

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1959 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES
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THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1959

sold on execution, and out of the proceeds, after deducting his fees and the expenses of sale, to pay to the plaintiff the amount and costs awarded him, and the balance to the person entitled to it, if he is known to the court, otherwise into court. (R. S. c. 164, § 81. 1959, c. 317, § 408.)

Effect of amendment.—The 1959 amendment substituted “plaintiff” for “petitioner” twice in this section.

Effective date of 1959 amendment.—See note to § 14.

Chapter 180.

Mills and Dams.

Sections 39-A to 39-C. Water Storage Reservoirs.

Erection of Mills and Dams, and Rights of Flowage.

Sec. 7. Service of complaint.—The complaint shall be filed and service made as in other actions. (R. S. c. 166, § 6. 1959, c. 317, § 409.)

Effect of amendment.—The 1959 amendment rewrote this section.

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 fur-

ther 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.”

Sec. 8. Defenses.—The owner or occupant of such mill or canal may answer that the plaintiff 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 plaintiff cannot maintain the action; but he shall not answer that the land described is not injured by such dam or canal. (R. S. c. 166, § 7. 1959, c. 317, § 410.)

Effect of amendment.—The 1959 amendment substituted “answer” for “plead in bar” near the beginning of the section, “plaintiff” for “complainant” twice, “action” for “suit” and “answer” for “plead

in bar of the complaint” and deleted “therein” following “described.”

Effective date of 1959 amendment.—See note to § 7.

Sec. 9. Trial; costs.—When such answer is filed and an issue in fact or in law is joined, it shall be decided as similar issues are decided at common law. If judgment is for the defendant, he shall recover his costs. (R. S. c. 166, § 8. 1959, c. 317, § 411.)

Effect of amendment.—The 1959 amendment divided this section into two sentences and substituted “answer” for “plea” in the first sentence and “defendant” for

“respondent” in the second.

Effective date of 1959 amendment.—See note to § 7.

Sec. 10. Plaintiff recovers; damages in gross; annual damages if owners do not elect to pay.—If the issue is decided in favor of the plaintiff, or if the defendant is defaulted or does not answer or show any legal objection to the proceedings, the court shall appoint 3 or more disinterested commissioners of the same county, who shall go upon and examine the premises and make a true and faithful appraisal, under oath, of the yearly damages, if any, done to the plaintiff 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 ascertain and report for what portion of the 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 flashboards as then existing; and if within 10 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. (R. S. c. 166, § 9. 1959, c. 317, § 412.)

Effect of amendment.—The 1959 amendment substituted “plaintiff” for “complainant” twice, “defendant” for “respondent” and “answer” for “plead” in the first sentence.

Effective date of 1959 amendment.—See note to § 7.

Sec. 29. Judgment no bar to new complaint.—A judgment against a plaintiff 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. (R. S. c. 166, § 28. 1959, c. 317, § 413.)

Effect of amendment.—The 1959 amendment substituted “plaintiff” for “complainant” in this section.

Effective date of 1959 amendment.—See note to § 7.

Sec. 30. Tender of damages.—In case of an original complaint, the defendant may, with the same advantages to himself, tender and bring money into court, or if the issue is decided in favor of the plaintiff, or if the defendant is defaulted or does not answer or show any legal objections to the proceedings, the defendant may, in writing entered of record with its date, offer to be defaulted for a specific sum for the yearly damages or a sum in gross as reasonable compensation for all damages, as in an action at common law. If either is accepted, the judgment has the same effect as if rendered on a verdict. If not accepted within such time as the court orders, it shall not be offered in evidence or have any effect upon the rights of the parties, or the judgment to be rendered except the costs. If the plaintiff fails to recover a sum greater than the sum tendered or offered, he recovers such costs only as accrued before the offer, and the defendant recovers costs accrued after that time, and his judgment for costs may be set off against the plaintiff’s judgment for damages and costs. (R. S. c. 166, § 29. 1959, c. 317, § 414.)

Effect of amendment.—The 1959 amendment divided the first sentence into two sentences and substituted “defendant” for “respondent,” “answer” for “plead” and

“plaintiff” for “complainant” throughout the section.

Effective date of 1959 amendment.—See note to § 7.

Sec. 31. No abatement by death of either party.—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 plaintiffs or defendants, or the executors or administrators of the deceased. (R. S. c. 166, § 30. 1959, c. 317, § 415.)

Effect of amendment.—The 1959 amendment substituted “plaintiffs or defendants” for “complainants or respondents.”

Effective date of 1959 amendment.—See note to § 7.

Sec. 32. If complaint abates, rights preserved by new complaint.—If such complaint is abated or defeated for want of form, or if, after a verdict for the plaintiff, judgment is reversed, he may bring a new complaint at any time within one year thereafter and thereon recover the damages sustained during

the 3 years preceding the institution of the first complaint, or at any time afterwards. (R. S. c. 166, § 31, 1959, c. 317, § 416.)

Effect of amendment.—The 1959 amendment substituted “plaintiff” for “complainant.”

Effective date of 1959 amendment.—See note to § 7.

Sec. 38. Complaint to remove timber, etc., on lands flowed by erection of dam.—When any person or corporation shall have decided to erect a dam across a nonnavigable stream under this chapter under special authority granted by the legislature, and shall have filed the specifications required by chapter 44, section 11, and it appears that standing timber or other property of value upon the land intended to be flowed will constitute a menace to the safety of such person or corporation or to persons or property upon and along the banks of said stream below the intended location of said dam, the superior court shall have jurisdiction, upon complaint of such person or corporation, to authorize said plaintiff to remove and sell such timber or other property and to order the payment to the owner thereof of the gross proceeds of such sale and such further sum, if any, as said court shall deem just. Said court shall require the plaintiff to furnish security for such payment and for an additional penalty not less than double the amount to be received from such sale and shall include in its decree a condition that such additional sum shall be paid to said owner as damages if the dam is not completed and the land flowed within a time to be therein specified. Such time may be extended for good cause shown. (R. S. c. 166, § 37, 1959, c. 317, § 417.)

