

MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1961

cree a restoration of the property, with costs. If the jury or court finds the seizure without probable cause, reasonable damages shall be decreed for the claimant. (R. S. c. 165, § 7. 1961, c. 317, § 613.)

Effect of amendment.—The 1961 amendment substituted “complaint” for “libel” near the beginning of this section.

Sec. 8. If value less than \$20, complaint filed before trial justice.—When the value of the property seized does not exceed \$20, the complaint shall be filed before a trial justice or municipal court of the county where the offense was committed. After notice as aforesaid has been posted at 2 or more public places in the county, 7 days at least before the day of trial, such justice or the judge of such court shall try and decide the cause and make such decree therein as law requires. (R. S. c. 165, § 8. 1961, c. 317, § 614.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted “complaint” for “libel” in the present first sentence.

Lost Goods and Stray Beasts.

Sec. 19. Damages recovered by sufferers; beasts taken up; lien.—Any person injured in his land by sheep, swine, horses, asses, mules, goats or neat cattle, in a common or general field, or in a close by itself, may recover his damages by taking up any of the beasts doing it, and giving the notice provided in section 11, or in a civil action against the person owning or having possession of the beasts at the time of the damage, and there shall be a lien on said beasts, and they may be attached in such action and held to respond to the judgment as in other cases, whether owned by the defendant or only in his possession. If the beasts were lawfully on the adjoining lands, and escaped therefrom in consequence of the neglect of the person suffering the damage to maintain his part of the partition fence, their owner shall not be liable therefor. (R. S. c. 165, § 19. 1961, c. 317, § 615.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action of trespass” in the first sentence of this section.

Chapter 180.

Mills and Dams.

Sections 39-A to 39-C. Water Storage Reservoirs.

Erection of Mills and Dams, and Rights of Flowage.

Sec. 1. Right to erect and maintain milldams, and to divert water by canal for mills.

Quoted in *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

Sec. 3. Not to injure mill or canal previously built.

Quoted in *Central Maine Power Co. v. Public Utilities Comm.*, 156 Me. 295, 163 A. (2d) 762.

Sec. 6. Complaint.—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 action. (R. S. c. 166, § 5. 1961, c. 317, § 616.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” at the end of this section.

Sec. 7. Service of complaint.—The complaint shall be filed and service made as in other actions. (R. S. c. 166, § 6. 1959, c. 317, § 409.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all fur-

ther proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Sec. 8. Defenses.—The owner or occupant of such mill or canal may answer that the plaintiff 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 plaintiff cannot maintain the action; but he shall not answer that the land described is not injured by such dam or canal. (R. S. c. 166, § 7. 1959, c. 317, § 410.)

Effect of amendment.—The 1959 amendment substituted "answer" for "plead in bar" near the beginning of the section, "plaintiff" for "complainant" twice, "action" for "suit" and "answer" for "plead

in bar of the complaint" and deleted "therein" following "described."

Effective date of 1959 amendment.—See note to § 7.

Sec. 9. Trial; costs.—When any such answer is filed and an issue in fact or in law is joined, it shall be decided as similar issues are decided at common law. If judgment is for the defendant, he shall recover his costs. (R. S. c. 166, § 8. 1959, c. 317, § 411.)

Effect of amendment.—The 1959 amendment divided this section into two sentences and substituted "answer" for "plea" in the first sentence and "defendant" for

"respondent" in the second.

Effective date of 1959 amendment.—See note to § 7.

Sec. 10. Plaintiff recovers; damages in gross; annual damages if owners do not elect to pay.—If the issue is decided in favor of the plaintiff, or if the defendant is defaulted or does not answer or show any legal objection to the proceedings, the court shall appoint 3 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 plaintiff 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 flashboards as then existing; and if within 10 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. (R. S. c. 166, § 9. 1959, c. 317, § 412.)

Effect of amendment.—The 1959 amendment substituted "plaintiff" for "complainant" twice, "defendant" for "respondent" and "answer" for "plead" in the first sen-

tence.

Effective date of 1959 amendment.—See note to § 7.

Sec. 17. Security required for yearly damages. — 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 a civil action as provided in section 18, 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 a civil action. (R. S. c. 166, § 16. 1961, c. 317, § 617.)

Effect of amendment.—The 1961 amendment substituted “a civil action as provided in section 18” for “his action of debt as provided in the following section” and “a civil action” for “an action at common law” in this section.

Sec. 18. Plaintiff may sue for damages, if unpaid; lien upon mill and land.—The party entitled to such annual compensation may maintain a civil action 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 milldam, 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 3 years before the commencement of the complaint. (R. S. c. 166, § 17. 1961, c. 317, § 618.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action of debt or assumpsit” near the beginning of this section.

