

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)

THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....
1841.

CHAP. 28. mitted to such house; and the master of the house shall receive such materials, implements and means of work, and keep them separate from those of other towns; and shall be accountable to any such town for the prime cost, and all profits and earnings, made by the labor of those persons, under his care, belonging to such town.

Master to keep a registry. 1821, 124, § 10.

SECT. 18. The master of such work house shall keep a register of the names of the persons committed, and of the towns, to which they belong, with the time of their being received into, and discharged therefrom, and of their earnings; and the same shall be open to the inspection of the overseers, on request.

Controversy between master and overseers, how determined. 1821, 124, § 10.

SECT. 19. All controversies between the master of such house and the overseers of any town, relating to his official transactions, may be determined by the overseers of the house, at a general or quarterly meeting.

Each town liable for its own commitments. Mode of discharge. 1821, 124, § 11.

SECT. 20. No town shall be chargeable for the expenses of any person, committed to said house, who was not sent thither by overseers, belonging to such town; nor shall any person, duly committed to such house, be discharged therefrom, except by written order of the overseers of his town, or by vote of the board of overseers of said house, at a quarterly meeting, or by the district court, held in the same county, upon application for that purpose.

Persons committed, to be kept employed. 1821, 124, § 11.

SECT. 21. Every person, duly committed to such work house, if able to work, shall be kept diligently employed, during the term of his commitment. For idleness, obstinacy or disorderly conduct, he shall be liable to such punishment, as may be provided for, by the standing regulations of the house, authorized in this chapter, and not repugnant to the laws of the state.

Work houses may be discontinued. 1821, 124, § 13.

SECT. 22. Any work house, erected, or provided as aforesaid, may be discontinued, or applied to any other use, whenever the town or towns concerned shall find that their circumstances require it, and shall agree thus to do.

Certain special laws, not affected by this chapter.

SECT. 23. Nothing, contained in this chapter, shall be construed to affect any powers and privileges, heretofore granted to any towns, or the overseers of the poor thereof, by any act specially relating to work houses, erected in such towns.

CHAPTER 29.

OF FENCES AND COMMON FIELDS.

SECT. 1. What are legal fences.

2. To be maintained equally by adjoining occupants.
3. If either party neglect, proceedings of fence viewers, on application.
4. Complainant may recover double compensation, in certain cases.
5. Proceedings for division of partition fences.

SECT. 6. Each party bound to build the part, assigned to him.

7. To be kept in repair.
8. Fences may vary from the dividing line, in certain cases.
9. Assignment of parts, before fence is built.
10. Occupant ceasing to improve, not to remove his fence, in case the other will purchase.

- SECT. 11. Liability of owner, beginning to improve land lying in common.
12. If fence be on town line, how divided.
 13. Division of fences, when binding.
 14. Provisions not applicable to house lots, nor agreements.
 15. Inclosure of lots, lying together, by a general fence.
 16. Manner of calling meetings of proprietors.
 17. How notice is to be given.
 18. How they may vote.
 19. May raise and assess moneys. Abatements.
 20. Choice of officers.
 21. Clerk to issue warrant, to collect moneys.
 22. Apportionment of the general fence.
 23. Proprietors not liable, who do not occupy their lots.
 24. Apportionment of expenses, according to interest.
 25. Manner of repairing fences of delinquents.
 26. Delinquent liable for double the expense.

- SECT. 27. Proceedings, if any part be suddenly destroyed.
28. Choice of field drivers, and their powers.
 29. No proprietor to put in stock contrary to regulations. Penalty.
 30. Remedy, if a proprietor be injured by beasts of a stranger.
 31. Lines between proprietors, to be run once in two years.
 32. Association may be discontinued.
 33. Certain proprietaries not subject to these regulations.
 34. Waste portions of lots, excluded from estimates and assessments.
 35. Proceedings, on application of three or more, to be set off.
 36. Proceedings, for organizing to inclose a common field.
 37. After establishment of a common field, proprietors to proceed, as provided in this chapter.
 38. Penalty, if fence viewers neglect their duty.
 39. Fees for services. Penalty for neglect of payment.

