

# MAINE STATE LEGISLATURE

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SIXTH REVISION

THE  
REVISED STATUTES

OF THE

STATE OF MAINE

PASSED SEPTEMBER 29, 1916, AND TAKING  
EFFECT JANUARY 1, 1917



By the Authority of the Legislature

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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.

**Sec. 35. Owner may apply to supreme court.** R. S. c. 22, § 28. Any owner aggrieved by such order, may apply to a justice of the supreme judicial court, in term time or vacation, who shall forthwith, after notice and hearing, affirm, annul or alter such order. If the court is not in session, the action shall be entered on the docket of the preceding term.

**Sec. 36. Costs.** R. S. c. 22, § 29. If the court affirms such order, costs shall be recovered by the town. If it wholly annuls such order, costs shall be recovered by the applicant, and if it alters it in part, the court may render such judgment as to costs as justice requires.

**Sec. 37. Sections 33-36 require vote of town.** R. S. c. 22, § 30. The four preceding sections shall not be in force in any town unless adopted at a legal meeting thereof.

## CHAPTER 24.

### Ways.

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### Location, Alteration and Discontinuance of Highways.

**Sec. 1. County commissioners may lay out, alter or discontinue, all county roads.** R. S. c. 23, § 1. County commissioners may lay out, alter or discontinue highways leading from town to town, and grade hills in any such highway. Nothing in any city charter shall be so construed as to deprive them of the power to lay out, alter or discontinue county roads within the limits thereof. Responsible persons may present, at their regular session, a written petition describing a way and stating whether its location, alteration, grading or discontinuance is desired, or an alternative action, in whole or in part. The commissioners may act upon it, conforming substantially to the description, without adhering strictly to its bounds.

Authority of commissioners. 11 Me. 276; 15 Me. 22; 19 Me. 343; 26 Me. 356, 409; 31 Me. 270; 32 Me. 568; 37 Me. 559; 39 Me. 584; 40 Me. 437; 42 Me. 401; 59 Me. 89; 64 Me. 457; 70 Me. 408; 77 Me. 130; 78 Me. 156; 79 Me. 526; 87 Me. 151; 102 Me. 161; 106 Me. 131; 110 Me. 506.

Petition. 2 Me. 53; 3 Me. 105; 26 Me. 356, 408; 32 Me. 568; 37 Me. 119; 63 Me. 114; 68 Me. 407, 497; 78 Me. 537; 80 Me. 44.

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**Sec. 2. Notice, how given, proved and recorded.** R. S. c. 23, § 2. Being satisfied that the petitioners are responsible, and that an inquiry into the merits is expedient, they shall cause thirty days' notice to be given of the time and place of their meeting, by posting copies of the petition, with their order thereon, in three public places in each town in which any part of the way is, and serving one on the clerks of such towns, and publishing it in some newspaper, if any, in the county. The fact that notice has been so given, being proved and entered of record, shall be sufficient for all interested, and evidence thereof.

19 Me. 343; 30 Me. 305; 68 Me. 406, 497; 83 Me. 116; 105 Me. 560; 110 Me. 512.

**Sec. 3. Costs paid by petitioners on failure.** R. S. c. 23, § 3. When their decision is against the prayer of the petitioners, they shall order them to pay to the treasurer of the county, at a time fixed, all expenses incurred on account of it; and if they are not then paid, they shall issue a warrant of distress against the petitioners therefor.

2 Me. 54; 3 Me. 105; 68 Me. 497; 83 Me. 115.

**Sec. 4. Proceedings before county commissioners; return; durable monuments erected.** R. S. c. 23, § 4. They shall meet at the time and place appointed, and view the way, and there, or at a place in the vicinity, hear the parties interested. If they judge the way to be of common convenience and necessity, or that any existing way shall be altered, graded or discontinued, they shall proceed to perform the duties required; make a correct return of their doings, signed by them, accompanied by an accurate plan of the way, and state in their return when it is to be done, the names of the persons to whom damages are allowed, the amount allowed to each, and when to be paid. When the way has been finally established and opened to travel, they shall cause durable monuments to be erected at the angles thereof.

