

MAINE STATE LEGISLATURE

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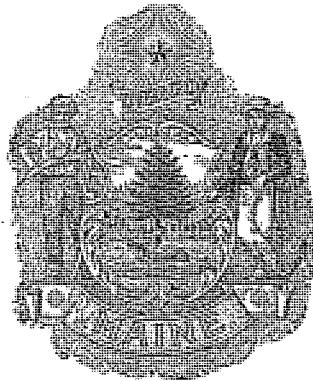
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CHAPTER 28.

Fences. Drainage of Salt Marshes.

Sec. 1. Legal fences. R. S. c. 26, § 1. All fences four feet high and in good repair, consisting of rails, timber, stone walls, iron or wire, and brooks, rivers, ponds, creeks, ditches and hedges, or other things which in the judgment of the fence-viewers having jurisdiction thereof are equivalent thereto, are legal and sufficient fences; provided, however, that no barbed wire fence shall be accounted legal and sufficient, unless it is protected by an upper rail or board of wood, and no division fence built after the twenty-sixth day of March, eighteen hundred ninety-seven, within thirty rods of any dwelling-house in the construction of which barbed wire is used, shall be accounted legal and sufficient, except by mutual written consent of the adjoining owners.

See c. 23, §§ 5, 6.
82 Me. 126; 98 Me. 513; 112 Me. 342.

Sec. 2. Maintenance. R. S. c. 26, § 2. The occupants of lands enclosed with fences shall maintain partition fences between their own and the adjoining enclosures, in equal shares, while both parties continue to improve them.

60 Me. 560; 112 Me. 342.

Sec. 3. If either neglects, proceedings of fence-viewers on application. R. S. c. 26, § 3. If any party neglects or refuses to repair or rebuild any such fence, which he is legally required 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 delinquent, 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 judge reasonable, not exceeding thirty days. If the fence is not repaired or rebuilt accordingly, the complainant may make or repair it.

8 Me. 83; 13 Me. 376; 22 Me. 546; 29 Me. 367; 33 Me. 65; 35 Me. 27; 48 Me. 375; 53 Me. 100; 107 Me. 171; 112 Me. 342.

Sec. 4. Complainant may recover double compensation for building fence, in certain cases. R. S. c. 26, § 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; in case of neglect or refusal 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.

22 Me. 547; 29 Me. 366; 50 Me. 86; 58 Me. 452; 78 Me. 244; 87 Me. 116; 107 Me. 171; 112 Me. 342.

Sec. 5. Proceedings for division of partition fences; record of assignments by fence-viewers; fees. R. S. c. 26, § 5. When the occupants or

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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 of said delinquent party, in an action on the case, double the amount of his said proportion thereof.

5 Me. 359; 8 Me. 83; 29 Me. 367; 33 Me. 65; 34 Me. 334; 35 Me. 28; 48 Me. 375; 53 Me. 100; 58 Me. 452; 60 Me. 557, 559; 68 Me. 535; 78 Me. 243; 87 Me. 116; 107 Me. 172; 112 Me. 342.

Sec. 6. Each party shall build part assigned; if not, remedy for other party. R. S. c. 26, § 6. If any party refuses or neglects to build and maintain the part thus assigned to him, it may be done by the aggrieved party; who is entitled to double the value and expenses, to be ascertained, and recovered as provided in section four, and shall have a lien therefor on the land owned or occupied by the party neglecting or refusing to build or maintain the partition fence assigned to him by the fence-viewers, to be enforced by attachment made within one year from the day of division by them.

58 Me. 452; 68 Me. 535; 78 Me. 242; 87 Me. 116; 96 Me. 484.

Sec. 7. Repair. R. S. c. 26, § 7. All division fences shall be kept in good repair throughout the year, unless the occupants of adjacent lands otherwise agree.

Sec. 8. Fences may vary from the dividing line in certain cases. R. S. c. 26, § 8. When in the opinion of the fence-viewers having jurisdiction of the case, it is, by reason of natural impediments, impracticable or unreasonably expensive to build a fence on the true line between adjacent lands, and the occupants disagree respecting its position, on application of either party as provided in section five, and after notice 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 proportion by each party; and either party may have the same remedy against the other, as if the fence were on the true line.

