

MAINE STATE LEGISLATURE

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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.

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1841.

secure the payment of the same, upon such house or building, and the lot of land, on which the same stands, and upon the right of redeeming the same when under mortgage; and such lien shall continue in force for the space of ninety days from the time, when such payment becomes due.

SECT. 38. Such person may secure the benefit of such lien by an attachment of such house or building, land or right of redemption, within the said ninety days; and such attachment shall have precedence of all other attachments, not made under any such lien.

SECT. 39. When the debtor shall tender to the creditor the sum justly due to him, as aforesaid, such lien shall cease.

SECT. 40. When any lot or parcel of land, or any mill privilege, may be leased for the purpose of having a house, shop, mill or other building erected or placed thereon, and rent is reserved in the lease, all the buildings erected as aforesaid, together with all the interest which the lessee before had, or may have, in the premises, by force of such lease, shall remain liable to be attached by any such lessor or his assignee to secure the rent due on such lease, notwithstanding any previous transfer of property by the lessee; provided, such attachment be made within six months from the time such rent becomes due.

CHAP. 125.

16 Maine, 268.

Such lien to be secured by attachment. 1837, 273, § 2.

Dissolved by a tender. 1837, 273, § 3.

Lien of landlord, on buildings erected by the lessee. 1824, 258, § 1, 2.

CHAPTER 126.

OF THE RIGHT OF ERECTING MILLS AND MILL DAMS, AND OF FLOWING LANDS; AND THE MODE OF OBTAINING DAMAGES THEREFOR.

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| <p>SECT. 1. Right to erect and maintain mill dams.</p> <p>2. Not to injure a mill previously built.</p> <p>3. Not on another's land without consent.</p> <p>4. Restriction, as to height of dam.</p> <p>5. Damages for flowing, recoverable, on complaint.</p> <p>6. Form of complaint.</p> <p>7. How presented and served.</p> <p>8. Service, how made.</p> <p>9. What may be pleaded in bar.</p> <p>10. Mode of trial. Appeal.</p> <p>11. Costs for respondent, if complainant fail.</p> <p>12. Proceedings, if complainant recover.</p> <p>13. Trial by jury. Commissioners' report to be evidence.</p> <p>14. Acceptance of commissioners' report.</p> <p>15. Verdict or report, to bar any future action.</p> <p>16. Compensation to commissioners.</p> <p>17. Yearly damages, how fixed.</p> | <p>SECT. 18. Security to be given for yearly damages, if required.</p> <p>19. Lien upon mill and land, for damages.</p> <p>20. Complainant may sue for damages, if unpaid.</p> <p>21. Mill and land may be seized and sold on the execution, after thirty days.</p> <p>22. Effect of such sale.</p> <p>23. Right of redemption.</p> <p>24. Either party may file a new complaint.</p> <p>25. Restriction of this right.</p> <p>26. Owner may offer an increased compensation. Consequence.</p> <p>27. Injured party may offer to accept a less compensation. Consequence.</p> <p>28. Restriction of suits for damages.</p> <p>29. Costs.</p> <p>30. Tenants may make such offers, as well as owners.</p> <p>31. Agreement of parties binding, if recorded.</p> <p>32. Judgment no bar to a new complaint.</p> |
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CHAP. 126. SECT. 33. Tender of damages, and effect thereof. SECT. 35. If complaint abate, rights may be preserved by new complaint within a year.

34. Complaint not to abate, by death of either party.

Right to erect and maintain mill dams.
1821, 45, § 1.
5 Greenl. 9.
10 Pick. 247, 348.

Not to injure a mill previously built.
11 Mass. 533.
17 Mass. 289.
10 Pick. 348.
22 Pick. 312.

Not on another's land, without consent.
1821, 45, § 1.

Restriction, as to height of dam.
1824, 261, § 1.

