

MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

BY THE AUTHORITY OF THE LEGISLATURE.



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CHAP. 16.

how to be
settled.
R.S., c. 16, § 23.
1883, c. 125,
§§ 3, 4.

improvement, including the value of the royalty or stumpage on the rock, and of the other material removed and used, may be recovered against the persons or corporations taking said material, in an action on the case; or upon application to the county commissioners, at the election of the party injured, who shall assess the damages, and the proceedings shall be conducted as provided in section eight of chapter eighteen.

Drains, how
protected.
R.S., c. 16, § 24.

SEC. 24. Whoever damages such works shall be punished as provided in chapter one hundred and twenty-seven, for offences of like nature.

CHAPTER 17.

NUISANCES.

- SEC. 1. Certain places declared nuisances.
2. Punishment for keeping such nuisances.
3. Lease to a tenant keeping a nuisance, void.
4. Liability of owners of buildings, knowingly allowing nuisances.
5. Certain nuisances described.
6. Places to be assigned for unwholesome employments.
7. Proceedings when places so assigned become offensive.
8. When gunpowder manufactories shall be deemed nuisances.
9. Penalty for burning bricks in parts of a town prohibited by vote.
10. Water mills and dams on streams, and fences and buildings fronting on public ways, in certain cases, not nuisances.
11. Punishment for nuisances, on conviction; abatement thereof.
12. Action for damages, whether nuisances are public or private.
13. Process for abatement of a nuisance.
14. Warrant stayed, if defendant gives security to discontinue nuisance.
15. Expenses of abatement to be defrayed from materials, if sufficient; otherwise, as in case of execution.
16. Equity jurisdiction of supreme judicial court. Injunction may issue from court where a suit for nuisance is pending.
17. Stationary steam engine not to be used without license.
18. Notice and hearing by town officers on application for a license.
19. Such engine erected without license, to be deemed a nuisance.
20. Power of town officers to remove such engine.
21. Steam boilers to be provided with fusible safety plug.
22. Penalty for removing such plug, or using steam boiler without it.
23. Blasting rocks; notice to be given.
24. Violation, penalty for.
25. What buildings may be adjudged nuisances. Proceedings. Powers of town officers.
26. Town officers may abate nuisance, at owner's expense, unless he applies to a justice of the supreme court.
27. Owner may apply to justice of supreme court. Proceedings.
28. Costs, by whom to be paid.
29. Sections 25 to 29, inclusive, not to be in force unless adopted by town.

Common
nuisances.
1880, c. 247, § 1.
1873, c. 152.
63 Me., 219.
64 Me., 529.
65 Me., 295,
430.
66 Me., 419.
67 Me., 125.
69 Me., 136.
74 Me., 153.

SEC. 1. All places used as houses of ill-fame, or for the illegal sale or keeping of intoxicating liquors, or resorted to for lewdness or gambling; all houses, shops or places where intoxicating liquors are sold for tippling purposes, and all places of resort where intoxicating liquors are kept, sold, given away, drunk, or dispensed in any manner not provided for by law, are common nuisances.

SEC. 2. Whoever keeps or maintains such nuisance, shall be fined not exceeding one thousand dollars, or imprisoned in jail not more than one year. (a)

SEC. 3. If any tenant or occupant, under any lawful title, of any building or tenement not owned by him, uses it or any part thereof for any purpose named in section one, he forfeits his right thereto, and the owner thereof may make immediate entry, without process of law, or may avail himself of the remedy provided in chapter ninety-four.

SEC. 4. Whoever knowingly lets any building or tenement owned by him, or under his control, for any purpose named in section one, or knowingly permits the same or part thereof to be so used, is guilty of aiding in the maintenance of a nuisance, and shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned not less than thirty days nor more than six months.

SEC. 5. The erection, continuance or use of any building or place for the exercise of a trade, employment, or manufacture, which, by noxious exhalations, offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or of the public; the causing or suffering any offal, filth, or noisome substance to collect, 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; the corrupting, or rendering unwholesome, or impure, the water of a river, stream, or pond; the unlawfully diverting it from its natural course or state, to the injury or prejudice of others; and the obstructing or encumbering by fences, buildings, or otherwise, highways, private ways, streets, alleys, commons, common landing places, or burying-grounds, are nuisances within the limitations and exceptions hereafter mentioned.

SEC. 6. The municipal officers of a town, when they judge it necessary, may assign places therein for the exercise of any trades, employments, or manufactures aforesaid, and may forbid their exercise in other places, under penalty of being deemed public or common nuisances and the liability 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.

SEC. 7. When a 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; but if the jury acquit the defendant, he shall recover costs of the complainant.

