

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. 91. respective counties, of liens and proceedings relative thereto, for an amount not exceeding their jurisdiction in other civil actions, to be enforced as provided in this chapter.

and police courts.
1875, c. 28.

PLEDGES.

Pledge for payment of money, notice for sale of.
1875, c. 53, § 1.

—notice, how to be served

SEC. 57. The holder of stocks, bonds or other personal property in pledge for the payment of money or the performance of any other thing, may, after failure to pay or perform, give written notice to the pledgeor that he intends to enforce payment by a sale of the pledge; which notice shall be served by leaving a copy with the pledgeor, if he resides within the state and his residence is known to the holder, otherwise by publishing it at least once a week for three successive weeks, in one of the principal newspapers, if any, in the city or town where the pledgee resides, otherwise, in one of the principal newspapers published in the county, or in the state paper. Such notice, together with an affidavit of service, shall be recorded in the clerk's office of the city or town where the pledgee resides.

—shall be recorded.

Pledge, sale of.
1875, c. 53, § 2.

—proceeds, how applied.

SEC. 58. If the money to be paid or the thing to be done is not paid or performed, or tender thereof made, within sixty days after such notice is so recorded, the holder may sell the pledge at public auction, and apply the proceeds to the satisfaction of the debt or demand and the expenses of the notice and sale, and any surplus shall be paid to the party entitled thereto on demand.

CHAPTER 92.

THE RIGHT OF ERECTING MILLS AND MILL-DAMS, OF FLOWING LANDS AND OF DIVERTING WATER FOR THE SUPPLY OF MILLS; AND THE MODE OF OBTAINING DAMAGES. PROTECTION OF WAYS FROM OVERFLOW. INSPECTION OF DAMS AND RESERVOIRS.

ERECTION OF MILLS AND DAMS, AND RIGHTS OF FLOWAGE.

- SEC. 1.** Right to erect and maintain mill-dams, and to divert water by a canal for mills.
2. No dam or canal shall injure a mill or canal previously built.
 3. Restriction as to height of the dam, length of time, and quantity of water.
 4. Damages for flowing, or diversion, are recoverable on complaint.
 5. Form of complaint.
 6. How presented and served. May be inserted in writ, and how served.
 7. What may be pleaded in bar.
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 9. Proceedings, if complainant recovers. Commissioners shall determine gross damages. If owners do not pay them, then annual damages stand as the judgment of court.
 10. If owners pay, judgment bars further complaint, unless dam is raised.
 11. Owners may apply to have damages assessed in gross. Proceedings.

- SEC. 12. Trial by jury. Commissioners' report is evidence.
 13. Acceptance of commissioners' report.
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 15. Yearly damages, how to be fixed.
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 17. Complainant may sue for damages, if unpaid. Lien upon mill and land for damages.
 18. Mill and land may be seized and sold on the execution, after thirty days. Effect of such sale.
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 22. Owner may offer an increased compensation. Consequence.
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 24. Tenants may make such offers, as well as owners.
 25. Restriction of suits for damages.
 26. Double damages, if dam is raised higher, kept up longer, or more water is diverted, than is allowed by the judgment.
 27. Agreement of parties is binding, if recorded.
 28. Judgment is no bar to a new complaint.
 29. Tender of damages, and effect thereof.
 30. Complaint shall not abate by death of either party.
 31. If complaint abates, rights preserved by new complaint within a year.
 32. This chapter applies to streams forming the boundary of the state.
 33. Compensation of commissioners. Costs.
 34. Owner or mortgagee in possession, when liable for acts of tenants.
 35. Right to erect and maintain dams for cutting ice. Damages, how to be recovered. Proviso.

PROTECTION OF WAYS FROM OVERFLOW.

- SEC. 36. Owners of mills or water power may petition county commissioners for right to raise ways and enlarge vents. Preliminary proceedings.
 37. Examination, hearing and decision. Expenses and costs, how to be borne.
 38. If decision is in favor of petitioners, proceedings.
 39. If decision is against petitioners, proceedings.
 40. Any party may appeal, as in case of highways.
 41. Rights of flowage or damage are unaffected by the five preceding sections.