Damages for flowing, recoverable, on complaint.
1821, 45, § 2.
7 Greenl. 155.
1 Fairf. 224.
14 Maine, 423.
6 Pick. 94.
9 Pick. 62.
12 Pick. 556.
Form of complaint.
11 Mass. 462.
5 Pick. 182, 294.

How presented and served.
1821, 45, § 2.

Service, how made.
1821, 45, § 2.

What may be pleaded in bar.
1821, 45, § 3.
3 Mass. 184.
5 Mass. 398.
4 Greenl. 322.
5 Greenl. 9.
3 Fairf. 183.
7 Pick. 141.

Mode of trial. Appeal.
1821, 45, § 3.
6 Greenl. 282.

SECTION 1. Any man may erect and maintain a water mill, and a dam to raise water for working it, upon and across any stream that is not navigable, upon the terms and conditions, and subject to the regulations, hereinafter expressed.

SECT. 2. No dam shall be erected to the injury of any mill, lawfully existing, either above or below it, on the same stream; nor to the injury of any mill site, on which a mill or mill dam shall have been lawfully erected and used, unless the right to maintain a mill, on such last mentioned site, shall have been lost or defeated by an abandonment, or otherwise.

SECT. 3. Nor shall any mill or dam be placed on the land of any person, without such grant, conveyance or authority from the owner, as would be necessary by the common law, if no provision relating to mills had been made by any statute.

SECT. 4. The height, to which the water may be raised, and the length of time, during which it may be kept up in each year, shall be liable to be restricted and regulated by the verdict of a jury, or report of commissioners, as hereinafter provided.

SECT. 5. Any person sustaining damages in his lands, by their being overflowed by a mill dam, may obtain compensation for the injury by complaint to the district court in the county, where the lands so flowed shall be situated, or any part of the same; but no compensation shall be awarded for any damages, sustained more than three years before the institution of the complaint.

SECT. 6. The complaint shall contain such a description of the land, alleged to be overflowed and injured, and such a statement of the damage, that the record of the case shall show, with sufficient certainty, the matter, that shall have been heard and determined therein.

SECT. 7. Such complaint may be presented to the court in term time, or be filed in the clerk's office in vacation; and a copy thereof, in either case, shall be served on the person complained of, by being delivered to him, or left at his dwelling house, if he has any in the state; otherwise, it shall be left at the mill in question, or with the owner of the mill.

SECT. 8. Such service shall be made by the proper officer, fourteen days at least before the term, at which the complaint is to be heard.

SECT. 9. The owner or occupant of such mill may appear and plead in bar to such complaint, that the complainant has no right, title or estate in the lands, alleged to be flowed; or, that he has a right to maintain such dam and flow the lands for an agreed price, or without any compensation; or any other matter, which may show, that the complainant cannot maintain the suit; but he shall not plead in bar of the complaint, that the land described therein is not injured by such dam.

SECT. 10. When any such plea is filed, and an issue in fact, or in law, is joined, it shall be heard and decided as similar issues are

to be decided in cases at common law; and either party may appeal CHAP. 126.
to the supreme judicial court.

SECT. 11. If, on any such plea, the issue is decided in favor of the respondent, or the complainant shall become nonsuit, or discontinue the suit, the respondent shall be entitled to his costs, as in common actions. Costs for respondent, if complainant fail.
1821, 45, § 8.

SECT. 12. If the issue is decided in favor of the complainant, or, if the owner or occupant, after being notified as before mentioned, shall not appear, or shall be defaulted, or shall not plead or show any legal objection to proceeding, the court shall appoint three or more disinterested persons of the same county, commissioners, who shall go upon and examine the premises, and make a true and faithful appraisement under oath of the yearly damages, if any, done to the complainant by the flowing of his lands, described in the complaint, and how far the same may be necessary; and ascertain and make report, what portion of the year such lands ought not to be flowed. Proceedings, if complainant recover.
1824, 261, § 1.
11 Mass. 363,
462.
17 Pick. 53, 70.