SEC. 8. If any person manufactures gunpowder, or mixes or grinds the composition therefor, in any building within eighty rods of any valu-

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Punishment.
R.S., c. 17, § 2.Lease void.
R.S., c. 17, § 3.
—owner may enter or he may apply chapter 94.
56 Me., 323.
68 Me., 545.Liability of owner.
R.S., c. 17, § 4.
67 Me., 125.
—punishment.Certain nuisances described.
R. S., c.17, § 5.
7 Me., 156.
12 Me., 361.
17 Me., 294.
26 Me., 132.
30 Me., 74.
32 Me., 85.
37 Me., 362.
42 Me., 156,
527.
43 Me., 201.
47 Me., 163.
49 Me., 30.
51 Me., 504.
57 Me., 403.
58 Me., 48.
59 Me., 367.
60 Me., 194.
65 Me., 435,
438.
68 Me., 545.Town officers may assign places for unwholesome employments.
R.S., c.17, § 6.
34 Me., 40.
65 Me., 435.Proceedings, when places so assigned become offensive.
R.S., c. 17, § 7.

When buildings for manufacture of

(a) 64 Me., 529; 65 Me., 295; 68 Me., 545.

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powder are nuisances. 1877, c. 219. See c. 26, § 20. Burning of bricks in parts of a town may be prohibited by vote. R.S., c. 17, § 9. —violation of such prohibition, is a nuisance.

Mills and dams on streams, and fences and buildings fronting on public ways, sometimes not nuisances. R.S., c. 17, § 10. 6 Me., 123. 7 Me., 156. 8 Me., 145. 24 Me., 234. 60 Me., 194.

Punishment: and abatement of nuisance. R.S., c. 17, § 11. 21 Me., 12, 85. 30 Me., 78.

Action for damages. R.S., c. 17, § 12. 44 Me., 156. 49 Me., 30. 51 Me., 504. 57 Me., 377.

Process for abatement of nuisance. R.S., c. 17, § 13.

able building not owned by such person or his lessor, which was erected when such business was commenced, the former building shall be deemed a public nuisance; and such person may be prosecuted accordingly.

SEC. 9. 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 forfeits not exceeding two hundred dollars to the town; and if said bricks or brick-kiln are not removed before conviction, the court may issue a warrant for the removal thereof, or stay it as hereinafter provided.

SEC. 10. The erection and maintenance of water mills and dams to raise water for working them upon or across streams not navigable, as provided in chapter ninety-two, shall not be deemed a nuisance, 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, commons, or lands appropriated to public use, shall not be deemed nuisances, when erected for the times and in the manner provided in section ninety-five, of chapter eighteen.

SEC. 11. Whoever erects, causes or continues a public or common nuisance, as herein described or at common law, where no other punishment is specially provided, may be fined 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 hereinafter provided.

SEC. 12. 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 offender an action on the case for his damages, unless otherwise specially provided.

SEC. 13. 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.

—form.

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

Greeting.

Whereas, by the consideration of our honorable — court, at a term begun and held at —, within and for said county, 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 —, in said county," (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; also that you levy of the materials by you so removed, and of the goods, chattels, and lands of said C. D., a sum sufficient to defray the expense of removing and abating the same, not to exceed — 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 said C. D., and him commit unto our jail in —, in said county, and there detain until he pays such sums or is legally discharged. And make return of this warrant, with your doings thereon, within thirty days. Witness, A. B., Esq., at —, this — day of —, in the year of our Lord 18—. J. S., Clerk."

And when the conviction is upon an action before a trial justice, and no appeal is made, the justice, after estimating 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. 14. Instead of issuing such warrant, the court or trial 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 either 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 may be 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 trial justice on being satisfied of such default, may forthwith issue the warrant and scire facias on the recognizance.

SEC. 15. 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 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 him, 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 avail himself of the poor debtor's oath, 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.

SEC. 16. 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.

SEC. 17. No stationary steam engine shall be erected in a town, until the municipal officers have granted license therefor, designating the place where the buildings therefor shall be erected, the materials and mode of

Warrant to be stayed, if defendant gives security to discontinue the nuisance. R.S., c. 17, § 14.

Expenses of abatement to be defrayed from materials, if sufficient; otherwise, as in case of execution. R.S., c. 17, § 15.

—defendant entitled to poor debtor's oath.

Equity jurisdiction of S. J. Court, by injunction. R.S., c. 17, § 16. 60 Me., 194.

Stationary engine not to be used without

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license from
town officers.
R.S., c. 17, § 17.
65 Me., 435.
—how
applied for.

Notice and
hearing on
application.
R.S., c. 17, § 18.

Unlicensed
engine.
R.S., c. 17, § 19.
65 Me., 435.
Officers may
remove it.
R.S., c. 17, § 20.
See c. 14, § 16.
65 Me., 435.

Steam boilers
to be pro-
vided with
safety fusible
plugs.
R.S., c. 17, § 21.

Penalty for
violation.
R.S., c. 17, § 22.

Blasting
rocks, notice
to be given.
R.S., c. 17, § 23.