INSPECTION OF DAMS AND RESERVOIRS.

- SEC. 42. Engineer shall, on petition, be appointed by governor and council to inspect dams and reservoirs, and to report to them.
 43. If dam or reservoir is reported unsafe, occupants or lessees shall make alterations. Proceedings, in case of neglect.
 44. Compensation of engineer, how to be paid.

ERECTION OF MILLS AND DAMS, AND RIGHTS OF FLOWAGE.

SEC. 1. Any man may on his own land, erect and maintain a water mill and dams to raise water for working it, upon and across any stream, not navigable; or, for the purpose of propelling mills or machinery, may cut a canal and erect walls and embankments upon his own land, not exceeding one mile in length, and thereby divert from its natural channel the water of any stream not navigable, upon the terms and conditions, and subject to the regulations hereinafter expressed. (a)

Right to erect and maintain mill-dams, and to divert water by a canal for mills.
 R.S., c. 92, § 1.

SEC. 2. No such dam shall be erected or canal constructed to the injury of any mill or canal lawfully existing on the same stream; nor to the injury of any mill site, on which a mill or mill-dam has been lawfully

Shall not injure mill or canal previously built.
 R.S., c. 92, § 2.

(a) 5 Me., 12; 28 Me., 20; 36 Me., 43; 39 Me., 250; 42 Me., 155; 50 Me., 483; 52 Me., 261; 54 Me., 489; 61 Me., 26; 62 Me., 456, 497; 65 Me., 194; 68 Me., 542; 69 Me., 19; 70 Me., 246.

CHAP. 92. erected and used, unless the right to maintain a mill thereon has been lost or defeated. (a)

Restrictions and regulations of height of dam, time, and quantity of water.
R.S., c. 92, § 3.
38 Me., 239.
Damages for flowing or by diversion of water, are recoverable by complaint.
R.S., c. 92, § 4.

SEC. 3. The height to which the water may be raised, and the length of time during which it may be kept up in each year, and the quantity of water that may be diverted by such canal, may be restricted and regulated by the verdict of a jury, or report of commissioners, as is herein-after provided.

SEC. 4. Any person, whose lands are damaged by being flowed by a mill-dam, or by the diversion of the water by such canal, may obtain compensation for the injury, by complaint to the supreme judicial court in the county where any part of the lands are; but no compensation shall be awarded for damages sustained more than three years before the institution of the complaint. (b)

Complaint.
R.S., c. 92, § 5.

SEC. 5. The complaint shall contain such a description of the land flowed or injured, and such a statement of the damage, that the record of the case shall show the matter heard and determined in the suit. (c)

Presentment and service of complaint; or it may be inserted in a writ.
R.S., c. 92, § 6.
64 Me., 367.
65 Me., 563.

SEC. 6. The complaint may be presented to the court in term time, or be filed in the clerk's office in vacation; and the proper officer shall serve the same, fourteen days before, on the respondent, by leaving a copy thereof at his dwelling-house, if he has any in the state; otherwise, he shall leave it at the mill in question, or with its occupant; or the complaint may be inserted in a writ of attachment and served by summons and copy.

What may be pleaded in bar.
R.S., c. 92, § 7.

SEC. 7. The owner or occupant of such mill or canal may plead in bar that the complainant has no right, title, or estate in the lands alleged to be injured; or that he has a right to maintain such dam, and flow the lands, or divert the water for an agreed price, or without any compensation; or any other matter, which may show that the complainant cannot maintain the suit; but he shall not plead in bar of the complaint, that the land described therein is not injured by such dam or canal. (d)

Respondent prevailing, recovers costs.
R.S., c. 92, § 8.

SEC. 8. When any such plea is filed, and an issue in fact or in law is joined, it shall be decided as similar issues are decided at common law; and if judgment is for the respondent, he shall recover his costs. (e)

Proceedings, if complainant recovers.
R.S., c. 92, § 9.
39 Me., 460.
48 Me., 462.
65 Me., 563.
68 Me., 222.
74 Me., 70.