SECT. 13. If either party shall request, that a jury may be empaneled to try the cause at the bar of the court, the report of the commissioners shall, under the direction of the court, be given in evidence to the jury; subject to be impeached by evidence from either party. Trial by jury.
Commissioners' report to be evidence.
1824, 261, § 1.

SECT. 14. If neither party shall request a trial of the cause by a jury, as before mentioned, the report of the commissioners may be accepted by the court, and judgment rendered thereon. Acceptance of commissioners' report.
1824, 261, § 1.

SECT. 15. The verdict of such jury, or the report of such commissioners, where no trial is requested, being so accepted, shall be a bar to any action brought for such damages; and such owner or occupant shall not flow such lands during any portion of the period, when such flowing is prohibited by the commissioners or the jury. Verdict or report, to bar any future action.
1824, 261, § 1.
17 Mass. 76.

SECT. 16. The court shall have power to award reasonable compensation to such commissioners, which shall be taxed and recovered by the prevailing party. Compensation to commissioners.
1824, 261, § 1.

SECT. 17. Such verdict or accepted report of the commissioners, and judgment thereon, shall be the measure of the yearly damages, until the owner or occupant of such lands, or the owner or occupant of such mill, shall, on a new complaint to the court, and by similar proceedings as in the former case, obtain an increase or decrease of such damages. Yearly damages, how fixed.
1821, 45, § 6.

SECT. 18. When any person, whose lands shall be flowed as aforesaid, shall, on filing his complaint for ascertaining or increasing his damages, or, on bringing his action of debt, as provided in the twentieth section of this chapter, move the court to direct the owner or occupant of such mill to give security for the payment of said annual damages, as they shall become due, and the court shall so order, the owner or occupant, refusing or neglecting to give such security, shall have no benefit of this chapter; but shall be liable to be sued for the damages occasioned by such flowing, in an action at common law. Security to be given for yearly damages, if required.
1821, 45, § 7.
11 Mass. 364.

SECT. 19. The person, entitled to receive such annual compensation, shall have a lien therefor, from the time of the institution of the original complaint, on the mill and mill dam, with the appurten- Lien upon mill and land, for damages.

CHAP. 126. ances and the land under and adjoining the same, and used there-
with; provided, that it shall not extend to any sum, due more than
three years before the commencement of the action.

Complainant
may sue for
damages, if un-
paid.
1821, 45, § 6.
15 Maine, 242.

SECT. 20. The party, entitled to such annual compensation,
may maintain an action of debt or assumpsit therefor, before the
proper tribunal, against the person who shall own or occupy the
said mill, when the action is brought; and shall therein recover the
whole sum due and unpaid, with costs.

Mill and land
may be seized
and sold on the
execution, after
thirty days.

SECT. 21. The execution on such judgment, if not paid, may,
at any time within thirty days, be levied on the premises subject to
the lien; and the officer may sell the same at public auction; or so
much thereof in common with the residue, as shall be necessary to
satisfy the execution; proceeding in giving notice of such sale in
the same manner, as in making sale of an equity of redemption
upon execution.

Effect of such
sale.

SECT. 22. Such sale shall be effectual against all persons, claim-
ing the premises by any title; which accrued within the time covered
by the lien.

Right of red-
emption.

SECT. 23. Any person, entitled to the premises, may redeem
the same within one year after the sale, on paying to the purchaser
or the person holding under him the sum paid therefor, with interest
at the rate of twelve per cent. deducting therefrom any rents and
profits, which may have been received by such purchaser or person
holding under him; and may have the same process to compel the
purchaser to account, as might be had against a purchaser of an
equity of redemption.

Either party
may file a new
complaint.
1821, 45, § 6.
9 Mass. 203.
10 Mass. 72.
16 Maine, 411.

SECT. 24. When either party is dissatisfied with the annual com-
pensation, established as before provided, a new complaint may be
filed and similar proceedings shall be had, and conducted substan-
tially in the manner, before provided in case of an original complaint.