Penalty for
violation.
R.S., c. 17, § 24.

Dangerous
buildings
may be
adjudged
nuisances;
proceedings.
R.S., c. 17, § 26.

—powers of
municipal
officers.

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 shall be granted on written application, recorded in the town records, and a certified copy of it furnished, without charge, to the applicant.

SEC. 18. When application is made for such license, said officers shall assign a time and place for its consideration, and give at least fourteen days' public notice thereof in such manner as they think proper, at the expense of the applicant.

SEC. 19. Any such engine erected without a license shall be deemed a common nuisance without other proof than its use.

SEC. 20. Said officers 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.

SEC. 21. No person or corporation shall manufacture, sell, use or cause to be used any steam boiler, unless it is provided with a fusible safety plug, made of lead or some other equally fusible material, not less than one half inch in diameter, which shall be placed in the roof of the fire box, when a fire box is used; and which, in all cases, shall be placed in the 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 is lawful to use Ashcroft's "protected safety fusible plug."

SEC. 22. 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, or manufactures, or sells a steam boiler unprovided with such safety fusible plug, such offender shall be fined not exceeding one thousand dollars.

SEC. 23. Persons engaged in blasting lime-rock or other rocks, shall before each explosion 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. 24. Whoever violates the preceding section, forfeits to the prosecutor five dollars for each offence, to be recovered in an action of debt, and is liable for all damages caused by any explosion; and if the persons engaged in blasting rocks are unable to pay, or after judgment and execution, avoid payment of the fine, damages and costs, by the poor debtor's oath, the owners of the quarry, in whose employment they were, are liable for the same.

SEC. 25. When the municipal officers of a town after personal notice in writing to the owner of any burnt, dilapidated or dangerous building, or by publication in a newspaper in the same county, if any, three weeks successively, otherwise in the state paper, and after a hearing of the matter, adjudge the same to be a nuisance, or dangerous, they may make and record an order, prescribing what disposal shall be made thereof, and thereupon the town clerk shall deliver a copy of such order to a constable, who shall serve such owner, if a resident of the state, with an attested

copy thereof, and make return of his doings thereon to said clerk forthwith. If the owner, or part owner, is unknown, or resides without the state, such notice shall be given by publication in the state paper, or in a paper published in the county, three weeks successively.

SEC. 26. If no application is made to a justice of the supreme judicial court, as is hereafter provided, the municipal officers of such town, shall cause said nuisance to be abated, removed or altered in compliance with their order, and all expenses thereof shall be repaid to the town within thirty days after demand, or may be recovered of such person by an action for money paid.

SEC. 27. Any owner aggrieved by such order, may apply to a justice of the supreme judicial court, in term time or vacation, who shall forthwith, after notice and hearing, affirm, annul, or alter such order. If the court is not in session, the action shall be entered on the docket of the preceding term.

SEC. 28. If the court affirms such order, costs shall be recovered by the town. If it wholly annuls such order, costs shall be recovered by the applicant, and if it alters it in part, the court may render such judgment as to costs as justice requires.

SEC. 29. The four preceding sections shall not be in force in any town unless adopted at a legal meeting thereof.

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—owner to be served with a copy of order; return of service.

See c. 3, § 59, ¶ 8.

Town officers may order nuisance abated, at owner's expense, unless owner applies to S. J. C.

R. S., c. 17, § 26. Owner may apply to supreme court; proceedings.

R. S., c. 17, § 27. 1883, c. 175, §§ 3, 4.

Costs, by whom to be paid.

R. S., c. 17, § 29. 1883, c. 175, §§ 3, 4.

Sections 25-28 require vote of town. R. S., c. 17, § 30.

CHAPTER 18.

WAYS.

LOCATION, ALTERATION, AND DISCONTINUANCE OF HIGHWAYS.

- SEC. 1. Commissioners' power; petition how framed.
- 2. Notice how given, proved and recorded.
- 3. Costs paid by petitioners on failure. Distress warrant may be issued.
- 4. Duties of commissioners at the hearing, and in laying out or altering ways.
- 5. Return when made; disposal of it. Petitions for increase of damages, when presented. Damages awarded under first thirteen sections, to be paid out of county treasury.
- 6. Proceedings, when petitions are presented, before and after hearing.
- 7. Damages, how estimated, to whom awarded; when payable.
- 8. Petitions for increase of damages, by appeal to S. J. court. Proceedings.
- 9. Time allowed for removing growth, and for making the way.
- 10. Way discontinued before damages paid; proceedings.
- 11. Highways, when county commissioners may re-locate doubtful boundaries of. Town officers to preserve road monuments.

WAYS IN TWO OR MORE COUNTIES.

- SEC. 12. Petitions respecting ways in two or more counties. Proceedings of commissioners of the several counties thereon. Notices.
- 13. Proceedings of commissioners continued and closed.