MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1963 CUMULATIVE SUPPLEMENT

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THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

Chapter 141.

Nuisances.

Sec. 1. Common nuisances; jurisdiction to abate. — All places used as houses of ill fame, or for the illegal sale or keeping of intoxicating liquors or narcotic drugs, 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. The superior court shall have jurisdiction upon information filed by the county attorney or upon complaint filed by not less than 7 legal voters of his county 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. Such injunction shall be recorded within 30 days in the registry of deeds in the county where said nuisance is located and shall forever run against the building or other place or structure in which said nuisance is committed. No dismissal of such information or complaint shall prevent action upon any information or complaint subsequently filed covering the same subject matter. (R. S. c. 128, § 1. 1961, c. 317, § 471. 1963, c. 327, § 7.)

Effect of amendments. — The 1961 amendment rewrote the second sentence of this section.

The 1963 amendment inserted "or narcotic drugs" near the beginning of the section.

Sec. 6. Certain nuisances described.—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 permitting abandoned wells or tin mining shafts to remain unfilled or uncovered to the injury or prejudice of others; causing or suffering any 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 mentioned. Any places where one or more old, discarded, worn out or junked automobiles, or parts thereof, are gathered together, kept, deposited or allowed to accumulate, in such manner or in such location or situation, either within or without the limits of any highway, as to be unsightly, detracting from the natural scenery and injurious to the comfort and happiness of individuals and the public, and injurious to property rights, are declared to be public nuisances. (R. S. c. 128, § 7. 1949, c. 379. 1963, c. 305.)

Effect of amendment.—The 1963 amendment divided the section into two sentences, substituted "Any places" for "and all automobile dumps or automobile graveyards, so called" at the beginning of the present second sentence, and inserted "one or more" near the beginning of such sentence.

Section cannot be used to evade requirements of c. 96, § 89.—One who was injured by reason of a defect in a town could not escape the rigorous and limiting requirements of c. 96, § 89, by denominating the defect as a nuisance and seeking recovery under the provisions of this section. Dugan v. Portland, 157 Me. 521, 174 A. (2d) 660.

Cavity in black top of sidewalk, with a submerged gasoline filler cap for the use of an adjacent gasoline filling station, constitutes a common and public nuisance. Daniel v. Morency, 156 Me. 355, 165 A. (2d) 64.

Cited in Verreault v. Lewiston, 150 Me. 67, 104 A. (2d) 538.

Sec. 11. Repealed by Public Laws 1963, c. 286, § 4.

Effective date.—The 1963 act repealing this section became effective on its approval, May 9, 1963.

Sec. 11-A. Dumping of oil.—Oil, and a petroleum base, or materials containing significant quantities of such oil shall not be intentionally placed or deposited directly into or on banks of any river or stream, permanent or temporary, lake, pond or tidal waters or on the ice thereof where such material may fall or otherwise find its way into said watercourse or tidal waters, or shall such material be intentionally placed or deposited directly in pits, wells or on ground surfaces in such a manner that oil will percolate, seep or otherwise find access into ground waters or into wells used for the production of water. (1961, c. 132.)

Sec. 14. Repealed by Public Laws 1955, c. 405, § 46.

Sec. 17-A. Certain lights prohibited along highways. — No person shall place or maintain upon or in view of any highway any light so that its beams or rays are directed at any portion of a public street or highway when the light is of such brilliance and so positioned as to blind, dazzle or otherwise impair the vision of the driver of any motor vehicle upon said street or highway; or any rotating or flashing light or signal which imitates or simulates the flashing or rotating lights used on school buses, police, fire or highway vehicles, except safety signaling devices required by law. Whoever violates this section shall be punished by a fine of not more than $100. (1959, c. 208.)

Sec. 18. Action for damages caused by nuisance.—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 a civil action for his damages, unless otherwise specially provided. (R. S. c. 128, § 16. 1961, c. 317, § 472.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action on the case" in this section.

Contributory negligence precludes recovery from injuries arising from the maintenance of a nuisance. Daniel v. Morency, 156 Me. 355, 165 A. (2d) 64.

Cited in Verreault v. Lewiston, 150 Me. 67, 104 A. (2d) 538.

Sec. 19. Abatement of nuisance.—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, Greetings.

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."

(R. S. c. 128, § 17. 1963, c. 402, § 231.)