SEC. 9. If the issue is decided in favor of the complainant, or if the respondent is defaulted, or does not plead or show any legal objection to proceeding, the court shall appoint three or more disinterested commissioners of the same county, who shall go upon and examine the premises, and make a true and faithful appraisement, under oath, of the yearly damages, if any, done to the complainant by the flowing of his lands or the diversion of the water described in the complaint, and determine how far the same is necessary, and as certain and report for what portion of the

(a) 31 Me., 254; 38 Me., 246; 44 Me., 173, 199; 54 Me., 489.

(b) 7 Me., 156; 10 Me., 236; 14 Me., 425; 28 Me., 20; 33 Me., 273, 480; 52 Me., 78; 54 Me., 489; 58 Me., 168; 59 Me., 256; 61 Me., 29; 63 Me., 447; 68 Me., 221; 73 Me., 65.

(c) 16 Me., 412; 28 Me., 20; 41 Me., 296; 42 Me., 69; 61 Me., 30.

(d) 4 Me., 323; 5 Me., 14; 6 Me., 283; 12 Me., 188; 21 Me., 230; 32 Me., 39, 385; 33 Me., 548; 36 Me., 44; 42 Me., 70; 48 Me., 462; 56 Me., 399; 65 Me., 563.

(e) 6 Me., 283; 65 Me., 562.

year such lands ought not to be flowed, or water diverted, or what quantity of water shall be diverted. They shall also ascertain, determine and report what sum in gross would be a reasonable compensation for all the damages, if any, occasioned by the use of such dam, and for the right of maintaining and using the same forever, estimated according to the height of the dam and flash-boards as then existing; and if within ten days after said report is presented to the court, the owners of said dam or mills elect to pay the damages in gross, the court, where the judgment is entered, shall fix the time in which said damages shall be paid, and if not paid within that time, the owners of the dam or mills lose all benefit of their election, and the annual damages shall stand as the judgment of the court, and, except as herein provided, all proceedings shall be in conformity with the other provisions of this chapter.

SEC. 10. If the damages in gross are paid within the time fixed, the judgment is a bar to any further complaint so long as the dam and flash-boards remain at the same height, but if thereafter either is raised, a new complaint may be made by the owner of the lands flowed for any additional damages caused thereby, and the proceedings in said new complaint shall be as hereinbefore prescribed.

SEC. 11. In any case where annual damages have been determined by a judgment of the court, the owners of the dam or mills may apply to the court by a new complaint, to have the damages assessed in gross, and commissioners may be appointed as in other cases, to ascertain, determine and report the damages in gross, and like proceedings shall then be had as are provided in the two preceding sections.

SEC. 12. If either party requests that a jury may be impanelled to try the cause, the report of the commissioners shall, under the direction of the court, be given in evidence to the jury; but evidence shall not be admitted to contradict it, unless misconduct, partiality, or unfaithfulness on the part of some commissioner is shown.

SEC. 13. If neither party requests a trial by jury, the report of the commissioners may be accepted by the court and judgment rendered thereon.

SEC. 14. The verdict of the jury or the report of the commissioners so accepted, is a bar to any action brought for such damages; and the owner or occupant shall not flow the lands nor divert the water during any portion of the period when prohibited, nor divert the water beyond the quantity allowed by the commissioners or jury.

SEC. 15. Such verdict or accepted report of the commissioners, and judgment thereon, shall be the measure of the yearly damages, until the owner or occupant of the lands or the owner or occupant of the mill or canal, on a new complaint to the court, and by proceedings as in the former case, obtains an increase or decrease of such damages.

SEC. 16. When any person, whose lands are so flowed or from whose lands the water is so diverted, files his complaint for ascertaining or increasing his damages, or brings his action of debt as provided in the following section, and moves the court to direct the owner or occupant of such mill or canal to give such security for the payment of the annual

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—commissioners shall determine damages in gross. 1881, c. 88, § 1.

—if owners do not elect to pay, annual damages stand as the judgment of court.

If damages in gross are paid, judgment is a bar to further complaint, unless dam is raised. 1881, c. 88, § 2. 74 Me., 70.

Owners may apply to have damages assessed in gross. 1881, c. 88, § 3. 74 Me., 70. —proceedings.

Commissioners' report is evidence in trial by jury. R.S., c. 92, § 10. 36 Me., 44. 42 Me., 70.