SECTION 1. All fences, four feet high and in good repair, consisting of rails, timber, boards, or stone walls, and brooks, rivers, ponds, creeks, ditches, and hedges, or other things, which, in judgment of the fence viewers, having jurisdiction thereof, are equivalent thereto, shall be accounted legal and sufficient fences.

What are legal fences.
1821, 44, § 2.

SECT. 2. The respective occupants of lands, inclosed within fences, shall maintain partition fences, between their own and the next adjoining inclosures, in equal shares; so long as both parties continue to improve the same.

To be maintained equally by adjoining occupants.
1821, 44, § 2.

SECT. 3. In case any party shall neglect or refuse to repair, or rebuild any such fence, which, of right, he ought 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 party, shall proceed to survey the same; and if they shall determine, that the fence is insufficient, they shall signify the same, in writing, to the delinquent occupant of the land, and direct him to repair or rebuild the same, within such time, as they shall judge reasonable, not exceeding six days. If the fence shall not be repaired, or rebuilt, accordingly, it shall be lawful for the complainant to make, or repair such fence.

If either party neglect, proceedings of fence viewers, on application.
1821, 44, § 2.
8 Greenl. 81.
13 Maine, 371.
15 Pick. 123.

SECT. 4. When the complainant shall have completed such fence, and the same shall have been adjudged sufficient, by two or more of the fence viewers, and the value thereof, together with the fence viewers' fees, certified under their hands; he may demand and recover, either of the occupant, or owner, of the land, where the fence was deficient as aforesaid, at his election, double the value and fees, thus ascertained; and in case of neglect or refusal to pay the same, for one month after demand, the complainant may sue

Complainant may recover double compensation, in certain cases.
1821, 44, § 2.

CHAP. 29.

Proceedings for
division of par-
tition fences.
1821, 44, § 3.
5 Greenl. 356.
8 Greenl. 81.

for and recover the same, by a special action on the case, with interest, at the rate of one per cent. a month.

SECT. 5. When the occupants or owners of adjacent lands disagree, respecting their rights in partition fences, and their obligations to maintain the same, on application of either party to two or more fence viewers of the town, where the lands lie, said fence viewers, after reasonable notice to each party, may, in writing under their hands, assign to each party, his share thereof, and limit the time, in which each party shall build or repair his part of the fence, not exceeding six days, as provided in the third section of this chapter. Such assignment, and all other assignments of proprietors of partition fences, provided for in this chapter, being recorded in the town clerk's office, shall be binding upon the parties, and all who may afterwards occupy the lands; and they shall be obliged, always thereafter, to maintain their part of said fence. If such fence shall have been already built and maintained by the parties, in unequal proportions, and the fence viewers shall adjudge the same to be good and sufficient, they may, after notice as aforesaid, in writing under their hands, award to the party, who may have 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.

Each party
bound to build
the part, assign-
ed to him.
1821, 44, § 3.

SECT. 6. In case any of the parties shall refuse or neglect to build and maintain the part, thus assigned them, the same may be done by the aggrieved party in the manner, before provided in this chapter; and he shall be entitled to double the value, and expenses, ascertained and to be recovered in like manner, as aforesaid.

To be kept in
repair.
1821, 44, § 3.

SECT. 7. All division fences shall be kept in good repair, throughout the year, unless the occupiers of the adjacent lands shall otherwise agree.

Fences may vary
from the di-
viding line, in
certain cases.
1821, 44, § 4.

