

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Maine
REVISED STATUTES
1964

*Prepared Under the Supervision
of the
Committee on Revision of Statutes*

Being the Tenth Revision of the
Revised Statutes of the State
of Maine, 1964

Volume 5
Titles 26 to 32



Boston, Mass.
Boston Law Book Co.

Orford, N. H.
Equity Publishing Corporation

St. Paul, Minn.
West Publishing Co.

Text of Revised Statutes
Copyright © 1964
by
State of Maine

This is a historical version of the Maine Revised Statutes that may not reflect the current state of the law. For the most current version, go to:

<http://legislature.maine.gov/legis/statutes/>

CHAPTER 217

DITCHES, MARSHES, MEADOWS AND SWAMPS

Subch.	Sec.
I. Commissioners	3251
II. Proprietors	3301
III. Appeals	3351
IV. Jurisdiction of Fence-Viewers	3401

SUBCHAPTER I

COMMISSIONERS

Sec.	
3251.	Improvement of severally owned lands.
3252.	Application to Superior Court; notice.
3253.	Appointment of commissioners.
3254.	Improvements by commissioners.
3255.	Proprietors or workmen to do work.
3256.	Apportionment of expenses.
3257.	Collector; powers and duties.
3258.	—Liability.
3259.	Pay of collector and commissioners.
3260.	Return to court by commissioners.
3261.	Apportionment of expense between landlord and life tenant.
3262.	Entry on premises; floodgates and temporary dams; damages.

§ 3251. Improvement of severally owned lands

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 provided.

R.S.1954, c. 96, § 155.

§ 3252. Application to Superior Court; notice

The proprietors, or a majority of them in interest, may apply by complaint to the Superior Court in the county where the lands or any part of them lie, setting forth the proposed improvements and the reasons therefor. The court shall cause notice of the

complaint to be given in such manner as it may judge proper to any proprietors who have not joined in the complaint, that they may appear and answer thereto.

R.S.1954, c. 96, § 156; 1961, c. 317, § 279.

§ 3253. Appointment of commissioners

If upon hearing, it appears that the proposed improvements will be for the general advantage of the proprietors, the court may appoint 3 suitable persons as commissioners who shall be sworn to the faithful discharge of their duties. The commissioners shall 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.

R.S.1954, c. 96, § 157.

§ 3254. Improvements by commissioners

The commissioners shall, according to the tenor of the complaint 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. They shall meet from time to time as may be necessary to cause the works to be completed according to their directions.

R.S.1954, c. 96, § 158; 1961, c. 317, § 280.

§ 3255. Proprietors or workmen to do work

The commissioners 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.

R.S.1954, c. 96, § 159.

§ 3256. Apportionment of expenses

The commissioners 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.

R.S.1954, c. 96, § 160.

§ 3257. Collector; powers and duties

The commissioners 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.

R.S.1954, c. 96, § 161.

§ 3258. —Liability

If the collector neglects for 20 days after being 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.

R.S.1954, c. 96, § 162.

§ 3259. Pay of collector and commissioners

The collector shall be allowed such compensation for his services as may be agreed upon between him and the commissioners. The commissioners shall be allowed such compensation as may be ordered by the court.

R.S.1954, c. 96, § 163.

§ 3260. Return to court by commissioners

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.

R.S.1954, c. 96, § 164.

§ 3261. Apportionment of expense between landlord and life tenant

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. Every such tenant, landlord and reversioner shall be considered a proprietor.

R.S.1954, c. 96, § 165.

§ 3262. Entry on premises; floodgates and temporary dams; damages

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 floodgates 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.

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 provided.

R.S.1954, c. 96, § 167.

SUBCHAPTER II

PROPRIETORS

Sec.

- 3301. Possessor of mortgaged property considered proprietor.
- 3302. After improvements, repairs are expense of occupying proprietors.
- 3303. Maintenance of dikes.
- 3304. Meetings.
- 3305. —Notice of.
- 3306. Votes of each proprietor.
- 3307. Officers; election and qualification.
- 3308. Record.
- 3309. Committee to ascertain needed repairs.
- 3310. Raising of money and assessments.
- 3311. Tax exemption on cessation of land use.
- 3312. Discontinuance of association.

