

# MAINE STATE LEGISLATURE

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SIXTH REVISION

THE  
REVISED STATUTES

OF THE

STATE OF MAINE

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## CHAPTER 22.

## Drains and Common Sewers.

**Sec. 1. Highways not to be opened without consent.** R. S. c. 21, § 1. Whoever digs up the ground in a highway or street to lay or repair any drain or common sewer without the written consent of the municipal officers, forfeits for each offense four dollars to the town.

92 Me. 493.

**Sec. 2. Construction of drains, authorized by vote of the town; expense and control thereof.** R. S. c. 21, § 2. The municipal officers of a town, or a committee duly chosen by the town, may, at the expense of the town, construct public drains or sewers along or across any public way therein; and through any lands of persons or corporations, when they deem it necessary for public convenience or health; but neither the municipal officers of the town, nor such committee, shall construct any public sewer therein until the same shall be authorized by vote of said town, and an appropriation made for the purpose; and when constructed such sewers shall be under the control of the municipal officers.

56 Me. 410; 67 Me. 53; 74 Me. 272; 82 Me. 355; 83 Me. 582; 86 Me. 538; 95 Me. 310, 315; 99 Me. 79; 100 Me. 262; 101 Me. 313; 103 Me. 123; 110 Me. 201; 111 Me. 122.

**Sec. 3. Notice, damages.** R. S. c. 21, § 3. Before the land is so taken, notice shall be given, and damages assessed and paid therefor as is provided for the location of town ways.

See c. 24, §§ 8, 16, 19, 20. 51 Me. 524; 67 Me. 53; 86 Me. 538; 95 Me. 310.

**Sec. 4. Proceedings when public sewer or drain crosses right of way of railroad.** R. S. c. 21, § 4. 1915, c. 347, § 21. Whenever a public drain or sewer is located and about to be constructed under the general provisions of law across the right of way of any railroad, unless the municipal officers or committee of the city or town which located the drain or sewer shall agree with the corporation operating such railroad as to the place, manner and conditions of the crossing, the public utilities commission, upon petition of either party, after notice and hearing, shall determine the place, manner and conditions of such crossing; all the work within the limits of such railroad location shall be done under the supervision of the officers of the corporation operating said railroad and to the satisfaction of the public utilities commission, and the expense thereof shall be borne by the city or town in which said drain or sewer is located; provided, however, that any additional expense in the construction of that part of the sewer or drain within the limits of the right of way of said railroad occasioned by the determination of said commission shall be borne by said railroad company or by the city or town in which said drain or sewer is located, or shall be apportioned between such company and the city or town as may be determined by said public utilities commission. Said commission shall make report of their decision in the same manner as in the case of highways located across railroads and subject to the same right of appeal.

**Sec. 5. Expense of construction of drains, etc., how estimated and assessed.** R. S. c. 21, § 5. When any town has constructed and completed a public drain or common sewer, the municipal officers shall determine what lots or parcels of land are benefited by such drain or sewer, and shall estimate and assess upon such lots and parcels of land, and against the owner thereof, or person in possession, or against whom the taxes thereon shall be assessed, whether said person to whom the assessment is so made shall be the owner, tenant, lessee or agent, and whether the same is occupied or not, such sum not exceeding such benefit as they may deem just and equitable towards defraying the expenses of constructing and completing such drain or sewer, the whole of such assessments not to exceed one-half of the cost of such drain or sewer, and such drain or sewer shall forever thereafter be maintained and kept in repair by such town. The municipal officers shall file with the clerk of the town the location of such drain or sewer, with a profile description of the same, and a statement of the amount assessed upon each lot or parcel of land so assessed, and the name of the owner of such lots or parcels of land or person against whom said assessment shall be made, and the clerk of such town shall record the same in a book kept for that purpose, and within ten days after filing such notice, each person so assessed shall be notified of such assessment by having an authentic copy of said assessment, with an order of notice signed by the clerk of said town, stating the time and place for a hearing upon the subject matter of said assessments, given to each person so assessed or left at his usual place of abode in said town; if he has no place of abode in said town, then such notice shall be given or left at the abode of his tenant or lessee if he has one in said town; if he has no such tenant or lessee in said town, then by posting the same notice in some conspicuous place in the vicinity of the lot or parcel of land so assessed, at least thirty days before said hearing, or such notice may be given by publishing the same three weeks successively in any newspaper published in said town, the first publication to be at least thirty days before said hearing; a return made upon a copy of such notice by any constable in said town, or the production of the paper containing such notice, shall be conclusive evidence that said notice has been given, and upon such hearing the municipal officers shall have power to revise, increase or diminish any of such assessments, and all such revisions, increase or diminution shall be in writing and recorded by such clerk.