SECT. 8. When from natural impediments, in the opinion of the fence viewers, having jurisdiction of the case, it may be impracticable, or unreasonably expensive, to build a fence on the true line between the adjacent lands, if the occupants disagree, respecting the position of their partition fence, then, said fence viewers, on application of either party, as provided in the fifth section of this chapter, and after notice to both parties, and on view of the premises, 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, as they shall see cause, the fence shall be built and maintained, and in what proportions, under all the circumstances of the case, by the respective parties; and either party may have the same remedy against the other, as is herein before provided, in regard to assignments of partition fences, made by fence viewers.

Assignment of
parts, before
fence is built.
1821, 44, § 5, 7.

SECT. 9. When adjacent lands have been occupied in common, without a partition fence, and either party desires to occupy his own in severalty, or when a fence, running into the water, is necessary to be made, and the parties liable to build and maintain the same disagree, either party may have the line divided on application to the fence viewers of the town; who shall proceed in like manner, as is provided for the disagreement, mentioned in the fifth section

of this chapter; excepting, that the fence viewers may allow a longer time than six days for building the fence, if they think proper, having regard to the season of the year. In other respects the remedy, for the aggrieved party, shall be the same, as is provided in the case aforesaid.

SECT. 10. When one party shall cease to improve his land, or shall lay open his inclosure, he shall not take away any part of the partition fence, belonging to him, and adjoining to the next inclosure improved, provided the owner or occupant thereof will allow, and pay therefor, so much, as two or more fence viewers shall, on due notice to both parties, determine to be the reasonable value of such part of the fence.

Occupant ceasing to improve, not to remove his fence, in case the other will purchase. 1821, 44, § 6. 11 Mass. 293.

SECT. 11. Whenever any land, which has lain uninclosed, shall be afterwards inclosed, or shall be used for pasturing, the occupant or owner thereof shall pay for one half of each partition fence, standing upon the line, between his land and the inclosures of any other occupant, or owner, the value thereof, to be ascertained in writing, in case they shall not agree between themselves, by two or more of the fence viewers of the same town, wherein such partition fence stands; and in case such occupant or owner, after the value has been so ascertained by the fence viewers, on notice to him, shall neglect or refuse, for thirty days after demand made, to pay for one half of the partition fence, the proprietor of the fence may maintain, in form aforesaid, an action for such value, and the costs of ascertaining the same.

Liability of owner, beginning to improve land lying in common. 1821, 44, § 6.

SECT. 12. In all cases, where the line, upon which a partition fence is to be made, or to be divided, is the boundary line between two or more towns, or partly in one town, and partly in another town, a fence viewer shall be taken from each town.

If fence be on town line, how divided. 1821, 44, § 6.

SECT. 13. In all cases, where a division of fence, between the owners of improved lands, has been or shall be made, either by fence viewers, or by the written agreement of the parties, recorded in the office of the clerk of the town, where such lands are situate, the several owners of such lands, and their heirs and assigns, forever, shall erect and support such fences, agreeably to such division; provided, that if any person shall lay his lands common, and determine, not to improve any part of the same, adjoining the fence, divided as aforesaid, and shall give six months notice to all occupants of adjoining lands, he shall not be required to maintain such fence, during the time his lands shall so lie common and unimproved.

Division of fences, when binding. 1821, 44, § 3.

SECT. 14. Nothing, in this chapter contained, shall extend to house lots, the contents of which do not exceed half an acre; but if the owner of such lot improve the same, the owner of the adjacent land shall be compellable to make and maintain one half of the fence between them, whether he improve or not; nor shall the provisions of this chapter make void any written agreement, made or to be made respecting public fences.

Provisions not applicable to house lots, nor agreements. 1821, 44, § 7. 2 Greenl. 72.

SECT. 15. When several distinct lots or pieces of land are inclosed and fenced, in one common field, or when all the proprietors of such land shall agree to inclose them in that manner, the said proprietors may hold regular meetings, at such times as they

Inclosure of lots, lying together, by a general fence. 1821, 44, § 9, 12.

