#### DRAINING OF SALT MARSHES.

SEC. 40. The owners or occupants of salt marsh in any town, enclosed by ditches for drainage and partition, shall maintain such ditches between their own and the adjoining enclosures while they continue to improve them, in proportion to the benefits accruing to each by such drainage, in the judgment of the fence viewers in such town, who shall have jurisdiction thereof the same as they have of fences; and all the duties, obligations and liabilities of adjoining owners or occupants of such marsh as to making, repairing, and maintaining such ditches, and the powers, duties, penalties and fees of fence viewers in relation thereto shall be the same as prescribed in the preceding sections in relation to partition fences.

Ditches subject to jurisdiction of fence viewers.  
1866, c. 34, §§ 1, 2, 3, 7.

SEC. 41. Said fence viewers shall determine the width and depth of the ditch, neither to exceed three feet, and the time to be allowed for making it, not exceeding sixty days; and notice thereof shall be given to the delinquent proprietor; and if he neglects to make or repair his portion of such ditch, it may be done by the complainant, to be adjudged sufficient by two or more fence viewers, who shall make a certificate thereof, and of its value and their fees. If such delinquent owner or proprietor neglects payment of said value and fees, one month after demand, the complainant may recover of him double the amount thereof with interest at the rate of one per cent. a month, in an action on the case.

Width and depth of ditches.  
1866, c. 34, §§ 3, 4, 5.

Complainant to recover of delinquent owners expense of making.

SEC. 42. When a ditch between improved lands of different owners is divided by fence viewers, or by the written agreement of the parties, recorded in the town clerk's office, where the land lies, the owners shall make and maintain it accordingly; but if any person lays his lands common, and determines not to improve any part of them adjoining such ditch, and gives six months notice to all occupants of adjoining lands, he shall not be required to maintain such ditch while his lands so lie common and unimproved.

Provisions respecting improved lands.

Exemption from maintenance of ditches when lands lie common.  
1866, c. 34, § 6.