

# MAINE STATE LEGISLATURE

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THE  
REVISED STATUTES

OF THE  
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED  
THE CONSTITUTIONS

OF THE  
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

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BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:  
PUBLISHED BY BAILEY & NOYES.

SEC. 20. At the meeting of said commissioners next after the report of the committee is received they may, if deemed reasonable, accept such report.

CHAP. 17.

To consider report of committee at next meeting.  
1859, c. 101, § 4.

SEC. 21. The party praying for such drains or ditches shall cause the final report and adjudication to be recorded in the registry of deeds for the county, and shall pay or tender in payment the full amount of damages to the parties to whom the same is adjudicated.

Final report to be recorded and damages tendered.  
1859, c. 101 § 5.

SEC. 22. The owners of a drain or ditch constructed for the purposes above named, or any one of them, benefited thereby, may, from time to time, improve, deepen, and repair the same in such a manner as shall be necessary to make them effective, and shall have the right to remove and use any rock, earth or other material which shall be necessary in making such improvements, and to enter upon the lands through which such drains or ditches pass, for that purpose.

Repairs, how to be made.  
1859, c. 101, § 6.  
1870, c. 117, § 1.

SEC. 23. All damages sustained by any person by reason of such improvement, the value of the royalty or stumpage on the rock, and of the other material removed and used, may be recovered against the person, persons or corporations taking said rock, earth or other material, in an action on the case, or upon application to the county commissioners at the election of the party injured, and in case he shall elect the latter, the same proceedings shall be had for the purpose of ascertaining such damage, and to recover the same, as are now provided in estimating damage by a jury in case of laying out public highways.

Damages how to be settled.  
1859, c. 101, § 7.  
1870, c. 117, § 2.

SEC. 24. Any person doing damage to such works shall be punished as provided in chapter one hundred and twenty-seven, for offences of like nature.

Drains, how protected.  
1859, c. 101, § 6.

## CHAPTER 17.

### NUISANCES.

- SEC. 1. 1. Certain places declared nuisances.
2. Punishment for keeping such nuisances.
3. Lease to a tenant keeping a nuisance, void.
4. Liability of owners of buildings, knowingly allowing nuisances.
5. Certain nuisances described.
6. Places to be assigned for unwholesome employments.
7. Proceedings when places so assigned become offensive.
8. When buildings for the manufacture of gunpowder shall be deemed a nuisance.
9. Burning bricks in parts of a town prohibited by vote; nuisances.
10. Water mills and dams on streams, and fences and buildings fronting on public ways, in certain cases, not nuisances.

- CHAP. 17. SEC. 11. Punishment for nuisances, on conviction; abatement thereof.
12. Action for damages, whether nuisances be public or private.
  13. Process for abatement of a nuisance.
  14. Warrant to be stayed, if defendant give security to discontinue the nuisance.
  15. Expenses of abatement to be defrayed from materials, if sufficient; otherwise, as in case of execution.
  16. Equity jurisdiction of supreme judicial court. Injunction may issue from court where a suit for nuisance is pending.
  17. Stationary steam engine not to be used without license.
  18. Duty of town officers on application for a license.
  19. Such engine erected without license to be deemed a nuisance.
  20. Power of town officers to remove such engine.
  21. Steam boilers to be provided with fusible safety plug.
  22. Penalty for removing such plug, or using steam boiler without such plug.
  23. Blasting rocks; notice to be given.
  24. Violation, penalty for.
  25. Notice for construction of wharves.
  26. What buildings may be adjudged nuisances. Proceedings.
  27. Appeals allowed and proceedings thereon.
  28. Verdict and proceedings thereafter.
  29. Costs, how to be paid.
  30. Sections 26, 27, 28 and 29, not to be in force in any city or town unless adopted therein.

Certain places declared common nuisances. 1858, c. 54, § 1. See c. 27, § 31. Punishment for keeping. 1858, c. 54, § 2.

SEC. 1. All places used as houses of ill fame, resorted to for lewdness or gambling, for the illegal sale or keeping of intoxicating liquors, are common nuisances.