CHAP. 29.

shall judge proper, make such rules for managing their common concerns, and adopt such equitable modes of improvement, as their common interest may require; but in all other respects, each proprietor may, at his own expense, inclose, or manage and improve his own land, as he shall think best; but he shall, nevertheless, maintain his proportion of fence inclosing the general field.

Manner of calling meetings of proprietors.
1821, 44, § 13.

SECT. 16. Upon the application of any two or more of the said proprietors, to any justice of the peace for the county, where such land lies, he shall issue his warrant to one of the applicants, or to the clerk of the proprietors; requiring him to call a meeting of the proprietors, and expressing in the warrant, the time, place and purpose of the meeting.

How notice is to be given.
1821, 44, § 13.

SECT. 17. Notice of the meeting shall be served, at least fourteen days previous to the time appointed, when all the proprietors reside in the town or plantation where the land lies, by reading the warrant to each proprietor, or giving to him in hand, or by leaving a copy at his usual place of abode, if the proprietors of said land have not been previously organized for the aforesaid purpose, or if no other mode of notice has been fixed by their standing rules; and, in such case, should one or more of the proprietors reside without the town or plantation, notice shall be given to such person by publishing a copy of said warrant in some newspaper, printed in the county, or in the newspaper, published by the printer to the state, three weeks successively, the last publication to be, at least, fourteen days before the time appointed. When the standing rules of the proprietors determine the mode of serving notices for their meetings, that mode may be observed in service of said warrant, at the election of the party serving the same.

How they may vote.
1821, 44, § 21.

SECT. 18. At all meetings of the said proprietors, each one may vote, according to the relative amount or value of his interest, when known; when not known, they shall all vote equally, and absent proprietors may vote by proxy, authorized in writing.

May raise and assess moneys. Abatements.
1821, 44, § 14.

SECT. 19. The proprietors may raise money, from time to time, for defraying their common charges, and for managing their affairs; which money shall be assessed upon the several proprietors, in proportion to their respective interests, by the assessors hereinafter provided for. Any person, aggrieved by such assessment, may apply to the county commissioners, who may abate his part of the same, in whole or in part, if they see cause.

Choice of officers.
1821, 44, § 14.

SECT. 20. The said proprietors may, from time to time, at their annual, or other meeting duly notified, choose a clerk, three or five assessors, a collector, and such other officers as they shall find necessary; all of whom shall continue in office, until removed by the proprietors, or until others are chosen and qualified in their stead. The clerk and assessors shall be sworn to the faithful discharge of their duty.

Clerk to issue warrant, to collect moneys.
1821, 44, § 14.

SECT. 21. The clerk of the proprietors shall issue his warrant to the collector, requiring him to collect all sums so assessed, and to pay over the same to the clerk, or other proper officer, according to the orders of the proprietors; and the collector shall collect the said sums in the same manner, as collectors of towns are authorized to collect town taxes.

SECT. 22. The whole fence, inclosing such general field, shall, so far as it may be found convenient, be apportioned amongst the proprietors, according to the number of acres held and cultivated, or otherwise used, by each one; and the part, to be maintained by each proprietor, shall be set out and assigned to him, by any two or more fence viewers of the town, unless the proprietors shall agree on an apportionment of the fence, among themselves. In all cases, the proportion of fence, so assigned to each proprietor, shall be recorded by the clerk, in the books of the proprietors; and where there is no such clerk, by the clerk of the town on the town records.

CHAP. 29.

Apportionment of the general fence. 1821, 44, § 9.

SECT. 23. If any proprietor of land, in such general field, shall decline to cultivate his land, or to use it for pasturing, and shall give written notice of his intention to the clerk of the proprietors, he shall not be required to maintain any part of the fence, nor to pay any tax or assessment on account of his land, so long as he shall neglect to cultivate, or use it, as aforesaid.

Proprietors not liable, who do not occupy their lots.