Sec. 9. Assignment of parts before fence is built. R. S. c. 26, § 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 apply to the fence-viewers of the town, who shall proceed as in section five; except that the fence-viewers may allow longer than thirty days for building the fence, having regard to the season of the year. In other respects the remedy shall be as there provided.

Sec. 10. Occupant ceasing to improve, not to remove his fence if the other will buy. R. S. c. 26, § 10. When one party ceases to improve his land, or lays open his enclosure, he shall not take away any part of his partition fence adjoining the next enclosure 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.

60 Me. 560.

Sec. 11. Liability of owner beginning to improve land lying in common. R. S. c. 26, § 11. When any land, which has been unenclosed, is afterwards enclosed, 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 enclosure 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 cost of ascertaining it.

60 Me. 560.

Sec. 12. If fence is on town line, how divided. R. S. c. 26, § 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.

Sec. 13. Division of fences, when binding; owners of land lying common giving six months' notice, not required to build; verbal agreements for division, to be enforced. R. S. c. 26, § 13. When a fence between 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 land so lies common and unimproved. But all partition fences divided by parol agreement and actually built in pursuance of such agreement, including fences so built heretofore, shall be deemed legal fences as if divided by fence-viewers or written agreement, and the adjoining owners shall support their respective portions of fence under such agreement, until otherwise ordered by the fence-viewers, on application to them by either party. And when a party has constructed his part of a fence in pursuance of a parol or written agreement or assignment of fence-viewers, no assignment shall

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thereafter be made by fence-viewers, depriving him of the full value of such fence or any part thereof.

60 Me. 560.

Sec. 14. Foregoing provisions not applicable to house-lots, nor to agreements. R. S. c. 26, § 14. Nothing herein extends to house-lots, the contents of which do 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 does this chapter make void any written agreement respecting partition fences.

2 Me. 73.

Sec. 15. Neglect of duty by fence-viewers. R. S. c. 26, § 37. Any fence-viewer, who, when requested, unreasonably neglects to view any fence, or to perform any other duties herein required of him, forfeits three dollars to any person suing therefor within forty days after such neglect, and is liable for all damages to the party injured.

Sec. 16. Compensation; recovery. R. S. c. 26, § 38. Each fence-viewer shall be paid by the person employing him, at the rate of two dollars a day for the time employed. If the party liable neglects to pay the same for thirty days after demand, each fence-viewer may recover double the amount in an action on the case.

Ditches on Salt Marshes.

Sec. 17. Ditches subject to jurisdiction of fence-viewers. R. S. c. 26, § 39. 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.

Sec. 18. Width and depth of ditches; complainant to recover of delinquent owners expense of making. R. S. c. 26, § 40. 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; 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 a delinquent owner or proprietor neglects payment of said value and fees, for 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.

Sec. 19. Provisions respecting improved lands; exemption from maintenance of ditches, while lands lie common. R. S. c. 26, § 41. When a ditch between improved lands of different owners is divided by fence-view-

ers, 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, 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.

Improvement of Marshes, Meadows and Swamps.

Sec. 20. Improvement of lands owned by several proprietors. R. S. c. 26, § 42. When any meadow, swamp, marsh, beach or other low land is held by several proprietors, and it becomes necessary or useful to drain or flow the same, or to remove obstructions in rivers or streams leading therefrom, such improvements may be effected under the direction of commissioners in the manner hereinafter provided.

Sec. 21. Application to supreme judicial court; notice. R. S. c. 26, § 43. Such proprietors, or a majority of them in interest, may apply by petition to the supreme judicial court sitting in the county where the lands or any part of them lie, setting forth the proposed improvements and the reasons therefor and the court shall cause notice of the petition to be given in such manner as it may judge proper, to any proprietors who have not joined in the petition, that they may appear and answer thereto.

