

MAINE STATE LEGISLATURE

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SEVENTH REVISION

THE
REVISED STATUTES

OF THE
STATE OF MAINE

PASSED AUGUST 5, 1930, AND TAKING
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By the Authority of the Legislature

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in a package and a certificate of such sealing shall be indorsed thereon, signed by such notary and attested by his seal, and said package shall be distinctly marked with the name and address of the person in whose name such safe or box stands upon the books of the corporation, and the estimated value thereof; said package shall then be placed in one of the general safes or boxes of the corporation, and shall be held subject to redemption by the owner thereof, who shall be required to pay the rent due for said safe or box, and all costs and damages attending the opening thereof together with reasonable charges for the custody of said package by the corporation, and the corporation shall have a lien upon said package to secure the payment of such rent, damages, and charges.

Lien on crops of members of cooperative marketing associations, c. 59, §§ 32-39.

CHAPTER 106.

The Right of Erecting Mills and Mill-Dams, of Flowing Lands and of Diverting Water for the Supply of Mills; and the Mode of Obtaining Damages. Protection of Ways from Overflow. Inspection of Dams and Reservoirs.

Sections 1-38 Erection of Mills and Dams, and Rights of Flowage.
 Sections 39-44 Protection of Ways from Overflow.
 Sections 45-47 Inspection of Dams and Reservoirs.

Erection of Mills and Dams, and Rights of Flowage.

Sec. 1. Right to erect and maintain mill-dams, and to divert water by a canal for mills. R. S. c. 97, § 1. Any man may on his own land, erect and maintain a water-mill and dams to raise water for working it, 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.

5 Me. 12; 28 Me. 20; 36 Me. 43; 39 Me. 250; 42 Me. 155; 50 Me. 483; 52 Me. 261; 54 Me. 489; *61 Me. 26; 62 Me. 456, 497; *65 Me. 194; 68 Me. 542; 69 Me. 19; 70 Me. 246; 76 Me. 95, 200; 82 Me. 57; 86 Me. 104; 99 Me. 136; 100 Me. 196, 241; *123 Me. 535.

Sec. 2. Not to injure mill or canal previously built. R. S. c. 97, § 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.

31 Me. 254; 38 Me. 246; 44 Me. 173, 199; 54 Me. 489; *95 Me. 321; *99 Me. 136.

Sec. 3. Restrictions and regulations. R. S. c. 97, § 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 the quantity of water that may be diverted by such canal, may be restricted and regulated by the verdict of a jury, or report of commissioners, as is hereinafter provided.

38 Me. 239; 76 Me. 95.

Sec. 4. Damages for flowing or by diversion of water, recoverable. R. S. c. 97, § 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 superior court in the county where any part of the lands are; but no compensation shall be awarded for damages sustained more than three years before the institution of the complaint.

7 Me. 156; 10 Me. 236; 14 Me. 425; 28 Me. 20; 33 Me. 273, 480; 52 Me. 78; 54 Me. 489; 58 Me. 168; 59 Me. 256; *61 Me. 29; 63 Me. 447; 68 Me. 221; 73 Me. 65; *76 Me. 95; 82 Me. 346.

Sec. 5. Complaint. R. S. c. 97, § 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.

16 Me. 412; 28 Me. 20; *41 Me. 296; *42 Me. 69; *61 Me. 30.

Sec. 6. Presentment and service of complaint; may be inserted in a writ. R. S. c. 97, § 6. The complaint may be presented to the court in term time, or be filed in the clerk's office in vacation; and the proper officer shall serve the same, fourteen days before the return day, on the respondent, by leaving a copy thereof at his dwelling-house, if he has any in the state; otherwise, he shall leave it 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.

64 Me. 367; *65 Me. 563; *100 Me. 547.

Sec. 7. Pleas in bar. R. S. c. 97, § 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 of the complaint, that the land described therein is not injured by such dam or canal.

4 Me. 323; 5 Me. 14; 6 Me. 283; 12 Me. 188; 21 Me. 230; 32 Me. 39, 385; 33 Me. 548; 36 Me. 44; *42 Me. 70; 48 Me. 462; 56 Me. 399; *65 Me. 563; 99 Me. 458.

Sec. 8. Trial; costs. R. S. c. 97, § 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 at common law; and if judgment is for the respondent, he shall recover his costs.