SECT. 24. The expense of apportioning the fence, and also for making and maintaining such part thereof, as cannot conveniently and justly be assigned to any one proprietor, shall be borne by all the proprietors who are liable to be taxed, in proportion to their respective interests; and the part, assigned to each proprietor, shall be made and maintained by himself, so long as he shall use his part of the said general field for pasturing, planting, mowing or otherwise.

Apportionment of expenses, according to interest. 1821, 44, § 9.

SECT. 25. If any part of the fence, assigned to any of the proprietors, shall become deficient, and, if he shall not repair it within three days after notice of such deficiency, given to him or his tenant, by a fence viewer of the town, it may be repaired by any other of the said proprietors; and such repairs may be examined by any two or more fence viewers, and if adjudged by them to be sufficient, they shall ascertain the cost of the repairs, and make a statement thereof, and of the amount of their fees, in writing under their hands.

Manner of repairing fences of delinquents. 1821, 44, § 10.

SECT. 26. The person, making such repairs, may demand of the proprietor, who was bound to make the same, or of his tenant, double the costs of the repairs and the fees aforesaid, thus ascertained; and if the same be not paid, within one month after notice and demand thereof, he may recover the same, in an action on the case.

Delinquent liable for double the expense. 1821, 44, § 10.

SECT. 27. If any part of the fence shall be suddenly blown down, or carried away by any flood or tempest, at a time, when the crops in the field shall be thereby exposed to immediate destruction or injury, the proprietor, to whom that part of the fence was assigned, shall be bound to repair the same, within twenty four hours after notice thereof, given him by a fence viewer. If he shall fail so to do, the fence may be repaired by any other proprietor; and such proprietor may recover double the costs of the repairs and fees, in the same manner, as is provided in the preceding section.

Proceedings, if any part be suddenly destroyed. 1821, 44, § 11.

SECT. 28. The proprietors may choose one or more field drivers, who shall have and exercise the same powers, with respect to the general fields, as are exercised by field drivers, chosen by a town.

Choice of field drivers, and their powers. 1821, 44, § 15.

SECT. 29. If any proprietor shall put into the general field, any horses, cattle or other beasts, contrary to the regulations of the pro-

No proprietor to put in stock, contrary to reg-

CHAP. 29.
 Regulations. Pen-
 alty.
 1821, 44, § 16.

Remedy, if a
 proprietor be in-
 jured by beasts
 of a stranger.
 1821, 44, § 17.

Lines between
 proprietors, to
 be run once in
 two years.
 1821, 44, § 18.

Association
 may be discon-
 tinued.
 1821, 44, § 19.

Certain proprie-
 taries not sub-
 ject to these
 regulations.
 1821, 44, § 20.

Waste portions
 of lots, exclud-
 ed from esti-
 mates and as-
 sessments.
 1821, 44, § 23.

Proceedings,
 on application
 of three or
 more, to be set
 off.
 1821, 44, § 24.

proprietors, either by putting in more than the number allotted him, or before the day fixed for that purpose, or by keeping them therein longer than the time limited, he shall be considered a trespasser; and his beasts may be impounded, as taken doing damage, as if he owned no land in the general field.

SECT. 30. If any proprietor shall be injured in his lands, by the beasts of any stranger, he shall have the same remedy therefor, as if his land had been inclosed, and used separately. When damage happens to any proprietor in such common field, through the insufficiency of the fence of a co-proprietor, the owner or occupant of the land, to which such insufficient fence belongs, shall be liable to answer and make good all such damage.

SECT. 31. Every proprietor of land, lying unfenced in a general field, shall once in every two years, if requested by the owner of the adjoining land, run lines with such owner between their lots, and establish boundaries by sufficient mete stones, at their joint expense; and if he shall fail so to do, after at least six days notice by the adjoining owner, he shall forfeit two dollars, to be recovered by such adjoining owner to his own use, in an action on the case.