Sec. 22. Appointment of commissioners. R. S. c. 26, § 44. If upon hearing, it appears that the proposed improvements will be for the general advantage of the proprietors, the court may appoint three suitable persons as commissioners, who shall be sworn to the faithful discharge of their duties; view the premises, notify parties concerned, hear them as to the best manner of making the improvements, and prescribe the measures to be adopted for that purpose.

Sec. 23. Commissioners shall make improvements. R. S. c. 26, § 45. They shall, according to the tenor of the petition and order of court, cause dams or dikes to be erected on the premises, at such places and in such manner as they direct; may order the land to be flowed thereby for such periods of each year as they deem most beneficial; and cause ditches to be opened on the premises, and obstructions in any rivers or streams leading therefrom to be removed; and they shall meet from time to time, as may be necessary, to cause the works to be completed according to their directions.

Sec. 24. May employ workmen, unless proprietors do the work. R. S. c. 26, § 46. They may employ suitable persons to erect the dams or dikes, or to perform the other work, under their direction, for such reasonable wages as they may agree upon; unless the proprietors do the same in such time and manner as the commissioners direct.

Sec. 25. Expenses to be apportioned among proprietors. R. S. c. 26, § 47. They shall apportion the whole charge and expense of the improvements, and of executing the commission, among the proprietors of the lands, having regard to the quantity, quality and situation of each proprietor's part thereof, and the benefit that he will derive from the improvements, and shall assess the same upon the proprietors.

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Sec. 26. Collector may be appointed; duties and powers. R. S. c. 26, § 48. They may appoint a collector of the moneys assessed, and shall give him a warrant to collect, pay over, and account for the same, to such person as they appoint. The collector shall have the same power, and proceed in like manner in collecting the assessment, as is provided for collecting town taxes.

See c. 11, §§ 1-64.

Sec. 27. Liability of collectors. R. S. c. 26, § 49. If the collector neglects for twenty days after being thereto required by the commissioners, to account for and pay over the money collected, the commissioners may recover of him the whole amount committed to him for collection, which, after deducting the expense of recovery, shall be applied and accounted for by the commissioners as if it had been collected and paid over by the collector, pursuant to his warrant.

Sec. 28. Pay of collector and commissioners, how fixed. R. S. c. 26, § 50. The collector shall be allowed such compensation for his services as may be agreed upon between him and the commissioners; and the commissioners shall be allowed such compensation as may be ordered by the court.

Sec. 29. Commissioners to make return to court. R. S. c. 26, § 51. The commissioners shall, as soon as may be after the completion of the business, make a return to court of their doings under the commission, including an account of all money assessed and collected by their order, and of the disbursement thereof.

Sec. 30. Commissioners to determine the amount to be paid by life tenant and by landlord. R. S. c. 26, § 52. When it appears to the commissioners, that part of the land is held by a tenant for life, or years, they shall determine how much of the sum apportioned on that part of the premises shall be paid by such tenant, and how much by the landlord or reversioner; and shall assess the same accordingly, unless the parties concerned agree to an apportionment; and every such tenant, landlord and reversioner shall be considered a proprietor.

Sec. 31. Possessor of mortgaged property, considered proprietor. R. S. c. 26, § 53. If any part of the land is mortgaged, the mortgagor or mortgagee, in possession, shall be considered the proprietor; and all sums paid by the mortgagee by order of the commissioners, shall be allowed to him, as like sums paid by him for improvements.

Sec. 32. Commissioners may enter premises of third parties, open flood-gates and build temporary dams. R. S. c. 26, § 54. When the commissioners find it necessary or expedient to reduce or raise the water, for the purpose of obtaining a view of the premises, or for more convenient or expeditious removal of obstructions, they may open the flood-gates of a mill, or make other needful passages through or around the dam thereof, or erect a temporary dam on the land of any person not a party to the proceedings, and may maintain such dam or passages for the water so long as may be necessary for the purposes aforesaid.

Sec. 33. Damages for such entry. R. S. c. 26, § 55. All damages thus occasioned shall be estimated and determined by the commissioners, unless agreed upon between them and the parties concerned; and shall be paid by

the commissioners out of the money to be assessed and collected by them as before provided.