6 Me. 283; *65 Me. 562.

Sec. 9. Proceedings if complainant recovers; commissioners to determine damages in gross; if owners do not elect to pay, annual damages stand as the judgment of court. R. S. c. 97, § 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 the proceedings, 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 report for what portion of the year such lands ought not to be flowed, or water diverted, or what quantity of water shall be diverted. They shall also ascertain, determine, and report what sum in gross would be a reasonable compensation for all the damages, if any, occasioned by the use of such dam, and for the right of maintaining and using the same forever, estimated according to the height of the dam and flash-boards as then existing; and if within ten days after said report is presented to the court, the owners of said dam or mills elect to pay the damages in gross, the court, where the judgment is entered, shall fix the time in which said damages shall be paid, and if not paid within that time, the owners of the dam or mills lose all benefit

of their election, and the annual damages shall stand as the judgment of the court, and, except as herein provided, all proceedings shall be in conformity with the other provisions of this chapter.

39 Me. 460; 48 Me. 462; *65 Me. 563; 68 Me. 222; *74 Me. 70; *76 Me. 95; 80 Me. 41; 107 Me. 530; 122 Me. 351.

Sec. 10. Effect of payment of damages in gross. R. S. c. 97, § 10. If the damages in gross are paid within the time fixed, the judgment is a bar to any further complaint so long as the dam and flash-boards remain at the same height, but if thereafter either is raised, a new complaint may be made by the owner of the lands flowed for any additional damages caused thereby, and the proceedings in said new complaint shall be as hereinbefore prescribed.

*74 Me. 70; 123 Me. 547.

Sec. 11. Owners may apply to have damages assessed in gross; proceedings. R. S. c. 97, § 11. In any case where annual damages have been determined by a judgment of the court, the owners of the dam or mills may apply to the court by a new complaint, to have the damages assessed in gross, and commissioners may be appointed as in other cases, to ascertain, determine, and report the damages in gross, and like proceedings shall then be had as are provided in the two preceding sections.

*74 Me. 70.

Sec. 12. Commissioners' report is evidence in trial by jury. R. S. c. 97, § 12. If either party requests that a jury may be impaneled to try the cause, 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.

36 Me. 44; *42 Me. 70; 98 Me. 571.

Sec. 13. Acceptance. R. S. c. 97, § 13. If neither party requests a trial by jury, the report of the commissioners may be accepted by the court and judgment rendered thereon.

Sec. 14. Verdict or report bars any future action. R. S. c. 97, § 14. The verdict of the jury or the report of the commissioners so accepted, is 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.

64 Me. 367; *76 Me. 95.

Sec. 15. Yearly damages. R. S. c. 97, § 15. 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.

36 Me. 44; 50 Me. 32; *76 Me. 95.

Sec. 16. Security may be required for yearly damages. R. S. c. 97, § 16. 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 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 is liable to be sued for the damages occasioned by such flowing, in an action at common law.

Sec. 17. Complainant may sue for damages, if unpaid; lien upon mill and land. R. S. c. 97, § 17. The party entitled to such annual compensation may maintain an action of debt or assumpsit therefor against any person who owns or occupies 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.

15 Me. 243; 30 Me. 251; 34 Me. 403; *65 Me. 561; 86 Me. 487.

Sec. 18. Mill and land may be sold on execution; effect of sale. R. S. c. 97, § 18. 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 is effectual against all persons claiming the premises by any title which accrued within the time covered by the lien.

28 Me. 21.

Sec. 19. Right of redemption. R. S. c. 97, § 19. 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 he might have had against a purchaser of an equity of redemption.

Sec. 20. New complaint. R. S. c. 97, § 20. 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.

16 Me. 412; *74 Me. 71.

Sec. 21. Restriction of this right. R. S. c. 97, § 21. No new complaint shall be brought, until one month after the payment of the preceding 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 is hereinafter provided.

50 Me. 33; *74 Me. 71.

Sec. 22. Owner may offer increased compensation. R. S. c. 97, § 22. The owner of the mill, dam, or canal, may, within said month, 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 recovers no costs, unless he obtains an increase greater than the offer.

Sec. 23. Injured party may offer to accept less compensation. R. S. c. 97, § 23. 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 reduced compensation for the future; and if the owner of the mill, dam, or canal declines to pay it, and brings a new complaint to obtain a reduction, he shall recover no costs, unless such compensation is reduced to a sum less than was offered.

Sec. 24. Tenants may make such offers. R. S. c. 97, § 24. 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 bind the owners, unless made by their consent.

Sec. 25. Remedy at common law limited. R. S. c. 97, § 25. 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.

64 Me. 367.

Sec. 26. Double damages, if restrictions are violated. R. S. c. 97, § 26. 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.

Sec. 27. Agreement of parties is binding, if recorded. R. S. c. 97, § 27. 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 to the former judgment, and to the book where the agreement is recorded, such agreement is as binding as a verdict and judgment on a new complaint.

Sec. 28. Judgment no bar to a new complaint. R. S. c. 97, § 28. A judgment against a complainant as not entitled to any compensation is no bar to a new complaint for damages, arising after the former verdict, and for compensation for damages subsequently sustained.