§ 3301. Possessor of mortgaged property considered proprietor

If any part of the land is mortgaged, the mortgagor or mortgagee in possession shall be considered the proprietor. All sums paid by the mortgagee by order of the commissioners shall be allowed to him, as like sums paid by him for improvements.

R.S.1954, c. 96, § 166.

§ 3302. After improvements, repairs are expense of occupying proprietors

After dams, dikes and removal of obstructions have been completed in pursuance of subchapters 1 and 3, repairs thereon may be made on complaint 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.

R.S.1954, c. 96, § 172; 1963, c. 414, § 110.

§ 3303. Maintenance of dikes

In addition to the provisions for repairing dikes and dams contained in subchapters 1 and 3 and section 3302, the proprietors of any meadow, swamp, marsh, beach or other low lands, after the completion of the dams, dikes and removal of obstructions as 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.

R.S.1954, c. 96, § 173.

§ 3304. Meetings

Upon written application of any 3 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.

R.S.1954, c. 96, § 174.

§ 3305. —Notice of

Notice of said meeting shall be served at least 14 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. 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 3 weeks successively, the last publication to be at least 14 days before the time appointed for said meeting.

R.S.1954, c. 96, § 175.

§ 3306. Votes of each proprietor

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 $\frac{1}{2}$. Absent proprietors may vote by written proxy.

R.S.1954, c. 96, § 176.

§ 3307. Officers; election and qualification

At such meeting said proprietors may by ballot elect a clerk, 3 or 5 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.

R.S.1954, c. 96, § 177.

§ 3308. Record

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 any subsequent transfer of interest shall also be entered by him within 3 months after it is made, if known to him.

R.S.1954, c. 96, § 178.

§ 3309. Committee to ascertain needed repairs

At any meeting called for the purpose, a committee of not less than 3 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.

R.S.1954, c. 96, § 179.

§ 3310. Raising of money and assessments

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 section 3309, 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.

R.S.1954, c. 96, § 180.

§ 3311. Tax exemption on cessation of land use

If any proprietor declines to cultivate, use or take profit from his portion of such lands and gives written notice of his intentions to do so 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.

R.S.1954, c. 96, § 181.

§ 3312. Discontinuance of association

A $\frac{2}{3}$ 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 6 months after the vote for that purpose.

R.S.1954, c. 96, § 182.

SUBCHAPTER III

APPEALS

Sec.

3351. Appeal from action of commissioners.
 3352. Affirmance, reversal or alteration of commissioners' order;
 jury.
 3353. Notice before entry on 3rd party premises; appeal.
 3354. Appeals to law court.

§ 3351. Appeal from action of commissioners

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 within 60 days after the return is made.

R.S.1954, c. 96, § 168; 1959, c. 317, § 64.

§ 3352. Affirmance, reversal or alteration of commissioners' order; jury

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.

R.S.1954, c. 96, § 169.

§ 3353. Notice before entry on 3rd party premises; appeal

The commissioners, before proceeding to open floodgates, 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. 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 the appeal is filed in court within 7 days from the time of claiming the same.

R.S.1954, c. 96, § 170; 1961, c. 317, § 281.

§ 3354. Appeals to law court

An appeal may be taken to the law court as in other actions.

R.S.1954, c. 96, § 171; 1959, c. 317, § 65.

SUBCHAPTER IV

JURISDICTION OF FENCE-VIEWERS

Sec.

3401. Salt marsh ditches.

3402. Width and depth of ditches; recovery of expenses.

3403. Improved lands; exemption from maintenance while lands lie common.

§ 3401. Salt marsh ditches

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. 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 chapter 219, in relation to partition fences.

R.S.1954, c. 96, § 152.

§ 3402. Width and depth of ditches; recovery of expenses

Said fence-viewers shall determine the width and depth of the ditch, neither to exceed 3 feet, and the time to be allowed for making it, not exceeding 60 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 2 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 1% a month in a civil action.

R.S.1954, c. 96, § 153; 1961, c. 317, § 278.

§ 3403. Improved lands; exemption from maintenance while lands lie common

When a ditch between improved lands of different owners is divided by fence-viewers or by the written agreement of the par-

ties recorded in the town clerk's office where the land lies, the owners shall make and maintain it accordingly. If any person lays his lands common, determines not to improve any part of them adjoining such ditch and gives 6 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.

R.S.1954, c. 96, § 154.