Lease to tenant void, if place so used. 1858, c. 54, § 3.

SEC. 2. Any person keeping or maintaining any such nuisance, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the county jail not more than one year.

Right of owner in such case. May make entry without process. c. 94, R. S. applicable. 56 Me. 321. Liability of owner. 1858, c. 54, § 4.

SEC. 3. If any person being a tenant or occupant, under any lawful title, of any building or tenement not owned by him, uses it or any part thereof for any purpose named in the first section, forfeits his right thereto, and the owner thereof may make immediate entry, without process of law, or may avail himself of the remedy provided in the ninety-fourth chapter.

Punishment.

SEC. 4. If any person knowingly lets any building or tenement owned by him, or under his control, for any of the purposes in the first section named, or knowingly permits the same or part thereof to be so used, shall be deemed guilty of aiding in the maintenance of a nuisance, and be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than thirty days nor more than six months.

Certain nuisances described. R. S. c. 17, § 1. 37 Me. 361.

SEC. 5. The erection, continuance or use of any building or other place for the exercise of a trade, employment, or manufacture, which, by occasioning noxious exhalations, offensive smells, or other annoy-

ances, becomes injurious and dangerous to the health, comfort, or property of individuals, or the public; causing or suffering any offal, filth, or noisome substance to be collected, 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 incumbering by fences; buildings, or otherwise, the highways, private ways, streets, alleys, commons, common landing places, or burying grounds, shall be deemed nuisances within the limitations and exceptions hereafter mentioned.

SEC. 6. The municipal officers of a town, when they judge it necessary, may assign some place or places therein for the exercise of any trade, employment, or manufacture aforesaid, and forbid their exercise in other places, under penalty of being deemed public or common nuisances and liable to be dealt with as such. All such assignments shall be entered in the records of the town and may be revoked, when said officers judge proper.

SEC. 7. When any place or building so assigned becomes a nuisance, offensive to the neighborhood, or injurious to the public health, any person may complain thereof to the supreme judicial court, and if after notice to the party complained of, the truth of the complaint is admitted by default, or made to appear to a jury on trial, the court may revoke such assignment, and prohibit the further use of such place or building for such purposes, under a penalty not exceeding one hundred dollars for each months continuance after such prohibition, to the use of said town; and may order it to be abated, and issue a warrant therefor, or stay it as hereafter provided; and if the jury, on said trial, acquits the defendant, he shall recover costs of the complainant.

SEC. 8. If a person carries on the business of manufacturing gunpowder, or of mixing or grinding the composition therefor, in any building within eighty rods of any valuable building erected when such business was commenced, the former building shall be deemed a public nuisance; and such person may be prosecuted accordingly.

SEC. 9. A town, at its annual meeting, may prohibit the burning of bricks, or the erecting of brick kilns within such parts thereof as they deem for the safety of the citizens or their property. And if any person, by himself or others, violates such prohibition, the municipal officers shall cause said bricks or brick kiln to be forthwith removed, at the expense of the owner thereof; and the offender shall be liable to a fine not exceeding two hundred dollars to the use of said town; and if said bricks or brick kiln are not removed before a

CHAP. 17.

7 Me. 155.  
17 Me. 292.  
26 Me. 128.  
30 Me. 65.  
32 Me. 80.  
42 Me. 150, 522.  
43 Me. 198.  
47 Me. 161.  
49 Me. 30.  
51 Me. 503.

Places to be assigned for unwholesome employments.  
R. S. c. 17, § 2.  
34 Me. 36.

Proceedings when places so assigned become offensive.  
R. S. c. 17, § 3.

When buildings for the manufacture of gunpowder, shall be deemed nuisances.  
R. S. c. 17, § 4.  
See c. 26, § 24.

Burning bricks in parts of a town prohibited by vote; nuisances.  
R. S. c. 17, § 5.

**CHAP. 17.** conviction, the court may issue a warrant for the removal thereof, or stay it as hereafter provided.

Water mills and dams on streams, and fences and buildings fronting on public ways, in certain cases not nuisances.  
R. S. c. 17, § 6.