Return. 12 Me. 212; 14 Me. 343; 23 Me. 13, 513; 26 Me. 409; 30 Me. 307; 35 Me. 377; 49 Me. 145; 51 Me. 384; 65 Me. 292; 72 Me. 430; 78 Me. 172; 79 Me. 528; 83 Me. 116; 89 Me. 252; 91 Me. 51; 105 Me. 186.

Angles and monuments. 25 Me. 304; 35 Me. 377; 49 Me. 148.

Validity of proceedings. 8 Me. 272, 293; 11 Me. 473; 19 Me. 343; 23 Me. 11, 513; 24 Me. 152; 26 Me. 356, 408; 30 Me. 306; 31 Me. 270; 32 Me. 568; 37 Me. 120, 559; 42 Me. 400; 49 Me. 145; 52 Me. 27; 68 Me. 407; 73 Me. 324; 81 Me. 411; 83 Me. 523.

Damages. 19 Me. 315; 45 Me. 424; 49 Me. 145; 52 Me. 27; 54 Me. 478; 60 Me. 540; 61 Me. 442; 63 Me. 28; 67 Me. 460, 464.

**Sec. 5. Return to be filed with clerk; proceedings thereon; notice of appeal, from estimate of damages; in case of appeal from location, when appeal on damages to be filed.** R. S. c. 23, § 5. 1913, c. 159. Their return, made at their next regular statute session after the hearing, shall be placed on file, and remain in the custody of their clerk for inspection without record. The case shall be continued to their next regular term of record, and at any time on or before the third day thereof, if no appeal from the location be taken, all persons aggrieved by their estimate of damages shall file their notice of appeal. If no such notice is then presented or pending, the proceedings shall be closed, recorded and become effectual; all claims for damages not allowed by them be forever barred; and all damages awarded under the first thirteen sections of this chapter, paid out of the county treasury except as provided in section eleven. But if an appeal from the

location be taken in accordance with section fifty-nine, then notice of appeal on damages may be filed with the clerk of the county commissioners within sixty days after the final decision of the appellate court in favor of such way, has been certified to him, to the supreme judicial court first held in the county where the land is situated, more than thirty days after such notice of appeal is filed, which court shall determine the same in the same manner as is provided in section eight, when no appeal on location is taken.

Filing and recording return. 31 Me. 272; 32 Me. 568; 42 Me. 399; 59 Me. 391; 63 Me. 28; 83 Me. 522.

Close of proceedings. 23 Me. 11; 25 Me. 304; 30 Me. 308; 59 Me. 391; 63 Me. 28; 78 Me. 101, 169.

**Sec. 6. Proceedings before and after decision respecting increase of damages; exception.** R. S. c. 23, § 6. When a notice of appeal for increase of damages is presented within the time allowed, the case shall be further continued until a final decision respecting damages is made. If they then are of opinion that their proceedings, or any part thereof, ought not to take effect, subject to such damages as have been assessed, they shall enter a judgment that the prayer of the petitioners, or any part thereof, designating what part, is not granted for that reason. Upon such judgment no damages shall be allowed for that part of the prayer of the petitioners not granted, but the costs shall be paid by the county; or if of opinion that such increase of damages should prevent a confirmation of a part or parts only of their proceedings, they shall designate such part or parts, and enter judgment accordingly; and the whole proceedings shall be recorded and become effectual. But the provisions of this section shall not apply when a location has been determined by a committee of the supreme judicial court upon appeal from the decision of the county commissioners thereon. In such case proceedings regarding the location shall become effectual as if no appeal for increase of damages had been taken.

63 Me. 28; 78 Me. 173.

**Sec. 7. Damages, how estimated; to whom awarded; when to be paid.** R. S. c. 23, § 7. If any person's property is damaged by laying out, altering or discontinuing a highway or town way, the county commissioners or the municipal officers of towns shall estimate the amount, and in their return state the share of each separately; damages shall be allowed to the owners of reversions, and remainders; and to tenants for life, and for years, in proportion to their interests in the estate taken; but said commissioners or officers shall not order such damages to be paid, nor shall any right thereto accrue to the claimant, until the land over which the highway or alteration is located, has been entered upon and possession taken, for the purpose of construction or use.