Effect of amendment.—The 1963 amendment deleted the former last paragraph, relating to the issuance of a warrant by a trial justice.

Application of amending act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Sec. 20. Warrant stayed, if defendant gives security to discontinue nuisance.—Instead of issuing the warrant required by section 19, the court 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 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 6 months, he will cause it to be abated and removed, as may be directed by the court. On failing to perform such condition, the recognizance shall be deemed forfeited, and the court on being satisfied of such default, may forthwith issue a warrant and entertain an action to enforce the recognizance. (R. S. c. 128, § 18. 1959, c. 317, § 284. 1963, c. 402, § 232.)

Effect of amendments. — The 1959 amendment divided this section into two sentences, substituted "section 19" for "the preceding section" in the first sentence, deleted "or any justice thereof, in term time or in vacation" after the word "court" and substituted "entertain an action to enforce" for "scire facias or" in the second sentence.

The 1963 amendment deleted "or trial justice" preceding "may order it" near the beginning of the section, deleted "or justice" preceding "directs" near the middle of the first sentence and deleted "or said trial justice" following "the court" in the second sentence.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Application of 1963 amending act.—See note to § 19.

Sec. 23. Stationary, internal combustion or steam engine not used without license from town officers.

When application is made for such license, said officers shall assign a time and place for its consideration, and give at least 14 days' public notice thereof, in such manner as they think proper, at the expense of the applicant. Any person aggrieved by the decision of the selectmen of towns in granting or refusing such license may appeal therefrom within 30 days to the superior court held in said county, which court may appoint a committee of 3 disinterested persons, as is provided in relation to appeals from location of highways. Said committee shall be sworn and give 14 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 superior court may enjoin the erection of such building and engine.

(1961, c. 317, § 473.)

Effect of amendment.—The 1961 amendment substituted "within 30 days to the superior court" for "to the next term of the superior court" in the second sentence of the second paragraph of this section and substituted "the superior court" for "the supreme judicial court in equity or the superior court in equity" in the fourth sentence of such paragraph.

As the rest of the section was not affected by the amendment, only the second paragraph is set out.

Sec. 24. Blasting rocks, notice given.

Whoever violates any provision of this section forfeits to the prosecutor $5 for each offense, to be recovered in a civil action, and is liable for all damages caused by any explosion. 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. (R. S. c. 128, § 22. 1961, c. 317, § 474.)

Effect of amendment.—The 1961 amendment divide the last paragraph of this section into two sentences and substituted "a civil action" for "an action of debt" in the present first sentence of such paragraph.

As the first paragraph of the section was not affected by the amendment, it is not set out.

Sec. 25. Dangerous buildings.

Cited in Levesque v. Fraser Paper Ltd., 159 Me. 131, 189 A. (2d) 375.

Sec. 26. Town officers may order nuisance abated.—If no application is made to the superior court, as is 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 30 days after demand, or may be recovered of such person by an action for money paid. (R. S. c. 128, § 24. 1961, c. 317, § 475.)

Effect of amendment.—The 1961 amendment substituted "the superior court, as is provided" for "a justice of the supreme judicial court or the superior court, as is hereafter provided" near the beginning of this section.

Sec. 27. Owner may apply to superior court.—Any owner aggrieved by such order may, within 30 days after said order is so made and filed, apply to the superior court which shall forthwith, after notice and hearing, affirm, annul or alter such order. (R. S. c. 128, § 25. 1947, c. 27. 1961, c. 317, § 476.)

Effect of amendment.—The 1961 amendment substituted "the superior court which" for "a justice of the supreme judicial or superior court in term time or vacation, who" in the first sentence of this section and deleted the former second sentence.

Chapter 142.

Timber upon Rivers, Streams and Adjacent Lands.

Sec. 3. Presumptive evidence of guilt; double damages.—In prosecutions under sections 1 and 2, if such log, mast or spar is found in the possession of the accused partly destroyed, partly sawed or manufactured, or with the marks cut out or altered, not being his property, it is presumptive evidence of his guilt. The burden of proof is then on him. Whoever is guilty of the offense described in either section is liable to the owner, in a civil action, for double the value of the log, mast or spar so dealt with. (R. S. c. 129, § 3. 1961, c. 317, § 477.)

Effect of amendment.—The 1961 amendment divided this section into three sentences, substituted "a civil action" for "an action of debt" in the present third sentence and made other minor changes in the section.