84 Me. 212; 86 Me. 379; 110 Me. 195; 113 Me. 208.

**Sec. 6. After hearing, assessment may be determined by arbitration, if any person is dissatisfied.** R. S. c. 21, § 6. Any person not satisfied with the amount for which he is assessed, may, within ten days after such hearing, by request in writing given to such clerk, have the assessment upon his lot or parcel of land determined by arbitration. The municipal officers shall nominate six persons who are residents of said town, two of whom selected by the applicant, with a third resident person selected by said two persons, shall fix the sum to be paid by him, and the report of such referees made to the clerk of said town, and recorded by him, shall be final and binding upon all parties. Said reference shall be had and their report made

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to said clerk, within thirty days from the time of hearing before the municipal officers as provided in section five.

110 Me. 194; 113 Me. 208.

**Sec. 7. Conditions upon which private drains may be entered into public drains.** R. S. c. 21, § 7. Any person may enter his private drain into any such public drain or common sewer, while the same is under construction and before the same is completed, and before the assessments are made, on obtaining a permit in writing from the municipal officers, or the sewer board having the construction of the same in charge; but after the same is completed and the assessments made, no person shall enter his private drain into the same, until he has paid his assessment and obtained a permit in writing from the town treasurer, by authority of the municipal officers. All permits given to enter any such drain or sewer, shall be recorded by the clerk of said town before the same are issued.

**Sec. 8. Lien on lots for payment of assessments; sale for non-payment.** R. S. c. 21, § 8. 1913, c. 38. All assessments made under the provisions of section five, shall create a lien upon each and every lot or parcel of land so assessed, and the buildings upon the same, which lien shall take effect when the municipal officers file with the town clerk the completed assessment, and shall continue one year thereafter; and within ten days after the date of hearing on said assessment the town clerk shall make out a list of all such assessments, the amount of each, and the name of the person against whom the same is assessed, and he shall certify the list and deliver it to the treasurer of said town; if said assessments are not paid within three months from the date thereof, the treasurer shall sell, at public auction, such of said lots or parcels of land upon which such assessments remain unpaid, or so much thereof as is necessary to pay such assessments and all costs and incidental charges; he shall advertise and sell the same within one year from the time said assessments are made, as real estate is advertised and sold for taxes under chapter eleven, and upon such sale, shall make, execute and deliver his deed to the purchaser, which shall be good and effectual to pass the title of such real estate; the sum for which such sale shall be made, shall be the amount of the assessment and all costs and incidental expenses.

See c. 11, §§ 72-79.

**Sec. 9. Redemption.** R. S. c. 21, § 9. Any person to whom the right by law belongs, may at any time within one year from the date of said sale, redeem such real estate by paying to the purchaser or his assigns the sum for which the same was sold, with interest thereon at the rate of twenty per cent a year, and the costs of re-conveyance.

**Sec. 10. Actions for collection.** R. S. c. 21, § 10. If said assessments are not paid, and said town does not proceed to collect said assessments, by a sale of the lots or parcels of land upon which such assessments are made, or does not collect, or is in any manner delayed or defeated in collecting such assessments by a sale of the real estate so assessed, then the said town, in the name of said town, may maintain an action against the party so assessed for the amount of said assessment, as for money paid, laid out and expended, in any court competent to try the same, and in such suit may

recover the amount of such assessment, with twelve per cent interest on the same from the date of said assessments and costs.

84 Me. 215; 110 Me. 193; 113 Me. 208.

**Sec. 11. Persons paying assessment shall have lien on lot and buildings; enforcement.** R. S. c. 21, § 11. When any such assessment shall be paid by any person against whom such assessment has been made, who is not the owner of such lot or parcel of land, then the person so paying the same, shall have a lien upon such lot or parcel of land with the buildings thereon, for the amount of said assessment so paid by said person, and incidental charges, which lien may be enforced in an action of assumpsit as for money paid, laid out and expended, and by attachment in the way and manner provided for the enforcement of liens upon buildings and lots, under chapter ninety-six, which lien shall continue one year after said assessment is paid.

**Sec. 12. Application of §§ 5-11.** R. S. c. 21, § 12. The seven preceding sections shall not apply to any city or town, until they shall have been accepted by the inhabitants of such town or the city council of such city at a meeting legally called therefor.