Sec. 27. Double damages, if restrictions violated. — 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 wrongdoers double damages for his injury in a civil action. (R. S. c. 166, § 26. 1961, c. 317, § 619.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action at common law” at the end of this section.

Sec. 29. Judgment no bar to new complaint.—A judgment against a plaintiff 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. (R. S. c. 166, § 28. 1959, c. 317, § 413.)

Effect of amendment.—The 1959 amendment substituted “plaintiff” for “complainant” in this section. **Effective date of 1959 amendment.**—See note to § 7.

Sec. 30. Tender of damages.—In case of an original complaint, the defendant may, with the same advantages to himself, tender and bring money into court, or if the issue is decided in favor of the plaintiff, or if the defendant is defaulted or does not answer or show any legal objections to the proceedings, the defendant 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. 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 plaintiff fails to recover a sum greater than the sum tendered or offered, he recovers such costs only as accrued before the offer, and the defendant recovers costs accrued after that time, and his judgment for costs may be set off against the plaintiff’s judgment for damages and costs. (R. S. c. 166, § 29. 1959, c. 317, § 414.)

Effect of amendment.—The 1959 amendment divided the first sentence into two sentences and substituted “defendant” for “respondent,” “answer” for “plead” and

"plaintiff" for "complainant" throughout the section. **Effective date of 1959 amendment.**—See note to § 7.

Sec. 31. No abatement by death of either party.—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 plaintiffs or defendants, or the executors or administrators of the deceased. (R. S. c. 166, § 30. 1959, c. 317, § 415.)

Effect of amendment.—The 1959 amendment substituted "plaintiffs or defendants" for "complainants or respondents." **Effective date of 1959 amendment.**—See note to § 7.

Sec. 32. If complaint abates, rights preserved by new complaint.—If such complaint is abated or defeated for want of form, or if, after a verdict for the plaintiff, judgment is reversed, he may bring a new complaint at any time within one year thereafter and thereon recover the damages sustained during the 3 years preceding the institution of the first complaint, or at any time afterwards. (R. S. c. 166, § 31. 1959, c. 317, § 416.)

Effect of amendment.—The 1959 amendment substituted "plaintiff" for "complainant." **Effective date of 1959 amendment.**—See note to § 7.

Sec. 38. Complaint to remove timber, etc., on lands flowed by erection of dam.—When any person or corporation shall have decided to erect a dam across a nonnavigable stream under this chapter under special authority granted by the legislature, and shall have filed the specifications required by chapter 44, section 11, 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 superior court shall have jurisdiction, upon complaint of such person or corporation, to authorize said plaintiff 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 plaintiff 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. Such time may be extended for good cause shown. (R. S. c. 166, § 37. 1959, c. 317, § 417.)

Effect of amendment.—The 1959 amendment made the proviso at end of the second sentence into a separate sentence, deleted "the provisions of" following "stream under," substituted "chapter 44, section 11" for "section 11 of chapter 44," deleted "the supreme judicial court or" following "dam," deleted "in equity" following "jurisdiction," and substituted "complaint" for "petition" in the first sentence, and substituted "plaintiff" for "petitioner" in the first and second sentences. **Effective date of 1959 amendment.**—See note to § 7.

Water Storage Reservoirs.

Sec. 39-A. Right of mill owners to augment stored water by pumping or otherwise; right to flow land conferred; assessment of damages.—Any person, firm or corporation which may be entitled to the rights and benefits provided for in this chapter is authorized and empowered to build, maintain and operate dams and other necessary works and structures, including side dams, embankments, ditches and drains, on lands owned or leased by them for the purpose of creating and maintaining water storage reservoirs or basins; to raise the level of the waters in such storage reservoirs or basins by augmenting the supply of stored water from sources other than the natural drainage area by

means of pumping or otherwise; to retain and discharge said stored water; to build, maintain and operate pipes, conduits, penstocks, tunnels and canals for the purpose of augmenting and discharging said stored water for use by such persons, firms or corporations for working their water mill or mills. Such persons, firms or corporations are also authorized and empowered to flow such lands as may be necessary to carry out the purposes of this section, and damages caused by the flowing of such lands by means of said dams, other works and structures shall be ascertained and determined in the manner as prescribed in this chapter. (1959, c. 325, § 1.)

Editor's note.—P. L. 1959, c. 325, adding this section, provided in section 2 thereof as follows:

"Sec. 2. Saving clause. If any clause, sentence or provision of the Revised Statutes of 1954, chapter 180, sections 39-A, 39-B and 39-C shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall not affect, impair or invalidate the remainder of said sections or the other provisions of said Revised Statutes, chapter 180, but shall be confined in its operation to the clause, sentence or provisions of said sections 39-A, 39-B and 39-C directly involved in the controversy in which such adjudication shall have taken place."