Sec. 29. Tender of damages and effect thereof. R. S. c. 97, § 29. In case of an original complaint, the respondent may, with the same advantages to himself, tender and bring money into court, or if the issue is decided in favor of the complainant, or if the respondent is defaulted, or does not plead or show any legal objections to the proceedings, the respondent may, in writing entered of record with its date, offer to be defaulted for a specific sum for the yearly damages or a sum in gross as reasonable compensation for all damages, as in an action at common law; and if either is accepted, the judgment has the same effect as if rendered on a verdict. If not accepted within such time as the court orders, it shall not be offered in evidence or have any effect upon the rights of the parties, or the judgment to be rendered except the costs. If the complainant fails to recover a sum greater than the sum tendered or offered, he recovers such costs only as accrued before the offer, and the respondent recovers costs accrued after that time, and his judgment for costs may be set off against the complainant's judgment for damages and costs.

Sec. 30. No abatement by death of either party. R. S. c. 97, § 30. No complaint for so flowing lands or diverting water abates 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.

111 Me. 342.

Sec. 31. If complaint abates, rights preserved by new complaint. R. S. c. 97, § 31. 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 the three years preceding the institution of the first complaint, or at any time afterwards.

Sec. 32. Streams forming boundary of state. R. S. c. 97, § 32. 1925, c. 202. This chapter applies 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. Provided, however, that this chapter shall not apply to mills and dams erected upon streams whose waters ultimately reach the ocean at a point wholly outside the territorial limits of the United States of America unless said dams are authorized by act of legislature or by a decree of the public utilities commission made after public notice and hearing on petition for such authorization.

*39 Me. 248.

Sec. 33. Compensation of commissioners. R. S. c. 97, § 33. The court shall award a suitable compensation to be paid to the commissioners, and taxed and recovered by the prevailing party. The prevailing party recovers costs, except where it is otherwise expressly provided.

Sec. 34. Owner or mortgagee in possession, liable for acts of tenants. R. S. c. 97, § 34. The owner or mortgagee in possession, as well as any tenant, of any mill used for manufacturing lumber, is liable for the acts of such tenant in unlawfully obstructing or diverting the water of any river or stream, by the slabs or other mill waste from his mill, 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.

50 Me. 492; 77 Me. 297.

Sec. 35. Damages by flowage for cranberry culture, how ascertained. R. S. c. 97, § 35. When dams are erected and maintained on streams not navigable, for the purposes of cranberry culture, and lands are flowed thereby and injured by such flowage, the owners thereof shall proceed for the recovery of damages for such flowage in the same manner as in case of flowage by dams erected and maintained for mill purposes.

See § 36; 111 Me. 341.

Sec. 36. Dams for ice cutting and harvesting, may be erected on certain streams; damages, how recovered. R. S. c. 97, § 36. In order to create ponds for the cutting and harvesting of ice for the market, any persons or corporations may erect and maintain on their own land, dams on streams not navigable or floatable, but emptying into tide-waters navigable in the winter, and may flow the lands above during November, December, January, February, March and April; but they shall draw off the water to its natural state by the twentieth day of May yearly; and if any lands are injured by such flowing, the owners thereof have the same remedies as in case of lands flowed by dams erected and maintained for mill purposes; but no right is granted by this or the preceding section to flow any mill-dam or any mill privilege improved or unimproved,—and this section shall not be construed as authorizing any persons or corporations to cut ice on any pond created as provided herein over any area the soil of which such persons or corporations do not own or lease or possess as tenants at will, or by reason of a valid agreement with the owner or lessee or tenant thereof when said owner or lessee is not the state and the pond is not a great pond.

Sec. 37. Timber and other property on lands about to be flowed by the erection of a dam may be ordered removed on petition to supreme judicial or superior court. 1921, c. 196, § 1. When any person or corporation shall

have decided to erect a dam across a non-navigable stream under the provisions of this chapter or under special authority granted by the legislature, and shall have filed the specifications required by section eleven of chapter sixty-two, and it appears that standing timber or other property of value upon the land intended to be flowed will constitute a menace to the safety of such person or corporation or to persons or property upon and along the banks of said stream below the intended location of said dam, the supreme judicial court or the superior court shall have jurisdiction in equity, upon petition of such person or corporation, to authorize said petitioner to remove and sell such timber or other property and to order the payment to the owner thereof of the gross proceeds of such sale and such further sum, if any, as said court shall deem just. Said court shall require the petitioner to furnish security for such payment and for an additional penalty not less than double the amount to be received from such sale and shall include in its decree a condition that such additional sum shall be paid to said owner as damages if the dam is not completed and the land flowed within a time to be therein specified; provided, however, that such time may be extended for good cause shown.