**Sec. 13. Private drains, application for permits; regulations.** R. S. c. 21, § 13. Abutters upon the line of a public drain existing in any town or city which has not accepted the provisions of the eight preceding sections, and abutters upon the line of a public drain constructed prior to such acceptance, and the owners of contiguous private drains, may enter and connect with such public drain, on written application to the municipal officers, distinctly describing the land to which it applies, and paying therefor what they determine. They shall then give the applicants written permits so to enter, which shall be available to the owner of the land so described, his heirs and assigns, and shall run with the land without any other or subsequent charge or payment. Said officers shall establish such other regulations and conditions for entering public drains, as they deem expedient.

95 Me. 310; 97 Me. 510.

**Sec. 14. Amount to be paid for permits, how adjusted.** R. S. c. 21, § 14. If any person is dissatisfied with the sum which he is required to pay to enter a public drain, and within ten days after notice thereof, requests in writing to have it determined by arbitration, said officers shall nominate six persons, any two of whom, selected by the applicant, with a third person, selected by himself, may fix the sum to be paid; and by paying it and the fees of the arbitrators, the applicant shall be entitled to a permit.

**Sec. 15. Drains heretofore laid.** R. S. c. 21, § 15. All drains, heretofore made at the expense of a town, shall be maintained, managed, controlled and entered the same as if made under this chapter, subject to the rights of private persons therein.

74 Me. 272.

**Sec. 16. Penalty for connecting private drains with public, without permission.** R. S. c. 21, § 16. If any person connects a private drain with a public drain, or enters it by a side drain, without a permit, the municipal officers may forthwith destroy such connection; and such person forfeits to the town where the offense is committed, not exceeding two hundred dollars, to be recovered by indictment or action of debt.

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**Sec. 17. Penalty for violation of permit, and for nuisances.** R. S. c. 21, § 17. If any person wilfully or negligently violates any condition or regulation prescribed in his permit, said officers may forthwith disconnect his drain from the public drain and declare his permit forfeited; and such person, his heirs and assigns, shall not be allowed to enter it again without a new permit. Whoever by the construction or use of a private drain commits a nuisance, is liable therefor notwithstanding anything herein contained.

57 Me. 438.

**Sec. 18. Drains to be kept in repair; penalty for neglect.** R. S. c. 21, § 18. After a public drain has been constructed and any person has paid for connecting with it, it shall be constantly maintained and kept in repair by the town, so as to afford sufficient and suitable flow for all drainage entitled to pass through it; but its course may be altered, or other sufficient and suitable drains may be substituted therefor. If such town does not so maintain and keep it in repair, any person entitled to drainage through it may have an action against the town for his damages thereby sustained.

56 Me. 410; 66 Me. 155; 82 Me. 359; 95 Me. 310; 97 Me. 510; 99 Me. 143; 100 Me. 263; 101 Me. 312; 103 Me. 121; 111 Me. 121.

**Sec. 19. Proceedings to be recorded; prosecutions.** R. S. c. 21, § 19. All proceedings of municipal officers as aforesaid shall be at their legal meetings. A suitable record shall be made of all such permits, exhibiting the persons and lands to which they apply. Said officers have exclusive direction, on behalf of their town, of all prosecutions under this chapter.

95 Me. 310.

**Sec. 20. Payment for permit in sixty days; fees of arbitrators.** R. S. c. 21, § 20. If any person, after the sum to be paid by him for a permit has been determined by arbitration, neglects to pay it within sixty days after notice thereof, with the fees of the arbitrators, he shall have no benefit of such determination, or of his permit. The municipal officers may determine the fees of the arbitrators, which shall be paid in advance, if required; and their award shall be returned by them to the town clerk, and recorded with the proceedings of said officers in establishing such drains.

**Sec. 21. Private drain, how repaired, in case of owner's neglect.** R. S. c. 21, § 21. If a private drain becomes so obstructed or out of repair as to injure any street or highway, and the persons using it, after notice by the road commissioner, unreasonably neglect to repair such injury, it shall be repaired by the town, and the expense thereof may be recovered to the town in an action on the case against any one or more of the persons using such drain.

51 Me. 524.

**Sec. 22. Wilfully or carelessly injuring public drains.** R. S. c. 21, § 22. Whoever wilfully or carelessly injures or obstructs such public drain or its outlet, or any street or highway culvert leading into it, is liable to the town where it is located, in an action on the case for double the amount of injury and damages thereby caused, in addition to all other legal penalties therefor.

**Sec. 23. All who enter a private drain must pay their proportion.** R. S. c. 21, § 23. When a person, at his own expense, lays a common drain or

sewer, all who join or enter it, shall pay him their proportion of such expense; and the expense of opening and repairing shall be paid by all benefited, to be determined in each case by the municipal officers, subject to appeal to the county commissioners.