**SEC. 10.** The erecting and maintaining of water mills and dams to raise water for working them upon or across streams not navigable, as provided in the chapter relating thereto, shall not be deemed nuisances, unless they become offensive to the neighborhood or injurious to the public health, or unless they occasion injuries or annoyances of a kind not authorized by said chapter. Fences and buildings fronting on public ways, commons, or lands appropriated to public use, shall not be deemed nuisances, when they have been erected for the times and in the manner provided in section seventy-six, chapter eighteen. (a)

Punishment for nuisances, on conviction; abatement thereof.  
R. S. c. 17, § 7.  
21 Me. 9, 84.  
30 Me. 65.

**SEC. 11.** Whoever is convicted of erecting, causing or continuing a public or common nuisance, as herein described or at common law, where no other punishment is specially provided, may be punished by a fine not exceeding one hundred dollars; and the court with or without such fine may order such nuisance to be discontinued or abated, and issue a warrant therefor as hereafter provided.

Action for damages, whether nuisances be public or private.  
R. S. c. 17, § 8.

**SEC. 12.** 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 guilty party an action on the case to recover his damages, unless it is otherwise specially provided by law. (b)

Process for abatement of nuisance.  
R. S. c. 17, § 9.  
12 Me. 361.  
24 Me. 232.  
37 Me. 361.

**SEC. 13.** 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.

“L., ss. To the sheriff of our county of L. or either of his deputies,  
Greeting.

“Whereas, by the consideration of our — court, — begun and held at —,” (describing the court, and the term,) “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 said —, and for —,” (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

(a) 6 Me. 118; 7 Me. 155; 8 Me. 138; 24 Me. 232.

(b) 44 Me. 154; 49 Me. 29; 51 Me. 503.

command you forthwith, to cause said nuisance to be abated and removed; and also that you levy of the materials by you so removed, and of the goods, chattels, and lands of the said C. D., a sum sufficient to defray the expense of removing and abating the same, not to exceed the sum of — 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 the said C. D. and him commit unto our jail in W. in said county, and there detain till he pay such sums or is legally discharged. And make return of this warrant, with your doings thereon, within thirty days. Witness, A. R., Esq., at —, this — day of —, in the year of our Lord —.

"J. S., Clerk."

And when the conviction is upon an action before a justice of the peace, and no appeal is made, the justice, after estimating the sum necessary to defray the expense of removing or abating the nuisance, may issue a like warrant, making corresponding alterations in its form.

SEC. 14. Instead of issuing such warrant, the court or justice 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 or justice 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 discontinue said nuisance, or that within a time limited by the court and not exceeding six months, he will cause it to be abated and removed, as either is directed by the court; and on failing to perform such condition, the recognizance shall be deemed forfeited, and the court, or any justice thereof, in term time or in vacation, or said justice on being satisfied of such default, may forthwith issue the warrant and scire facias on the recognizance.

Warrant to be stayed, if defendant give security to discontinue the nuisance, R. S. c. 17, § 10.

SEC. 15. The expense of abating a nuisance by virtue of a warrant shall be collected by the officer as damages and costs are collected on execution; except that the materials of any buildings, fences, or other things removed as a nuisance, may be first levied upon and sold by the officer, and the proceeds, if any remain after paying the expense of removal, shall be paid by the officer, on demand, to the defendant or the owner of such property; and if said proceeds are not sufficient to satisfy the expenses, the officer shall collect the residue as aforesaid. A person committed to jail on such warrant, may have the privilege of the oath for the relief of poor debtors, as if he had been committed on execution. If said expense cannot be collected of the defendant, it shall be paid as costs in criminal prosecutions.

Expenses of abatement to be defrayed from materials, if sufficient; otherwise, as in case of execution. R. S. c. 17, § 11.

SEC. 16. Any court of record, before which an indictment, complaint, or action for a nuisance is pending, may, in any county, issue

Equity jurisdiction of S.