Sec. 34. Appeal. R. S. c. 26, § 56. Any person, whether a party to the proceedings or otherwise interested therein or affected thereby, aggrieved by the doings of the commissioners, may appeal to the court at any time after their appointment, and before the end of the term following that at which the return is made.

Sec. 35. Court may affirm, reverse or alter commissioners' order; jury. R. S. c. 26, § 57. The court, upon such appeal, may affirm, reverse or alter any adjudication or order of the commissioners, and make such order therein as law and justice require. All questions of fact arising upon the hearing of the appeal, shall, on motion of either party, be tried by a jury in such manner as the court directs.

Sec. 36. Notice required before entering upon premises of a third party; appeal. R. S. c. 26, § 58. The commissioners, before proceeding to open flood-gates, or to make other passages for water through or around any dam, or to erect a dam on the land of any person not a party to the proceedings, shall give him seasonable notice in writing of their intention, to enable him to appear before them and object thereto; and if he appeals from their determination, and gives notice in writing of his appeal to the commissioners or any of them, they shall suspend all proceedings upon his land until the appeal is determined; provided, that the appeal is entered at the court held next after the expiration of seven days from the time of claiming the same.

Sec. 37. Exceptions. R. S. c. 26, § 59. Any person aggrieved by any opinion, direction or judgment of the court in any matter of law, may allege exceptions thereto, which shall be reduced to writing; and when found to be true and not deemed frivolous, shall be signed by the presiding judge, and thereupon the questions of law arising therein shall be determined, as in other actions.

Sec. 38. After completion of improvements, repairs made at expense of occupying proprietors. R. S. c. 26, § 60. After dams, dikes and removal of obstructions have been completed in pursuance of the eighteen preceding sections, repairs thereon may be made on petition to the court, and the proceedings shall be similar to those required for the construction of the original improvements, but such repairs shall be made at the expense of such proprietors only as occupy their lands, take crops therefrom, and are actually benefited by such improvements.

Sec. 39. Proprietors of low lands, may hold meetings, and make rules for maintenance of dikes. R. S. c. 26, § 61. In addition to the foregoing provisions for repairing dikes and dams, contained in section twenty and the eighteen following sections, the proprietors of any meadow, swamp, marsh, beach or other low lands, after the completion of the dams, dikes, and removal of obstructions as hereinbefore provided, may hold regular meetings when they adjudge proper, and make such rules for the maintenance and preservation of such dikes and dams as their common interest require.

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Sec. 40. Meetings, how called. R. S. c. 26, § 62. Upon written application of any three or more of said proprietors to any justice of the peace, he shall issue his warrant to one of the applicants requiring him to call a meeting of the proprietors, expressing in said warrant the time, place and purposes thereof.

Sec. 41. Notice of meetings. R. S. c. 26, § 63. Notice of said meeting shall be served at least fourteen days previous to the time appointed therefor, 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 a copy at his usual place of abode; and in case one or more of the proprietors reside without the town or plantation, notice of such meeting shall be given them by publishing a copy of such 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 for said meeting.

Sec. 42. Votes of each proprietor. R. S. c. 26, § 64. At such meeting and all other meetings of said proprietors, each shall have one vote for every acre owned by him and one vote for a fraction of an acre greater than one-half. Absent proprietors may vote by written proxy.

Sec. 43. Officers, election and qualification. R. S. c. 26, § 65. At such meeting said proprietors may by ballot elect a clerk, three or five assessors, a collector and such other officers and committees as may be deemed needful, and may adopt such needful by-laws and standing regulations as are not inconsistent with law; and may determine the manner of calling and notifying future meetings. The clerk, assessors and collector shall each be sworn. The clerk may be sworn by the moderator presiding at the meeting of his election. Officers, elected at the annual or other meetings shall continue in office until others are chosen and qualified in their stead.

Sec. 44. Record of proprietors. R. S. c. 26, § 66. At or immediately after the first meeting the clerk shall enter in a suitable book, the names of the several proprietors and the number of acres owned by each, and the subsequent transfer of interest shall also be entered by him, within three months after it is made, if known to him.