Sec. 38. How damages to be assessed. 1921, c. 196, § 2. Damages caused by flowage of lands from which timber or other property shall have been removed under section thirty-seven shall be assessed as though there had been no severance, and the amount paid for such timber or other property with interest to the date of the judgment shall be credited thereon, provided that the owner of the land shall have the right to elect whether his damages shall be assessed for flowage as of the time of taking or of flowing.

Protection of Ways from Overflow.

Sec. 39. Owners of mills or water power may petition for right to raise ways and enlarge water vents; notice of hearing. R. S. c. 97, § 37. When the owners of mills carried by the water of a stream, or the owners of water power for operating mills, find or apprehend that the necessary head of water for working or reservoir purposes, cannot be obtained, or when their existing rights in respect to the same cannot be exercised, without overflowing some highway or town way, they may petition the county commissioners for permission to raise such ways and to enlarge the water vent thereof. Such commissioners shall appoint a time and place for a hearing on the petition, and give notice thereof to all parties interested, as provided in section two of chapter twenty-seven, and such notice may be proved in the manner therein provided.

99 Me. 138.

Sec. 40. Proceedings of commissioners. R. S. c. 97, § 38. On the day appointed, they shall meet, examine the premises described in the petition, and hear the parties present, and thereupon they shall determine whether said ways shall be raised and the water vents enlarged, and to what extent, and shall prescribe the manner in which it shall be done, and what portion of the expenses thereof and the costs of the hearing shall be borne by the petitioners, and what portion, if any, by the town where the way is located.

Sec. 41. If decision is in favor of petitioners, proceedings. R. S. c. 97, § 39. If the decision is in favor of the petitioners, said commissioners shall direct the town, in writing, to make the alterations prescribed, and fix the time within which the same shall be done, and if not done within the time fixed, the same may be done by the petitioners, and whether by the town or by the petitioners, it shall be done in a faithful manner and to the acceptance of the commission-

ers; and whichever party makes said alterations has a claim upon the other for the proportion fixed by the commissioners for said other party to pay, and if it is not paid within thirty days after its approval by said commissioners and a demand therefor, it may be recovered in an action on the case.

Sec. 42. Costs, if decision is against petitioners; proceedings. R. S. c. 97, § 40. If the decision of the county commissioners is against the petitioners, they shall pay the costs of the hearing, taxed as in other cases before county commissioners.

Sec. 43. Appeal. R. S. c. 97, § 41. Any party aggrieved may appeal from the decision of said commissioners, in the same manner and subject to the same conditions as in case of highways.

See c. 27, § 61.

Sec. 44. Flowage rights not affected. R. S. c. 97, § 42. Nothing in the five preceding sections affects any right of flowage or damage therefor.

Inspection of Dams and Reservoirs.

Sec. 45. Inspector of dams and reservoirs; appointment; duties. R. S. c. 97, § 43. The governor, with the advice and consent of the council, shall annually appoint a competent and practical engineer, a citizen of the state, who shall hold said office until his successor is appointed and qualified, and who shall upon petition of ten resident taxpayers of any town or several towns, the selectmen or assessors of any town, or the county commissioners of any county, inspect any dam or reservoir located in such town or county, erected for the saving of water for manufacturing or other uses, and after personal examination and hearing the testimony of witnesses summoned for the purpose, he shall forthwith report to the governor his opinion of the safety and sufficiency thereof.

Sec. 46. If dam or reservoir is reported unsafe, proceedings. R. S. c. 97, § 44. If, after such personal survey and inspection, the engineer reports that such dam or reservoir is unsafe or dangerous to the lives or property of persons residing, carrying on business or employed near or below the same, then the owners, occupants or lessees thereof shall immediately make such alterations, repairs and additions to said dam or reservoir as such engineer recommends; and in default thereof, upon application of said engineer to any justice of the supreme judicial court or of the superior court, the said owners, occupants or lessees shall be enjoined from the use of such dam or reservoir and the water therein contained, until they or either of them comply with the requirements of said engineer, and the water contained in said dam or reservoir may be discharged therefrom, by order of said engineer, in such manner as he directs as in his judgment most conducive to the safety of human life, and consistent with the protection of property.

Sec. 47. Compensation of engineer. R. S. c. 97, § 45. Said engineer shall receive, as full compensation for his services, five dollars a day while actually employed in such service, together with his actual traveling expenses, to be audited, allowed and paid from the state treasury, in cases where such dam or reservoir is by him adjudged safe and sufficient; and by the owners, occupants, or lessees of said dam or reservoir, in cases where said dam or reservoir is by him adjudged unsafe and insufficient, to be recovered by said engineer in an action on the case.