SECT. 32. A major part in interest, in any common or general field, occupied under the provisions of this chapter, at any legal meeting called for the purpose, may discontinue their association; said discontinuance not to take effect, until six months after the vote for that purpose, unless all the proprietors consent to some earlier period.

SECT. 33. Nothing, contained in this chapter, shall prevent the proprietors of any such common field fenced, [and] who had been duly organized, previously to February twenty fourth, eighteen hundred and twenty one, from making and maintaining their fences, according to rules and orders, before that date agreed on by them, at any legal meeting.

SECT. 34. Portions of common fields, inclosed under the provisions of this chapter, which are unoccupied and unimproved by their owners, on account of their being rocky or barren, shall be excluded in all estimates for assessments under section, nineteen, or for apportionments of fence, under section, twenty two, of this chapter.

SECT. 35. Any three or more proprietors of lots in a general field, lying within one general fence or inclosure, may, by a petition in writing to the proprietors of such field, at any meeting of said proprietors, legally warned for that purpose, request to have their said lots, either alone, or jointly with any other lots in said field, divided from the remainder of the field, in order to be inclosed in one common fence, and to be occupied by them as an entire field, separately from the other proprietors of the general field; and, if the majority of the proprietors, in interest, who may be present at such meeting, shall withhold, or refuse their assent to such division, the county commissioners may, upon the like application, appoint three or five disinterested and suitable persons, within the county, where such general field is situated, to be a committee, to make such division thereof, if the said committee shall deem it expedient; and to assign to each field, its proportion of the partition fence,

which shall become necessary by reason of such division, to be kept up and maintained by the proprietors of said general fields, respectively: and the said committee shall, as soon as may be after their appointment, make return of their doings under their hands to the said county commissioners; and, after the acceptance thereof by said commissioners, the fields, so divided, shall be deemed separate general fields, and the proprietors of the field, so set off, and the remaining proprietors of the original, respectively, shall be distinct and separate proprietary bodies; having all the like powers and privileges, and subject to all the duties and liabilities, as the proprietors of [the] original general field, before such division was made; provided, that no order for such division shall be made, nor any committee appointed, as aforesaid, until the other proprietors shall have had notice of the petition for such division; which notice shall be given by serving the clerk of the proprietors with a copy of the petition, thirty days at least, before such order or appointment shall be made.

SECT. 36. When the major part, in interest, of the proprietors of any tract of land, consisting of five or more allotments, shall be desirous of inclosing them, in one general field, they may apply to the district court in the county, where such land lies, and when such land lies in different counties, then to the supreme judicial court, to be holden in either; and said court may order such notice to all parties interested, as they may deem reasonable, and after hearing the parties who may appear, may, if they see cause, order the land to be so inclosed.

Proceedings, for organizing to inclose a common field. 1821, 44, § 25.

SECT. 37. After a common or general field shall be so established by order of court, the further proceedings, in relation thereto, shall be the same, as are provided, when a field is so inclosed by the consent of all the proprietors; and the proprietors shall be entitled to all the privileges, and subject to all the duties, before provided in this chapter, with respect to the proprietors of fields, inclosed by consent.

After establishment of a common field, proprietors to proceed, as provided in this chapter. 1821, 44, § 25.

SECT. 38. Any fence viewer, who shall, when requested, unreasonably neglect to view any fence, or to perform any other duties, required of him in this chapter, shall forfeit three dollars to any person, who shall sue for the same, within forty days after such neglect. He shall also be liable for all damages, to the party injured.

Penalty, if fence viewers neglect their duty. 1821, 44, § 3.

SECT. 39. Each fence viewer shall be paid, by the person employing him, at the rate of one dollar a day, for the time he shall be so employed. If the party liable shall neglect to pay the same, for thirty days after demand, each of such fence viewers shall be entitled to recover double the amount, in an action on the case: and they may be mutually witnesses for or against each other.

Fees for services. Penalty for neglect of payment. 1821, 44, § 8.