

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.

BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:
PUBLISHED BY BAILEY & NOYES.

CHAP. 92. the tribunal will admit; and either party may appeal, and the proceedings shall be the same as in appeals in civil actions before a trial justice.

CHAPTER 92.

THE RIGHT OF ERECTING MILLS AND MILL-DAMS, AND OF FLOWING LANDS AND DIVERTING WATER TO SUPPLY MILLS, AND THE MODE OF OBTAINING DAMAGES THEREFOR.

- SEC. 1. Right to erect and maintain mill-dams, and to divert water by a canal for mills.
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4. Damages for flowing, &c., recoverable on complaint.
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17. Right of redemption, how enforced.
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20. Owner may offer an increased compensation. Consequence.
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22. Tenants may make such offers as well as owners.
23. Restriction of suits for damages.
24. Double damages if dam is raised higher, kept up longer, or more water diverted than allowed by the judgment.
25. Agreement of parties binding, if recorded.
26. Judgment no bar to a new complaint.
27. Tender of damages, and effect thereof.
28. Complaint not to abate by death of either party.
29. If complaint abates, rights may be preserved by new complaint within a year.
30. Provisions of this chapter apply to streams forming the boundary of the state.
31. Compensation of commissioners. Costs.
32. Owner or mortgage in possession, liable for acts of tenants in certain cases.

SEC. 1. Any man may erect and maintain a water mill and dams to raise water for working it, on his own land upon and across any stream, not navigable; or, for the purpose of propelling mills or machinery, may cut a canal and erect walls and embankments upon his own land, not exceeding one mile in length, and thereby divert from its natural channel the water of any stream not navigable, upon the terms and conditions, and subject to the regulations hereinafter expressed. (a)

CHAP. 92.
Right to erect and maintain mill-dams, and to divert water by a canal for mills.
R. S. c. 92, § 1.

SEC. 2. No such dam shall be erected or canal constructed to the injury of any mill or canal lawfully existing on the same stream; nor to the injury of any mill site, on which a mill or mill-dam has been lawfully erected and used, unless the right to maintain a mill thereon has been lost or defeated.

Not to injure mill or canal previously built.
R. S. c. 92, § 2.
31 Me. 252.
38 Me. 243.
44 Me. 167, 195.
54 Me. 487.
Restriction as to height of dam, &c.
R. S. c. 92, § 3.
38 Me. 237.

SEC. 3. The height to which the water may be raised, and the length of time during which it may be kept up in each year, and quantity of water that may be diverted by such canal, shall be liable to be restricted and regulated by the verdict of a jury, or report of commissioners, as hereinafter is provided.

SEC. 4. Any person, whose lands are damaged by being flowed by a mill-dam, or by the diversion of the water by such canal, may obtain compensation for the injury, by complaint to the supreme judicial court in the county where the lands or any part thereof are; but no compensation shall be awarded for damages sustained more than three years before the institution of the complaint.

Damages for flowing, recoverable by complaint.
R. S. c. 92, § 4.
7 Me. 155.
10 Me. 224.
14 Me. 423.
28 Me. 9.
33 Me. 480.
52 Me. 68.
54 Me. 487.

SEC. 5. The complaint shall contain such a description of the land flowed or injured, and such a statement of the damage, that the record of the case shall show the matter heard and determined in the suit.

Complaint, form of.
R. S. c. 92, § 5.
16 Me. 411.
28 Me. 9.
41 Me. 491.
42 Me. 64.

SEC. 6. The complaint may be presented to the court in term time, or be filed in the clerk's office in vacation; and a copy shall be served by the proper officer, fourteen days before the term day, on the respondent, by being left at his dwelling house, if he has any in the state; otherwise, it shall be left at the mill in question, or with its occupant; or the complaint may be inserted in a writ of attachment and served by summons and copy.

How presented and served.
May be inserted in writ and how served.
R. S. c. 92, § 6.
1868, c. 177.

SEC. 7. The owner or occupant of such mill or canal may plead in bar that the complainant 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 complainant cannot maintain the suit; but he shall not plead in bar

What may be pleaded in bar.
R. S. c. 92, § 7.

(a) 5 Me. 9; 28 Me. 9; 36 Me. 36; 39 Me. 246; 42 Me. 150.