Acceptance of commissioners' report. R.S., c. 92, § 11.

Verdict or report bars any future action. R.S., c. 92, § 12. 64 Me., 367.

Yearly damages, how to be fixed. R.S., c. 92, § 13. 36 Me., 44. 50 Me., 32.

Security must be given for yearly damages, if required. R.S., c. 92, § 14.

CHAP. 92. damages, and the court so orders, the owner or occupant refusing or neglecting to give security shall have no benefit of this chapter; but is liable to be sued for the damages occasioned by such flowing, in an action at common law.

Complainant may sue for damages, if unpaid.
R.S., c. 92, § 15.
15 Me., 243.
30 Me., 251.
34 Me., 403.
65 Me., 561.
—lien upon mill and land for damages.

SEC. 17. The party entitled to such annual compensation, may maintain an action of debt or assumpsit therefor against any person who owns or occupies said mill, or canal and mills supplied thereby, when the action is brought; and shall therein recover the whole sum due and unpaid, with costs; and shall have a lien for such compensation, from the time of the institution of the original complaint, on the mill and mill-dam, or on the canal and the mill supplied thereby, with the appurtenances and the land under and adjoining them and used therewith, for any sum due not more than three years before the commencement of the complaint.

Mill and land may be sold on execution after thirty days.
R.S., c. 92, § 16.
28 Me., 21.

SEC. 18. The execution on such judgment, if not paid, may at any time within thirty days be levied on the premises subject to the lien; and the officer may sell the same at public auction, or so much thereof in common with the residue, as is necessary to satisfy the execution, proceeding in giving notice of such sale as in selling an equity of redemption on execution. Such sale is effectual against all persons claiming the premises by any title which accrued within the time covered by the lien.

—effect of sale.

Right of redemption, how to be enforced.
R.S., c. 92, § 17.

SEC. 19. Any person, entitled to the premises, may redeem them within one year after the sale, by paying to the purchaser, or the person holding under him, the sum paid therefor, with interest at the rate of twelve per cent., deducting therefrom any rents and profits received by such purchaser, or person holding under him; and may have the same process to compel the purchaser to account, as he might have had against a purchaser of an equity of redemption.

Either party may file new complaint.
R.S., c. 92, § 18.
16 Me., 412.
74 Me., 71.

SEC. 20. When either party is dissatisfied with the annual compensation established as aforesaid, a new complaint may be filed, and proceedings had and conducted substantially as in case of an original complaint.

Restriction of this right.
R.S., c. 92, § 19.
50 Me., 33.
74 Me., 71.

SEC. 21. No new complaint shall be brought, until one month after the payment of the preceding year is due, and one month after notice to the other party; and the other party may within that time make an offer or tender, as is hereinafter provided.

Owner may offer increased compensation.
R.S., c. 92, § 20.
—consequence.

SEC. 22. The owner of the mill, dam, or canal, may, within said month, offer in writing to the owner of the land injured, an increase of compensation for the future; and if the owner of the land does not agree to accept it, but brings a new complaint for the purpose of increasing it, he recovers no costs, unless he obtains an increase greater than the offer.

Injured party may offer to accept less compensation.
R.S., c. 92, § 21.
—consequence.

SEC. 23. The owner of the land injured may, within said month, offer in writing to the owner of the mill, dam, or canal, to accept a reduced compensation for the future; and if the owner of the mill, dam, or canal, declines to pay it, and brings a new complaint to obtain a reduction, he shall recover no costs, unless such compensation is reduced to a sum less than was offered.

SEC. 24. Such offers may be made by or to the tenants or occupants of the land, and of the mill and dam, or canal, in like manner and with like effect, as if made by or to the owners; but no agreements founded thereon bind the owners, unless made by their consent.

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Tenants may make such offers as well as owners.
R.S., c. 92, § 22.

SEC. 25. No action shall be sustained at common law for the recovery of damages occasioned by the overflowing of lands, or for the diversion of the water as before mentioned, except in the cases provided in this chapter, to enforce the payment of damages after they have been ascertained by process of complaint as aforesaid.