Effect of amendment.—The 1959 amendment made the proviso at end of the second sentence into a separate sentence, deleted “the provisions of” following “stream under,” substituted “chapter 44, section 11” for “section 11 of chapter 44,” deleted “the supreme judicial court or” following “dam,”

deleted “in equity” following “jurisdiction,” and substituted “complaint” for “petition” in the first sentence, and substituted “plaintiff” for “petitioner” in the first and second sentences.

Effective date of 1959 amendment.—See note to § 7.

Water Storage Reservoirs.

Sec. 39-A. Right of mill owners to augment stored water by pumping or otherwise; right to flow land conferred; assessment of damages.—Any person, firm or corporation which may be entitled to the rights and benefits provided for in this chapter is authorized and empowered to build, maintain and operate dams and other necessary works and structures, including side dams, embankments, ditches and drains, on lands owned or leased by them for the purpose of creating and maintaining water storage reservoirs or basins; to raise the level of the waters in such storage reservoirs or basins by augmenting the supply of stored water from sources other than the natural drainage area by means of pumping or otherwise; to retain and discharge said stored water; to build, maintain and operate pipes, conduits, penstocks, tunnels and canals for the purpose of augmenting and discharging said stored water for use by such persons, firms or corporations for working their water mill or mills. Such persons, firms or corporations are also authorized and empowered to flow such lands as may be necessary to carry out the purposes of this section, and damages caused by the flowing of such lands by means of said dams, other works and structures shall be ascertained and determined in the manner as prescribed in this chapter. (1959, c. 325, § 1.)

Editor’s note.—P. L. 1959, c. 325, adding this section, provided in section 2 thereof as follows:

“Sec. 2. Saving clause. If any clause, sentence or provision of the Revised Statutes of 1954, chapter 180, sections 39-A, 39-B

and 39-C shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall not affect, impair or invalidate the remainder of said sections or the other provisions of said Revised Statutes, chapter 180, but shall be

confined in its operation to the clause, sentence or provisions of said sections 39-A, 39-B and 39-C directly involved in the controversy in which such adjudication shall have taken place."

Central Maine Power Company authorized.—Section 3 of P. L. 1959, c. 325, provided that: "In accordance with the Revised Statutes of 1954, chapter 180, section 39-C, Central Maine Power Company, a public utility corporation duly organized and existing under the laws of the state of Maine, is authorized and empowered under said Revised Statutes, chapter 180, sections 39-A and 39-B, and the rights and

benefits set forth therein, to build, maintain and operate a pump storage development, so called, at Clear and Rowe Ponds, in the Plantation of Pleasant Ridge, county of Somerset and state of Maine, for the purpose of generating electric energy for public uses by augmenting the supply of water stored and retained from the natural drainage area of said ponds by pumping water from Wyman Lake, so called, into the reservoir created at said ponds by means of a penstock, conduit, tunnel or canal, all in the manner and subject to the limitations prescribed in said Revised Statutes, chapter 180, sections 39-A and 39-B."

Sec. 39-B. Authorized to acquire lands and rights-of-way for pipes, conduits, penstocks, tunnels and canals by eminent domain; assessment of damages.—Any person, firm or corporation authorized and empowered to build, maintain and operate pipes, conduits, penstocks, tunnels and canals under section 39-A is further authorized and empowered to exercise the right of eminent domain by taking and holding as for public uses in the manner and subject to the limitations prescribed in chapter 52, section 12, such lands and rights-of-way as such person, firm or corporation may require for such purposes when the water which will be stored, retained and discharged through the use of such pipes, conduits, penstocks, tunnels and canals will be devoted to public uses. All proceedings relating to damages caused by the building, maintaining and operating of said pipes, conduits, penstocks, tunnels and canals shall be ascertained and determined in the same manner as prescribed in said chapter 52, sections 13 to 22. (1959, c. 325, § 1.)

Cross reference.—See note to § 39-A.

Sec. 39-C. Authorization required.—Any person, firm or corporation authorized and empowered to augment stored water by pumping or otherwise under section 39-A and acquire by eminent domain for public uses, lands and rights-of-way for pipes, conduits, penstocks, tunnels and canals under section 39-B, is authorized and empowered to exercise the rights and benefits under this chapter, as amended, but only when such person, firm or corporation shall have received the necessary authority by legislative act. (1959, c. 325, § 1.)

Cross reference.—See note to § 39-A.

Chapter 181.

Principals. Agents. Factors. Partnerships.

Factors and Agents.

Sec. 4. Factors' liens.—If so provided by any written agreement, all factors shall have a continuing general lien upon all materials, goods in process and merchandise from time to time consigned to or pledged with them, whether in their constructive, actual or exclusive occupancy or possession or not, and upon the proceeds resulting from the sale or other disposition of such materials, goods in process and merchandise, for all their loans and advances to or for the account of the person creating the lien, hereinafter called the borrower, together with interest thereon, and also for the commissions, obligations, indebtedness, charges and expenses properly chargeable against or due from said borrower and for the amounts due or owing upon any notes or other obligations given to or received by them for or upon account of any such loans or advances, interest,