CHAP. 92. of the complaint, that the land described therein is not injured by such dam or canal. (a)

Mode of trial.
Respondent,
prevailing, re-
covers costs.
R. S. c. 92, § 8.
6 Me. 282.

SEC. 8. When any such plea is filed, and an issue in fact or in law is joined, it shall be decided as similar issues are decided in cases at common law; and if judgment is for the respondent, he shall recover his costs.

Proceedings if
complainant
recovers.
R. S. c. 92, § 9.
39 Me. 458.
43 Me. 562.

SEC. 9. If the issue is decided in favor of the complainant, or if the respondent is defaulted, or does not plead or show any legal objection to proceeding, the court shall appoint three 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 complainant 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 make report what portion of the year such lands ought not to be flowed, or water diverted, or what quantity of water shall be diverted.

Trial by jury.
Commission-
ers' report to
be evidence.
R. S. c. 92, § 10.
36 Me. 36.
42 Me. 64.

SEC. 10. If either party requests that a jury may be impaneled 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; but evidence shall not be admitted to contradict it, unless misconduct, partiality, or unfaithfulness on the part of some commissioner is shown.

Acceptance of
commission-
ers' report.
R. S. c. 92, § 11.

SEC. 11. If neither party requests a trial by jury, the report of the commissioners may be accepted by the court and judgment rendered thereon.

Verdict or re-
port to bar
any future
action.
R. S. c. 92, § 12.

SEC. 12. The verdict of the jury or the report of the commissioners so accepted, shall be a bar to any action brought for such damages; and the owner or occupant shall not flow the lands nor divert the water during any portion of the period when prohibited, nor divert the water beyond the quantity allowed by the commissioners or jury.

Yearly dama-
ges, how fixed.
R. S. c. 92, § 13.
36 Me. 36.
50 Me. 31.

SEC. 13. 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 the lands or the owner or occupant of the mill or canal, on a new complaint to the court, and by proceedings as in the former case, obtains an increase or decrease of such damages.

Security to be
given for
yearly dama-
ges, if requir-
ed.
R. S. c. 92, § 14.

SEC. 14. When any person, whose lands are so flowed or from whose lands the water is so diverted, files his complaint for ascertaining or increasing his damages, or brings his action of debt as provided in the following section, and moves the court to direct the owner or occupant of such mill or canal to give security for the payment of the

(a) 4 Me. 332; 5 Me. 9; 12 Me. 183; 21 Me. 220; 32 Me. 39, 393; 33 Me. 273, 547; 42 Me. 64; 43 Me. 462; 56 Me. 395.

annual damages, and the court so orders, 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. CHAP. 92.

SEC. 15. The party entitled to such annual compensation, may maintain an action of debt or assumpsit therefor against any person who owns or occupies the said mill, or canal and mills supplied thereby, when the action is brought; and shall therein recover the whole sum due and unpaid, with costs; and shall have a lien for such compensation, from the time of the institution of the original complaint, on the mill and mill-dam, or on the canal and the mill supplied thereby, with the appurtenances and the land under and adjoining them, and used therewith, for any sum due not more than three years before the commencement of the complaint.

Complainant may sue for damages, if unpaid.
Lien upon mill and land for damages.
R. S. c. 92, § 15.
15 Me. 242.
30 Me. 244.
34 Me. 402.

SEC. 16. 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 is necessary to satisfy the execution, proceeding in giving notice of such sale as in selling an equity of redemption on execution. Such sale shall be effectual against all persons claiming the premises by any title, which accrued within the time covered by the lien.

Mill and land may be sold on execution after thirty days.
Effect of sale.
R. S. c. 92, § 16.
28 Me. 9.

SEC. 17. Any person, entitled to the premises, may redeem them within one year after the sale, by 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 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.

Right of redemption, how enforced.
R. S. c. 92, § 17.

SEC. 18. When either party is dissatisfied with the annual compensation established as aforesaid, a new complaint may be filed, and proceedings had and conducted substantially as in case of an original complaint.

Either party may file new complaint.
R. S. c. 92, § 18.
16 Me. 411.

SEC. 19. No new complaint shall be brought, until the expiration of one month after the payment of the then last year is due, and one month after notice to the other party; and the other party may within that time make an offer or tender, as hereinafter is provided.

Restriction of this right.
R. S. c. 92, § 19.
50 Me. 31.

