

MAINE STATE LEGISLATURE

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SIXTH REVISION

THE
REVISED STATUTES

OF THE

STATE OF MAINE

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CHAPTER 23.

Nuisances.

Sec. 1. Common nuisances; jurisdiction of supreme judicial court to abate. R. S. c. 22, § 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 tipping purposes, and all places of resort where intoxicating liquors are kept, sold, given away, drank or dispensed in any manner not provided for by law, are common nuisances. The supreme judicial court shall have jurisdiction in equity, upon information filed by the county attorney or upon petition of not less than twenty legal voters of such town or city, setting forth any of the facts contained herein, to restrain, enjoin or abate the same, and an injunction for such purpose may be issued by said court or any justice thereof.

See c. 15, § 125; c. 127, § 48; 63 Me. 219; 64 Me. 529; 65 Me. 295, 430; 66 Me. 419; 67 Me. 125; 69 Me. 136; 74 Me. 153; 75 Me. 124, 590; 78 Me. 439; 81 Me. 108, 411; 82 Me. 158, 558; 84 Me. 437, 560; 85 Me. 289; 96 Me. 562, 568; 97 Me. 307, 311, 317, 482; 98 Me. 197, 352, 397; 99 Me. 63, 488; 101 Me. 40; 105 Me. 130; 106 Me. 193, 359; 107 Me. 179; 108 Me. 531; 110 Me. 98; 112 Me. 17, 197.

Sec. 2. Punishment. R. S. c. 22, § 2. 1909, c. 231. 1911, c. 95. Whoever keeps or maintains such nuisance, shall be fined not less than one hundred dollars, nor more than one thousand dollars, and imprisoned not less than thirty days, nor more than one year, and in default of payment of said fine, shall be imprisoned for an additional term of not more than one year.

64 Me. 529; 65 Me. 295; 68 Me. 545; 78 Me. 441; 81 Me. 108; 82 Me. 158; 84 Me. 560; 85 Me. 289; 101 Me. 40; 107 Me. 179; 110 Me. 98.

Sec. 3. Lease void; remedy of owner. R. S. c. 22, § 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-nine.

See c. 126, § 22; 56 Me. 323; 68 Me. 545; 97 Me. 307, 311, 317; 108 Me. 531.

Sec. 4. Liability of owner. R. S. c. 22, § 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.

67 Me. 125; 79 Me. 98; 97 Me. 90; 107 Me. 179.

Sec. 5. Certain nuisances described. R. S. c. 22, § 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; causing or suffering any

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offal, filth or noisome substance to collect, 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 encumbering by fences, buildings or otherwise, of highways, private ways, streets, alleys, commons, common landing places or burying-grounds, are nuisances within the limitations and exceptions hereafter mentioned.

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; 80 Me. 310; 83 Me. 278; 85 Me. 281; 86 Me. 57; 88 Me. 380; 97 Me. 562; 102 Me. 55; 104 Me. 162.

Sec. 6. Fence maliciously kept, when deemed a nuisance. R. S. c. 22, § 6. Any fence or other structure in the nature of a fence, unnecessarily exceeding six feet in height, maliciously kept and maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance.

91 Me. 221; 104 Me. 124.

Sec. 7. Town officers may assign places for unwholesome employments. R. S. c. 22, § 7. 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.

See c. 30, § 12; 34 Me. 40; 65 Me. 435; 85 Me. 281.

Sec. 8. Proceedings, when places so assigned become offensive. R. S. c. 22, § 8. 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.

85 Me. 281.

Sec. 9. When buildings for manufacture of powder are nuisances. R. S. c. 22, § 9. If any person manufactures gunpowder, or mixes or grinds the composition therefor, in any building within eighty rods of any valuable 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.

See c. 30, § 20; 85 Me. 281.

Sec. 10. Burning of bricks may be prohibited; violation of such prohibition, is a nuisance. R. S. c. 22, § 10. 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.

85 Me. 281.

Sec. 11. Mills and dams on streams, and fences and buildings fronting on public ways, sometimes not nuisances. R. S. c. 22, § 11. 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-seven, 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 one hundred and six of chapter twenty-four, unless the owner of the same shall be estopped as therein provided from justifying his occupation within the limits of said way.

6 Me. 123; 7 Me. 156; 8 Me. 145; 24 Me. 234; 60 Me. 194; 85 Me. 281.

Sec. 12. Punishment, and abatement of nuisance. R. S. c. 22, § 12. 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.

21 Me. 12, 85; 30 Me. 78; 85 Me. 281; 94 Me. 530.

Sec. 13. Motor boats equipped with suitable mufflers. 1913, c. 111, § 1. All motor boats run or operated in any tidal or other waters within the state, shall be provided or equipped with proper and suitable mufflers or other devices, which shall effectually deaden sound. Said mufflers shall be used all the time the engine of the motor boat is in operation; provided that it shall be allowable to cut out said mufflers, in case of boats while entered and competing in boat races held under the auspices of some regularly organized club, between the hours of eight o'clock in the morning and sunset following.