**CHAP. 17.** an injunction to stay or prevent such nuisance, and make such orders and decrees for enforcing or dissolving it, as justice and equity require.

J. Court, &c.  
R. S. c. 17, § 12.  
Stationary steam engine not to be used without license.  
R. S. c. 17, § 13.

**SEC. 17.** No stationary steam engine shall be erected in a town, unless the municipal officers have previously granted license therefor, designating the place where the buildings therefor shall be erected, the materials and mode of construction, the size of the boiler and furnace, and such provisions as to height of chimneys or flues, and protection against fire and explosion, as they judge proper for the safety of the neighborhood. Such license is to be granted on written application, and recorded in the town records, and a certified copy of it furnished, without charge, to the person or persons applying for the license.

Duty of town officers on application for a license.  
R. S. c. 17, § 14.

**SEC. 18.** When application is made for such license, said officers shall assign a time and place for its consideration, and give public notice thereof at least fourteen days beforehand as they think proper, at the expense of the applicant, that all persons interested may be heard before granting a license.

Such engine erected without license to be deemed a nuisance.  
R. S. c. 17, § 15.

**SEC. 19.** Any such engine erected without a license shall be deemed a common nuisance without any other proof than its use.

Power of town officers to remove such engine.  
R. S. c. 17, § 16.  
See c. 14, § 16.

**SEC. 20.** Said officers shall have the same authority to abate and remove a steam engine, erected without license, as is given to the health committee or health officer in chapter fourteen for the removal or discontinuance of the nuisances therein mentioned.

Steam boilers to be provided with safety fusible plugs.  
R. S. c. 17, § 17.  
1858, c. 47, § 1.

**SEC. 21.** No person or corporation shall manufacture, sell, use or cause to be used any steam boiler in this state, unless it is provided with a fusible safety plug, made of lead or some other equally fusible material, not less than one-half inch in diameter, which shall be placed in the roof of the fire box, when a fire box is used; and in all cases, shall be placed in the part of the boiler fully exposed to the action of the fire, and as near the top of the water line as any part of the fire surface thereof; and for this purpose it shall be lawful to use Ashcroft's "protected safety fusible plug."

Penalty for violation.  
R. S. c. 17, § 18.  
1858, c. 47, § 2.

**SEC. 22.** If any person without just and proper cause removes from the boiler the safety plug, or substitutes any material more capable of resisting the action of the fire, or if any person or corporation uses or causes to be used, for six consecutive days, or manufactures, or sells a steam boiler unprovided with such safety fusible plug, the offender shall be punished by a fine not exceeding one thousand dollars.

Blasting rocks, notice to be given.  
R. S. c. 17, § 19.

**SEC. 23.** Persons engaged in blasting lime-rocks or other rocks, before each explosion shall give seasonable notice thereof, so that all persons or teams approaching shall have time to retire to a safe distance from the place of said explosion; and no such explosion shall be made after sunset.



SEC. 24. Whoever violates the provisions of the preceding section, shall pay five dollars for each offence, in an action of debt to the use of the person suing therefor, and all damages caused by any explosion; and if the persons engaged in blasting rocks are unable, or after judgment and execution, avoid payment of the fine, damages and costs, by the poor debtors' oath, the owners of the quarry, in whose employment they were, shall be liable for the same. CHAP. 17.

Violation,  
penalty for.  
R. S. c. 17, § 20.

SEC. 25. When the construction or extension of a wharf in tidal waters in any city is desired by the permission of the city authorities, they shall require the applicant to give fourteen days notice thereof by publication in two newspapers before acting upon it.

Notice for construction of wharves.  
R. S. c. 17, § 21.

SEC. 26. When the municipal officers of any town after personal notice in writing to the owner of any burnt, dilapidated or dangerous building, or by publication in a newspaper in the same county, if any, three weeks successively, otherwise in the state paper, and after a hearing of the matter, shall adjudge the same to be a nuisance, or dangerous, they may make and record an order, prescribing what disposition shall be made thereof, and thereupon the town clerk shall deliver a copy of such order to a constable, who shall serve such owner if resident within the state, with an attested copy thereof, and make return of his doings thereon to said clerk forthwith. If the owner, or part owner, is unknown, or resides without the state, such notice shall be given by publication in the state paper, or in a paper published in the county, three weeks successively. If no application is made to the supreme judicial court, or a justice thereof, as is hereafter 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 thirty days after demand, or may be recovered of such person by an action for money paid.