Restriction of
this right.
1821, 45, § 11.

SECT. 25. No new complaint shall be brought, until the expira-
tion of one month after the payment of the then last year shall
have become due, and one month after notice to the other party;
and the other party may, within that time, make an offer or tender,
as herein after provided.

Owner may of-
fer an increas-
ed compensa-
tion. Conse-
quence.
1821, 45, § 9.

SECT. 26. The owner of the mill or dam, within said month,
may offer in writing to the owner of the land injured, any increase
of compensation to be paid thereafter for maintaining said dam; and,
if the owner of the land shall not agree to accept the same,
but shall bring a new complaint, for the purpose of increasing the
compensation, he shall not recover any costs; unless he shall obtain
an increase of damages, in the manner before mentioned in this
chapter.

Injured party
may offer to ac-
cept a less com-
pensation. Con-
sequence.
1821, 45, § 10.

SECT. 27. The owner of the land injured may also, within said
month, offer, in writing, to the owner of the mill or dam, to accept
any sum smaller than the annual compensation established, to be
paid thereafter for maintaining said dam; and, if the owner of the
mill or dam shall decline to pay such reduced compensation, but
shall bring a new complaint to obtain a reduction of the same, he
shall not recover costs, unless such compensation shall be reduced
to a less sum than was offered.

Restriction of
suits for dama-
ges.

SECT. 28. No action shall be sustained at common law for the

recovery of damages occasioned by the overflowing of lands as before mentioned, except in the special cases provided in this chapter, to enforce the payment of damages after they have been ascertained by process of complaint, as aforesaid.

SECT. 29. The party prevailing shall recover costs, unless when it is otherwise expressly provided.

Costs.
3 Fairf. 345.

SECT. 30. Such offers may be made by or to the respective tenants or occupants of the land, and of the mill and dam in question, in like manner and with like effect, as if made by the respective owners; except, that no agreements founded thereon shall bind the owners, unless made by their consent.

Tenants may
make such offers,
as well as
owners.

SECT. 31. When an annual compensation upon the acceptance of one party, of an offer made by the other, is established and signed by the respective owners of the mill or dam, and of the land, and recorded in the office of the clerk of the court in which the former judgment was rendered, with a reference on the record to the former judgment, to the book where the agreement is recorded, such agreement shall be as binding as a verdict and judgment on a new complaint.

Agreement of
parties binding,
if recorded.

SECT. 32. A judgment against a complainant, as not being entitled to any compensation, shall be no bar to a new complaint for damages, which have arisen after the former verdict, and for compensation for damages, subsequently sustained.

Judgment no
bar to a new
complaint.

SECT. 33. In case of an original complaint, the respondent may tender and bring money into court, as in an action at common law; and with the same advantages to himself; and, if the money is accepted, the judgment shall have the same effect as if rendered on a verdict.

Tender of dam-
ages, and effect
thereof.

SECT. 34. No complaint for flowing lands shall abate by the death of any party thereto; but the same may be prosecuted or defended by the surviving complainants or respondents, or the executors or administrators of the deceased.

Complaint not
to abate, by
death of either
party.

SECT. 35. If such complaint shall be abated or defeated for want of form, or if, after a verdict for the complainant, judgment should be reversed, the complainant may bring a new complaint at any time within one year, after abatement or reversal as above stated; and thereon recover such damages, as have been sustained during the three years next before the institution of the first complaint, or any time afterwards.

If complaint a-
bate, rights may
be preserved by
new complaint,
within a year.

CHAPTER 127.

OF INQUESTS OF OFFICE, AND INFORMATIONS FOR INTRUSION.

- SECT. 1. Proceedings, to revest in the state, lands granted on condition.
2. Attorney general to file information.
3. Scire facias to issue. Service.
4. Judgment on default.

- SECT. 5. Consequence of disclaimer, by defendant.
6. Proceedings, if defendant claim title.