Sec. 14. Muffling devices approved by U. S. inspectors. 1913, c. 111, § 2. Any muffling device approved by the United States inspectors having jurisdiction of the tidal waters of this state shall, in case of motor boats run or operated on such tidal or other waters in the state, be deemed to be a compliance with the preceding section, provided such defense shall be set up and proved by the defendant.

Sec. 15. Penalty. 1913, c. 111, §§ 3, 4. Whoever violates any provision of sections thirteen and fourteen between eight o'clock in the forenoon and eight o'clock at night, shall be punished by a fine of not less than five dollars nor more than twenty-five dollars; whoever violates any provision

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of said sections between eight o'clock in the afternoon and eight o'clock in the forenoon shall be subject to a double penalty; and any such violation shall be deemed a common nuisance within the meaning of section twelve of this chapter.

Sec. 16. Action for damages caused by nuisance. R. S. c. 22, § 13. 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.

44 Me. 156; 49 Me. 30; 51 Me. 504; 57 Me. 377; 75 Me. 378; 80 Me. 33, 310; 85 Me. 281; 102 Me. 60; 103 Me. 50; 104 Me. 162; 106 Me. 422.

Sec. 17. Process for abatement of nuisance. R. S. c. 22, § 14. 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.

_____, 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 19—.

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.

80 Me. 307; 85 Me. 281; 94 Me. 530.

Sec. 18. Warrant to be stayed, if defendant gives security to discontinue the nuisance. R. S. c. 22, § 15. 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. 19. Expenses of abatement to be defrayed as in case of execution; defendant entitled to poor debtor's oath. R. S. c. 22, § 16. 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. 20. Equity jurisdiction of supreme judicial court, by injunction. R. S. c. 22, § 17. 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.

60 Me. 194.

Sec. 21. Stationary, gasoline or steam engine not to be used without license from town officers. R. S. c. 22, § 18. No stationary, gasoline or 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 construction, the size of the boiler and furnace, and such provision as to height of chimney 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.

65 Me. 435; 75 Me. 378; 80 Me. 490.

Sec. 22. Notice and hearing on application; appeal to supreme judicial court; proceedings. R. S. c. 22, § 19. 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. Any person aggrieved by

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the decision of the selectmen of towns, in granting or refusing such license, may appeal therefrom to the next term of the supreme judicial court held in said county, which court may appoint a committee of three disinterested persons, as is provided in relation to appeals from location of highways. Said committee shall be sworn and give fourteen days' notice of the time and place of their hearing to the parties interested, view the premises, hear the parties, and affirm, reverse or annul the decision of said selectmen, and their decision shall be final. Pending such appeal from granting such license, the supreme judicial court in equity may enjoin the erection of such building and engine.

See c. 24, § 60.

Sec. 23. Unlicensed engine. R. S. c. 22, § 20. Any such engine erected without a license shall be deemed a common nuisance without other proof than its use.

Sec. 24. Abatement. R. S. c. 22, § 21. Said officers have the same authority to abate and remove an engine, erected without license, as is given to the local board of health or health officer in chapter nineteen.

See c. 19, § 84; 65 Me. 435; 75 Me. 378; 80 Me. 490.

Sec. 25. Steam boilers to be provided with fusible safety plugs; exceptions. R. S. c. 22, § 22. No person or corporation shall manufacture, sell, use or cause to be used, except as hereinafter provided, any steam boiler in the state unless it is provided with a fusible safety plug, made of lead for boilers carrying steam pressure above fifty pounds per square inch, and of tin for boilers carrying steam pressure of fifty pounds and less per square inch; and said safety plug shall be not less than one-half inch in diameter, and shall be placed in the roof of the fire-box when a fire-box is used, and in all cases shall be placed in the part of the boiler fully exposed to the action of the fire, and as near the surface line of the water as good judgment shall dictate, excepting in cases of upright tubular boilers, when the upper tube sheet is placed above the surface line of the water, which class of boilers shall be exempted from the provisions of this section.

Sec. 26. Penalty for violation. R. S. c. 22, § 23. 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 of a class not exempted from the provisions of the preceding section, unprovided with such safety fusible plug, such offender shall be fined not exceeding one thousand dollars.

Sec. 27. Care of steam heating plants. 1907, c. 82, § 1. Whenever any school building, church, or other public building is heated by a steam plant, located in, under or near such building, such steam plant shall be in charge of a person qualified as provided in the following section.

Sec. 28. Applicant shall be examined by municipal officers; certificate; filing; not issued without evidence of qualification. 1907, c. 82, §§ 2, 3. The municipal officers of any town or city in which any of the buildings enumerated in the preceding section, heated by steam, are located, shall require the person or persons contemplating taking charge of the steam plant for such purpose, to appear before them, and they shall require him to produce

before them satisfactory evidence of his competency to have charge of such steam plant; and unless the person so applying has been licensed as an engineer, or has had previous experience as a machinist, or as an engineer of a steam plant, he shall be required to satisfy said municipal officers that he possesses the requisite qualifications and experience to assume charge of the particular plant which he desires permission to operate; and if said municipal officers, after such examination, are satisfied that the applicant possesses the requisite qualifications for such work, and is of temperate habits, they, or the majority thereof, shall issue under their hands a certificate in the following form:

“STATE OF MAINE.