Central Maine Power Company authorized.—Section 3 of P. L. 1959, c. 325, provided that: "In accordance with the Revised Statutes of 1954, chapter 180, section

39-C. Central Maine Power Company, a public utility corporation duly organized and existing under the laws of the state of Maine, is authorized and empowered under said Revised Statutes, chapter 180, sections 39-A and 39-B, and the rights and benefits set forth therein, to build, maintain and operate a pump storage development, so called, at Clear and Rowe Ponds, in the Plantation of Pleasant Ridge, county of Somerset and state of Maine, for the purpose of generating electric energy for public uses by augmenting the supply of water stored and retained from the natural drainage area of said ponds by pumping water from Wyman Lake, so called, into the reservoir created at said ponds by means of a penstock, conduit, tunnel or canal, all in the manner and subject to the limitations prescribed in said Revised Statutes, chapter 180, sections 39-A and 39-B."

Sec. 39-B. Authorized to acquire lands and rights-of-way for pipes, conduits, penstocks, tunnels and canals by eminent domain; assessment of damages.—Any person, firm or corporation authorized and empowered to build, maintain and operate pipes, conduits, penstocks, tunnels and canals under section 39-A is further authorized and empowered to exercise the right of eminent domain by taking and holding as for public uses in the manner and subject to the limitations prescribed in chapter 52, section 12, such lands and rights-of-way as such person, firm or corporation may require for such purposes when the water which will be stored, retained and discharged through the use of such pipes, conduits, penstocks, tunnels and canals will be devoted to public uses. All proceedings relating to damages caused by the building, maintaining and operating of said pipes, conduits, penstocks, tunnels and canals shall be ascertained and determined in the same manner as prescribed in said chapter 52, sections 13 to 22. (1959, c. 325, § 1.)

Cross reference.—See note to § 39-A.

Sec. 39-C. Authorization required.—Any person, firm or corporation authorized and empowered to augment stored water by pumping or otherwise under section 39-A and acquire by eminent domain for public uses, lands and rights-of-way for pipes, conduits, penstocks, tunnels and canals under section 39-B, is authorized and empowered to exercise the rights and benefits under this chapter, as amended, but only when such person, firm or corporation shall have received the necessary authority by legislative act. (1959, c. 325, § 1.)

Cross reference.—See note to § 39-A.

Protection of Ways from Overflow.

Sec. 42. If decision in favor of plaintiffs.—If the decision is in favor of the plaintiffs, 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 plaintiffs. Whether by the town or by the plaintiffs, it shall be done in a faithful manner and to the acceptance of the commissioners. 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 30 days after its approval by said commissioners and a demand therefor, it may be recovered in a civil action. (R. S. c. 166, § 41. 1961, c. 317, § 620.)

Effect of amendment.—The 1961 amendment divided this section into three sentences, substituted “plaintiffs” for “petitioners” in three places therein and also substituted “a civil action” for “an action on the case” at the end of the section.

Inspection of Dams and Reservoirs.

Sec. 48. Compensation of engineer.—Said engineer shall receive, as full compensation for his services, \$5 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 a civil action. (R. S. c. 166, § 47. 1961, c. 317, § 621.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action on the case” at the end of this section.

Mills and Their Repair.

Sec. 52. If part owner minor, or otherwise disqualified.—Where any part of such mill or dam at the time of meeting and notice is owned by minors, tenants by curtesy, in tail, for life or years, or by mortgagor or mortgagee, the guardians of such minors, such tenant, mortgagor or mortgagee shall be deemed, for the purposes of sections 49 to 54, the proprietors thereof, and shall be notified, vote and contribute accordingly. All advances so made by them, if not paid, may be recovered in a civil action, with interest. (R. S. c. 166, § 51. 1961, c. 317, § 622.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, substituted “curtesy” for “courtesy” in the present first sentence, and “civil action” for “special action on the case” in the present second sentence.

Chapter 181.

Principals. Agents. Factors. Partnerships.

Factors and Agents.

Sec. 4. Factors' liens.—If so provided by any written agreement, all factors shall have a continuing general lien upon all materials, goods in process and merchandise from time to time consigned to or pledged with them, whether in their constructive, actual or exclusive occupancy or possession or not, and upon the proceeds resulting from the sale or other disposition of such materials, goods in process and merchandise, for all their loans and advances to or for the account of the person creating the lien, hereinafter called the borrower, together with interest thereon, and also for the commissions, obligations, indebtedness, charges and expenses properly chargeable against or due from said borrower and for the amounts due or owing upon any notes or other obligations given to or received by them for or upon account of any such loans or advances, interest, commissions, obligations, indebtedness, charges and expenses, and such lien shall