Sec. 45. Committee may be chosen to ascertain needed repairs. R. S. c. 26, § 67. At any meeting called for the purpose, a committee of not less than three may be chosen to investigate the condition of such dikes and dams, to ascertain what repairs are needful, and report at an adjourned meeting, at which meeting the same or any other committee chosen therefor may be authorized to make needful repairs, and report the expense thereof at an adjourned or other meeting.

Sec. 46. Proprietors may raise money and assess same. R. S. c. 26, § 68. At any meeting called for that purpose, said proprietors may raise money for defraying common charges and for the payment of cost and expenses of such repairs as may have been incurred under the preceding section, which shall be assessed upon the proprietors by the assessors in proportion to their several interests, and which they shall commit to the collector for collection by an appropriate warrant for its collection, directing him to pay

it over to the clerk or other proper officer designated by vote of the proprietors, and the collector shall have the same power and shall collect the same as collectors of towns are authorized to collect town taxes.

Sec. 47. Proprietor, declining to use land, exempt from payment of taxes. R. S. c. 26, § 69. If any proprietor declines to cultivate, use or take profit from his portion of such lands, and gives written notice of his intention so to do, to the clerk of the proprietors he shall not be regarded as liable to pay any tax or assessment on account of his portion thereof, while he neglects to cultivate, use and take profit therefrom, nor shall he be entitled to vote at the meetings of said proprietors.

Sec. 48. Discontinuance of association. R. S. c. 26, § 70. A two-thirds part in interest of the proprietors entitled to vote at any legal meeting called for that purpose, may discontinue their association, but not to take effect until six months after the vote for that purpose.

CHAPTER 29.

Paupers, Their Settlement and Support.

Sec. 1. Settlements, how acquired. R. S. c. 27, § 1. Settlements, subjecting towns to pay for the support of persons on account of their poverty or distress, are acquired as follows:

I. A married woman has the settlement of her husband, if he has any in the state; if he has not, her own settlement is not affected by her marriage. When, in a suit between towns involving the settlement of a pauper, it appears that a marriage was procured to change it by the agency or collusion of the officers of either town, or of any person having charge of such pauper under authority of either town, the settlement is not affected by such marriage. And no derivative settlement is acquired or changed by a marriage so procured, but the children of such marriage and their descendants have the settlement which they would have had if no such marriage had taken place. And the same rule applies in all controversies touching the settlement of paupers between the town by whose officers a marriage is thus procured and any other town, whether the person whose marriage is thus procured is a pauper at the time of the marriage or becomes so afterwards.

4 Me. 296; 41 Me. 466, 485; 48 Me. 207; 52 Me. 219; 53 Me. 58; 56 Me. 23; 63 Me. 501; 64 Me. 85; 67 Me. 581; 68 Me. 147; 70 Me. 490; 71 Me. 538; 73 Me. 584, 586; 95 Me. 55; 97 Me. 18; 106 Me. 244.

II. Legitimate children have the settlement of their father, if he has any in the state; if he has not, they have the settlement of their mother within it; but they do not have the settlement of either, acquired after they are of age and have capacity to acquire one.

2 Me. 197; 3 Me. 390; 4 Me. 50, 295; 7 Me. 90, 272; 10 Me. 412; 11 Me. 456; 18 Me. 378; 19 Me. 446; 24 Me. 282; 32 Me. 62; 35 Me. 412; 36 Me. 392; 41 Me. 551; 48 Me. 566; 55 Me. 56, 471; 58 Me. 355; 60 Me. 117; 66 Me. 83; 70 Me. 353, 490; 72 Me. 511; 73 Me. 110; 74 Me. 46; 75 Me. 210; 85 Me. 135; 86 Me. 309; 88 Me. 251, 401; 89 Me. 44, 532; 95 Me. 57; 104 Me. 260; 106 Me. 244; 107 Me. 175; 111 Me. 373.

III. Children, legitimate or illegitimate, do not acquire a settlement by birth in the town where they are born. Illegitimate children have the settle-