Dangerous buildings may be adjudged nuisances, proceedings.  
1860, c. 177, § 1.  
1863, c. 187, § 1.

Powers of municipal officers.

Owner to be served with a copy of order, return of service.  
See c. 3, § 40, item seven.

Nuisance may be abated.  
Owner to pay expense.  
Payment enforced.

SEC. 27. Any owner aggrieved by any such order, may apply to the supreme judicial court, if in session in the county, or to any justice thereof, in vacation, for a jury, and such court or justice shall forthwith order a warrant for a jury to issue, to be empannelled by the sheriff as is provided by section ten of the eighteenth chapter. Such application shall be made within five days after such order is served on such owner, and the jury shall be empannelled within seven days from the issuing of the warrant.

Owner aggrieved may apply to supreme court, or justice of, for a jury.  
1860, c. 177, § 2.  
Jury, how empannelled.  
Application, when to be made.

SEC. 28. The jury may find a verdict, affirming or annulling the said order, or making alterations therein, which shall be returned forthwith to the justice issuing the warrant. He may accept or reject it and issue a new warrant. If the court is not in session the action shall be entered on the docket of the preceding term. Exceptions if taken by either party may be allowed, or execution may issue,

Verdict, what it may be.  
1860, c. 177, § 3.  
Return of.  
May be accepted or rejected.  
Action, how entered.

**CHAP. 18.** as of that term, and if the verdict is finally accepted, the justice may issue the proper process for enforcing it.

Exceptions taken, proceedings.

Verdict enforced.

Costs, how to be paid.  
1860, c. 177, § 4.

Not applicable unless by vote.  
1860, c. 177, § 5.

**SEC. 29.** If the verdict affirms such order, costs shall be recovered by the town against the applicant. If it annuls such order in whole, costs shall be recovered by the applicant against such town, and in case it shall alter it in part, the court may render such judgment as to costs as justice requires.

**SEC. 30.** The four preceding sections shall not be in force in any town unless adopted at a legal meeting thereof.

## CHAPTER 18.

### WAYS.

#### LOCATION, ALTERATION, AND DISCONTINUANCE OF HIGHWAYS.

- SEC. 1.** Commissioners' power; petition how framed.
2. Notice how given, proved, recorded.
3. Costs paid by petitioners on failure. Distress warrant may be issued.
4. Duties of commissioners at time of hearing, and in laying out or altering ways.
5. Return when made, disposition of it. Petitions for increase of damages, when presented. Damages awarded under first seventeen sections, to be paid into county treasury.
6. Proceedings, when such petitions presented, before and after hearing.
7. Damages when to be paid; to whom awarded.
8. Petitions for increase of damages, proceedings on them.
9. Not abated by death, all interested may join in them.
10. Jury how summoned, parties notified.
11. County attorney to be notified and attend.
12. Who presides; he and jurors and witnesses to be sworn. Duties of person presiding.
13. Proceedings of jury, officer's duty. Proceedings in supreme court on verdict. Clerk of court to certify to commissioners. Proceedings when no verdict. Costs, how adjusted.
14. Time allowed for removing growth, for payment of damages, for making the way.
15. Way discontinued before damages paid, proceedings.
16. Petitions respecting ways in different counties. Proceedings on them. Notices.
17. Proceedings continued and closed.

#### TOWN AND PRIVATE WAYS.

- SEC. 18.** Powers of municipal officers respecting town and private ways. Notice how given.
19. Municipal officers may lay out ways for hauling wood or lumber. Return expenses of such location. Town not liable for damages on such way.
20. Municipal officers lay out, towns accept.
21. Towns may discontinue town and private ways; establish sidewalks; plant trees.