**Sec. 24. Payment in ten days after notice.** R. S. c. 21, § 24. The municipal officers shall notify each person of the amount which he is to pay, and to whom; and if not paid in ten days, he shall pay double the amount with cost.

**Sec. 25. Notice to be given before opening for repairs.** R. S. c. 21, § 25. Before such drain is opened for repairs, all persons interested shall have seven days' notice thereof, given as the municipal officers direct; and if any one objects and said officers think his objection reasonable, he shall not be liable to any expense therefor; if not thought reasonable, or if no objection is made within three days, they may give written permission to proceed.

### Highway Ditches and Drains.

**Sec. 26. Towns may construct ditches and drains to drain highways; control; liability for damages.** R. S. c. 21, § 26. The municipal officers of a town may at the expense of the town construct ditches and drains to carry water away from any highway or road therein, and over or through any lands of persons or corporations when they deem it necessary for public convenience or for the proper care of such highway or road, provided that no such ditch or drain shall pass under or within twenty feet of any dwelling-house without the consent of the owner thereof. Such ditches or drains shall be under the control of said municipal officers and wilful interference therewith shall be punished as is provided by statute for obstruction in a traveled road. If such town does not maintain and keep in repair such ditches and drains, the owner or occupant of the lands through or over which they pass, may have his action against the town for damages thereby sustained.

See c. 24, § 80; c. 25, § 6; c. 129, § 28; 112 Me. 321.

**Sec. 27. Procedure.** R. S. c. 21, § 27. Before land is so taken, notice shall be given and damages assessed and paid therefor as is provided for the location of town ways.

See c. 24, §§ 16, 20.

### Drainage of Swamps and Meadows.

**Sec. 28. Drains across adjacent lands or highways, how authorized.** R. S. c. 21, § 28. Persons or corporations possessing land, swamp, meadow, quarries or mines, which by reason of adjacent lands or highways, cannot be approached, drained or used without crossing said lands or highways, may establish drains or ditches thereto, in the manner hereinafter provided.

**Sec. 29. Petition to county commissioners; bond.** R. S. c. 21, § 29. The party desiring to make such drains and ditches shall file a petition therefor with the county commissioners, in the county where the premises are situate, setting forth the proposed work, the situation of the adjoining lands, and the names of the parties interested, if known, accompanied by a bond ap-

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proved by the commissioners and payable to the county treasurer, conditioned to pay all costs and damages.

**Sec. 30. Notice; appointment and proceedings of committee.** R. S. c. 21, § 30. Said commissioners thereupon, shall order notice to all parties named therein, by serving on them an attested copy thereof with the order thereon, fourteen days before their next regular session, and by publishing it in some newspaper published in said county, if any, otherwise in some paper in an adjoining county, and after said order has been complied with, they may appoint a committee of review of not less than three, nor more than five disinterested persons, and fix their daily compensation; they shall meet on the premises on the day named, and by examination determine whether the proposed drain or ditch is necessary to the beneficial use of said lands, and if so, said committee shall lay out and establish the same, in a manner to cause the least injury, and shall assess the damages which any proprietor of the adjacent lands is likely to sustain, and report the same with all their proceedings to said commissioners; but before said committee proceeds to said examination they shall give ten days' notice of the time and place of their meeting, by posting notifications thereof in two public places, in the town in which said lands lie.

**Sec. 31. Report.** R. S. c. 21, § 31. At the next meeting of said commissioners after the report of the committee is received, they may, if deemed reasonable, accept such report.

**Sec. 32. Final report to be recorded and damages tendered.** R. S. c. 21, § 32. 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.

**Sec. 33. Repairs, how to be made.** R. S. c. 21, § 33. 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 manner as is necessary to make it effective, and may remove and use any rock, earth or other material necessary for such improvements, and may enter upon the lands through which such drain or ditch passes, for that purpose.

**Sec. 34. Damages, how to be settled.** R. S. c. 21, § 34. All damages sustained by any person by reason of such improvement, including the value of the royalty or stumpage on the rock, and of the other material removed and used, may be recovered against the persons or corporations taking said material, in an action on the case; or upon application to the county commissioners, at the election of the party injured, who shall assess the damages, and proceedings upon appeal may be conducted as provided in section eight of chapter twenty-four.

**Sec. 35. Drains, how protected.** R. S. c. 21, § 35. Whoever damages such works shall be punished as provided in chapter one hundred and twenty-nine, for offenses of like nature.

See c. 129, § 10.