SEC. 20. The owner of the mill, dam, or canal, within said month, may offer in writing to the owner of the land injured an increase of compensation for the future; and if the owner of the land does not agree to accept it, but brings a new complaint for the purpose of increasing it, he shall not recover any costs, unless he obtains an increase greater than the offer.

Owner may offer increased compensation.
Consequence.
R. S. c. 92, § 20.

SEC. 21. The owner of the land injured may, within said month, offer in writing to the owner of the mill, dam, or canal, to accept a

Injured party may offer to accept less

CHAP. 92. reduced compensation for the future; and if the owner of the mill, dam, or canal, declines to pay it, but brings a new complaint to obtain a reduction, he shall not recover costs, unless such compensation is reduced to a sum less than was offered.

Tenants may make such offers as well as owners.
R. S. c. 92, § 22.

SEC. 22. Such offers may be made by or to the tenants or occupants of the land, and of the mill and dam, or canal, in like manner and with like effect, as if made by or to the owners; but no agreements founded thereon shall bind the owners, unless made by their consent.

Restriction of suits for damages.
R. S. c. 92, § 23.
30 Me. 246.

SEC. 23. No action shall be sustained at common law for the recovery of damages occasioned by the overflowing of lands, or for the diversion of the water as before mentioned, except in the cases provided in this chapter, to enforce the payment of damages after they have been ascertained by process of complaint as aforesaid.

Double damages if dam is raised higher, &c.
R. S. c. 92, § 24.

SEC. 24. If after judgment, the restrictions imposed by the report of the commissioners or finding of the jury, respecting the flowing or diverting of the waters are violated, the party injured thereby may recover of the wrong-doers double damages for his injury in an action at common law.

Agreement of parties binding, if recorded.
R. S. c. 92, § 25.

SEC. 25. When an annual compensation, upon the acceptance by one party of an offer made by the other, is established and signed by the owners of the mill, dam, or canal, 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 of the former judgment, and to the book where the agreement is recorded, such agreement shall be as binding as a verdict and judgment on a new complaint.

Judgment no bar to a new complaint.
R. S. c. 92, § 26.

SEC. 26. A judgment against a complainant as not entitled to any compensation shall be no bar to a new complaint for damages, arising after the former verdict, and for compensation for damages subsequently sustained.

Tender of damages, and effect thereof.
R. S. c. 92, § 27.

SEC. 27. In case of an original complaint, the respondent may, with the same advantages to himself, tender and bring money into court, as in an action at common law; and if it is accepted, the judgment shall have the same effect as if rendered on a verdict.

Complaint not to abate by death of either party.
R. S. c. 92, § 28.

SEC. 28. No complaint for so flowing lands or diverting water shall abate by the death of any party thereto; but it may be prosecuted or defended by the surviving complainants or respondents, or the executors or administrators of the deceased.

If complaint abates, rights preserved by new complaint within a year.
R. S. c. 92, § 29.

SEC. 29. If such complaint is abated or defeated for want of form, or if after a verdict for the complainant, judgment is reversed, he may bring a new complaint at any time within one year thereafter, and thereon recover the damages sustained during three years next before the institution of the first complaint, or at any time afterwards.

SEC. 30. The provisions of this chapter shall apply to mills and dams erected upon streams forming the boundary line of the state, although a part of the dam is not in the state; and the rights and remedies of all parties concerned shall be ascertained and determined as if the whole of such streams were in the state.

SEC. 31. The court shall award a suitable compensation to be paid to the commissioners, and taxed and recovered by the prevailing party. The prevailing party shall recover his costs, except where it is otherwise expressly provided.

SEC. 32. The owner or mortgagee in possession, of any mill used for manufacturing lumber, shall be liable for the acts of his tenant in unlawfully obstructing or diverting the water of any river or stream, by the slabs or other mill waste from his mill, as well as the tenant himself, but no action shall be maintained therefor without a demand of damages, at least thirty days prior to its commencement. Such unlawful obstruction or diversion by the tenant, shall, at the election of the owner or mortgagee, and on written notice to the tenant, terminate his tenancy.

CHAP. 92.

Provisions of this chapter apply to streams forming the boundary of the state.

R. S. c. 92, § 30.
39 Me. 246.

Compensation of commissioners. Costs.
R. S. c. 92, § 31.

Owner or mortgagee in possession, liable for acts of tenants, &c.
1859, c. 98.
50 Me. 479.
52 Me. 260.
54 Me. 487.