Restriction of suits for damages.
R.S., c. 92, § 23.
64 Me., 367.

SEC. 26. If after judgment, the restrictions imposed by the report of the commissioners or finding of the jury, respecting the flowing or diverting of the waters are violated, the party injured thereby may recover of the wrong-doers double damages for his injury, in an action at common law.

Double damages, if dam is raised higher, &c.
R.S., c. 92, § 24.

SEC. 27. When an annual compensation, upon the acceptance by one party of an offer made by the other, is established and signed by the owners of the mill, dam, or canal, and of the land, and recorded in the office of the clerk of the court in which the former judgment was rendered, with a reference on the record to the former judgment, and to the book where the agreement is recorded, such agreement is as binding as a verdict and judgment on a new complaint.

Agreement of parties is binding, if recorded.
R.S., c. 92, § 25.

SEC. 28. A judgment against a complainant as not entitled to any compensation is no bar to a new complaint for damages, arising after the former verdict, and for compensation for damages subsequently sustained.

Judgment is no bar to a new complaint.
R.S., c. 92, § 26.

SEC. 29. In case of an original complaint, the respondent may, with the same advantages to himself, tender and bring money into court, as in an action at common law; and if it is accepted, the judgment has the same effect as if rendered on a verdict.

Tender of damages, and effect thereof.
R.S., c. 92, § 27.

SEC. 30. No complaint for so flowing lands or diverting water abates by the death of any party thereto; but it may be prosecuted or defended by the surviving complainants or respondents, or the executors or administrators of the deceased.

Complaint not to abate by death of either party.
R.S., c. 92, § 28.

SEC. 31. If such complaint is abated or defeated for want of form, or if, after a verdict for the complainant, judgment is reversed, he may bring a new complaint at any time within one year thereafter, and thereon recover the damages sustained during the three years preceding the institution of the first complaint, or at any time afterwards.

If complaint abates, rights may be preserved by new complaint within a year.
R.S., c. 92, § 29.

SEC. 32. This chapter applies to mills and dams erected upon streams forming the boundary line of the state, although a part of the dam is not in the state; and the rights and remedies of all parties concerned shall be ascertained and determined as if the whole of such streams were in the state.

Streams forming boundary of state.
R.S., c. 92, § 30.
39 Me., 248.

SEC. 33. The court shall award a suitable compensation to be paid to the commissioners; and taxed and recovered by the prevailing party. The prevailing party recovers costs, except where it is otherwise expressly provided.

Pay of commissioners.
R.S., c. 92, § 31.
—costs.

SEC. 34. The owner or mortgagee in possession, as well as any ten- Owner or

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mortgagee in possession, is liable for acts of tenants. R.S., c. 92, § 32. 50 Me., 492.

Dams for ice cutting and harvesting, may be erected on certain streams, by land owner. 1883, c. 151.

—damages for flowing, how to be recovered.

—proviso.

ant, of any mill used for manufacturing lumber, is liable for the acts of such tenant in unlawfully obstructing or diverting the water of any river or stream, by the slabs or other mill waste from his mill, but no action shall be maintained therefor without a demand of damages, at least thirty days prior to its commencement. Such unlawful obstruction or diversion by the tenant, shall, at the election of the owner or mortgagee, and on written notice to the tenant, terminate his tenancy.

SEC. 35. In order to create ponds for the cutting and harvesting of ice for the market, any persons or corporations may erect and maintain on their own land, dams on streams not navigable or floatable, but emptying into tide waters navigable in the winter, and may flow the lands above during November, December, January, February, March and April; but they shall draw off the water to its natural state by the twentieth day of May yearly; and if any lands are injured by such flowing, the owners thereof have the same remedies as in case of lands flowed by dams erected and maintained for mill purposes; but no right is granted by this section to flow any mill-dam or any mill privilege improved or unimproved.

PROTECTION OF WAYS FROM OVERFLOW.

Owners of mills or water power may petition county commissioners for right to raise ways and enlarge water vents. 1879, c. 137, § 1. —commissioners shall appoint hearing and give notice. —how proved.

Proceedings of commissioners. 1879, c. 137, § 2. —their determination, how carried into effect. —expenses and costs, how borne.