“City (or) Town of

This is to certify that _____ having made application to the municipal officers of the city (or) town of _____, for permission to take charge of, and operate a steam plant located in said city (or) town, (here describe the nature of the steam plant of which the applicant is authorized to have charge, and its location); and having produced evidence of his competency to act in said capacity, we have issued to him this certificate as provided by section twenty-eight of chapter twenty-three of the revised statutes.”

Said certificate when issued shall be filed in the office of the city or town clerk, and such clerk shall issue and deliver to said applicant a duly attested copy of such certificate, and the copy so issued shall be posted by the holder thereof, in a conspicuous place in or near the room in which the boiler to be operated is located. Municipal officers shall not issue the certificate provided for by this section without receiving proof that the person to whom such certificate is issued has had experience in such work, and is in all respects qualified to discharge the duties referred to in the certificate granted, and is also of temperate habits.

Sec. 29. Duty of municipal officers when notice is received that person in charge of steam heating plant is incompetent. 1907, c. 82, § 4. Whenever the municipal officers of any town or city receive notice in writing, signed by ten or more of the residents thereof, stating that the person in charge of a steam plant located in, under, or near, any school building, church, or other public building situated in said city or town, and furnishing or supplying heat for such building, is incompetent for the discharge of such duties, or by reason of negligence, intemperance, or any other cause, ought not longer to remain in charge of such steam plant, said municipal officers shall immediately suspend temporarily the authority of such person to act in said capacity; and until the investigation herein provided can be made, shall cause a person qualified as provided by the preceding section to be placed in charge of said steam plant. The municipal officers shall, as soon thereafter as practicable, cause an investigation of such complaint to be made, and shall thereupon inquire into the habits and qualifications of the person so complained of, and if such person is, for any reason, found to be incompetent or unsuitable to longer remain in charge of said steam plant, they shall immediately cause the certificate granted under the pro-

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visions of the preceding section, to be revoked, and notice of such revocation shall be filed with the clerk of such city or town, and thereupon said municipal officers shall, if such plant is under their control, place a person qualified as herein provided, in charge thereof; and if such steam plant is not in charge of such municipal officers, they shall give the person or corporation having the control of such steam plant, notice of their findings, and if such person or corporation having control of such steam plant, shall, after the receipt of such findings, neglect or refuse to cause said steam plant to be placed in charge of some person qualified under the provisions of the preceding section, such person or corporation shall be subject to the penalties provided in the following section.

Sec. 30. Penalty. 1907, c. 82, § 5. Whoever violates any provision of the three preceding sections shall be punished by fine of not exceeding fifty dollars, or imprisonment for not exceeding ninety days, or both, in the discretion of the court.

Note. Penalty for negligent management of steam boiler resulting in loss of life, c. 120, § 6.

Sec. 31. Blasting rocks, notice to be given. R. S. c. 22, § 24. 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.

82 Me. 242; 88 Me. 268; 93 Me. 67.

Sec. 32. Penalty for violation. R. S. c. 22, § 25. Whoever violates the preceding section, forfeits to the prosecutor five dollars for each offense, 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.

82 Me. 242; 88 Me. 268.

Sec. 33. Dangerous buildings may be adjudged nuisances; proceedings; notice to owner; return. R. S. c. 22, § 26. 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.

See c. 4, § 98, ¶ 8; c. 30, § 34.

Sec. 34. Town officers may order nuisance abated. R. S. c. 22, § 27. 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. 35. Owner may apply to supreme court. R. S. c. 22, § 28. 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. 36. Costs. R. S. c. 22, § 29. 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. 37. Sections 33-36 require vote of town. R. S. c. 22, § 30. The four preceding sections shall not be in force in any town unless adopted at a legal meeting thereof.

CHAPTER 24.

Ways.

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Location, Alteration and Discontinuance of Highways.

Sec. 1. County commissioners may lay out, alter or discontinue, all county roads. R. S. c. 23, § 1. County commissioners may lay out, alter or discontinue highways leading from town to town, and grade hills in any such highway. Nothing in any city charter shall be so construed as to deprive them of the power to lay out, alter or discontinue county roads within the limits thereof. Responsible persons may present, at their regular session, a written petition describing a way and stating whether its location, alteration, grading or discontinuance is desired, or an alternative action, in whole or in part. The commissioners may act upon it, conforming substantially to the description, without adhering strictly to its bounds.

Authority of commissioners. 11 Me. 276; 15 Me. 22; 19 Me. 343; 26 Me. 356, 409; 31 Me. 270; 32 Me. 568; 37 Me. 559; 39 Me. 584; 40 Me. 437; 42 Me. 401; 59 Me. 89; 64 Me. 457; 70 Me. 408; 77 Me. 130; 78 Me. 156; 79 Me. 526; 87 Me. 151; 102 Me. 161; 106 Me. 131; 110 Me. 506.

Petition. 2 Me. 53; 3 Me. 105; 26 Me. 356, 408; 32 Me. 568; 37 Me. 119; 63 Me. 114; 68 Me. 407, 497; 78 Me. 537; 80 Me. 44.