If decision is in favor of petitioners, proceedings. 1879, c. 137, § 3.

SEC. 36. When the owners of mills carried by the water of a stream, or the owners of water power for operating mills, find or apprehend that the necessary head of water for working or reservoir purposes, cannot be obtained, or when their existing rights in respect to the same cannot be exercised, without overflowing some highway or town way, they may petition the county commissioners for permission to raise such ways and to enlarge the water vent thereof. Such commissioners shall appoint a time and place for a hearing on the petition, and give notice thereof to all parties interested, as provided in section two of chapter eighteen, and such notice may be proved in the manner therein provided.

SEC. 37. On the day appointed, they shall meet, examine the premises described in the petition, and hear the parties present, and thereupon they shall determine whether said ways shall be raised and the water vents enlarged, and to what extent, and shall prescribe the manner in which it shall be done, and what portion of the expenses thereof and the costs of the hearing shall be borne by the petitioners, and what portion, if any, by the town where the way is located.

SEC. 38. If the decision is in favor of the petitioners, said commissioners shall direct the town, in writing, to make the alterations prescribed, and fix the time within which the same shall be done, and if not done within the time fixed, the same may be done by the petitioners, and whether by the town or by the petitioners, it shall be done in a faithful manner and to the acceptance of the commissioners; and whichever party makes said alterations has a claim upon the other for the proportion fixed by the commissioners for said other party to pay, and if it is not paid within thirty days after its approval by said commissioners and a demand therefor, it may be recovered in an action on the case.

If decision is against

SEC. 39. If the decision of the county commissioners is against the

petitioners, they shall pay the costs of the hearing, taxed as in other cases before county commissioners.

SEC. 40. Any party aggrieved may appeal from the decision of said commissioners, in the same manner and subject to the same conditions as in case of highways.

SEC. 41. Nothing in the five preceding sections affects any right of flowage or damage therefor.

INSPECTION OF DAMS AND RESERVOIRS.

SEC. 42. The governor, with the advice and consent of council, shall annually appoint a competent and practical engineer, a citizen of the state, who shall, during August, September and October, upon the petition of ten resident tax payers, the selectmen or assessors of any town, or the county commissioners of any county, inspect any dam or reservoir located in such town or county, erected for the saving of water for manufacturing or other uses, and after personal examination, and hearing the testimony of witnesses summoned for the purpose, he shall forthwith report to the governor his opinion of the safety and sufficiency thereof.

SEC. 43. If, after such personal survey and inspection, the engineer reports that such dam or reservoir is unsafe or dangerous to the lives or property of persons residing, carrying on business or employed near or below the same, then the owners, occupants or lessees thereof shall immediately make such alterations, repairs, and additions to said dam or reservoir as such engineer recommends; and in default thereof, upon application of said engineer to any justice of the supreme judicial court, the said owners, occupants, or lessees shall be enjoined from the use of such dam or reservoir and the water therein contained, until they or either of them comply with the requirements of said engineer, and the water contained in said dam or reservoir may be discharged therefrom, by order of said engineer, in such manner as he directs as in his judgment most conducive to the safety of human life, and consistent with the protection of property.

SEC. 44. Said engineer shall receive, as full compensation for his services, five dollars a day while actually employed in such service, together with his actual travelling expenses, to be audited, allowed and paid from the state treasury, in cases where such dam or reservoir is by him adjudged safe and sufficient; and by the owners, occupants or lessees, of said dam or reservoir, in cases where said dam or reservoir is by him adjudged unsafe and insufficient, to be recovered by said engineer in an action on the case.

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petitioners.
1879, c.137, § 4.
Appeal.
1879, c.137, § 5.
See c. 18, § 48.

Flowage
rights are not
affected.
1879, c.137, § 6.

Engineer
shall be
appointed
by governor
and council
to inspect
dams and
reservoirs.
1877, c. 169.

—to report
to governor
and council.

If dam or
reservoir is
reported un-
safe, owners
or occupants
shall make al-
terations, &c.
1877, c. 169.

—proceed-
ings in case
of neglect.

Compensa-
tion of
engineer.
1875, c. 30, § 3.

—how paid.