71 Me. 140; 84 Me. 54; 91 Me. 51; 93 Me. 127; 105 Me. 580.

**Sec. 8. Appeal from commissioners to supreme court.** R. S. c. 23, § 8. 1915, c. 62, § 1. Any person aggrieved by the estimate of damages by the county commissioners, on account of the laying out or discontinuing of a way, may appeal therefrom, at any time before the third day of the regular term succeeding that at which the commissioners' return is made, to the term of the supreme judicial court, first held in the county where the land is situated, more than thirty days after the expiration of the time within

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which such appeal may be taken, excluding the first day of its session, which court shall determine the same by a committee of reference if the parties so agree, or by a verdict of its jury, and shall render judgment for the damages recovered, and judgment for costs in favor of the party entitled thereto, and shall issue execution for the costs only. The appellant shall file notice of his appeal with the county commissioners within the time above limited, and at the first term of the court shall file a complaint setting forth substantially the facts, upon which the case shall be tried like other cases. The clerk shall certify the final judgment of the court to the county commissioners, who shall enter the same of record, and order the damages therein recovered to be paid as provided in section seven. The party prevailing recovers costs to be taxed and allowed by the court, except that they shall not be recovered by the party claiming damages, but by the other party, if on such appeal by either party, said claimant fails to recover a greater sum as damages than was allowed to him by the commissioners. The committee shall be allowed a reasonable compensation for their services, to be fixed by the court upon the presentation of their report and paid from the county treasury upon the certificate of the clerk of courts.

21 Me. 390; 77 Me. 181; 78 Me. 173; 83 Me. 535; 84 Me. 54; 89 Me. 313; 91 Me. 51; 96 Me. 249; 105 Me. 416; 106 Me. 147.

**Sec. 9. Time allowed for removing growth, and opening way. R. S. c. 23, § 9.** The owners of land taken shall be allowed not exceeding one year after the proceedings, regarding the location, are finally closed to take off timber, wood or any erection thereon. A time not exceeding two years shall be allowed for making and opening the way.

See § 45; 8 Me. 137; 39 Me. 116; 64 Me. 409; 84 Me. 100; 105 Me. 186, 580.

**Sec. 10. Way discontinued before damages paid, proceedings. R. S. c. 23, § 10.** When the way is discontinued before the time limited for the payment of damages, the commissioners may revoke their order of payment, and estimate the damages actually sustained, and order them paid. Any person aggrieved may have them assessed by a committee or jury, as herein provided.

93 Me. 130.

**Sec. 11. County commissioners shall fix boundaries of highways or town ways; proceedings. R. S. c. 23, § 11. 1905, c. 79. 1907, c. 143. 1915, c. 46; c. 111.** When the true boundaries of highways or town ways duly located, or of which the location is lost, or which can only be established by user, are doubtful, uncertain or lost, the county commissioners of the county wherein such highway or town way is located, upon petition of the municipal officers of the town wherein the same lies, shall, after such notice thereon as is required for the location of new ways, proceed to hear the parties, examine said highway or town way, locate and define its limits and boundaries by placing stakes on side lines at all apparent intersecting property lines, and at intervals of not more than one hundred feet and cause durable monuments to be erected at the angles thereof at the expense of the town wherein said highway or town way lies; make a correct return of their doings, signed by them, accompanied by an accurate plan of the way; and if any real estate is damaged by said action, they shall award damages to the owner as in laying out new highways, in the case of high-

ways to be paid by the county and in the case of town ways to be paid by the town. Their return made at the next regular statute session after the hearing, shall be placed on file and the case shall be continued to await a final decision respecting damages; sections five and six shall be applicable to appeals for increase of damages under this section. Said municipal officers shall maintain all highway or town way monuments, and replace them forthwith when destroyed. If any appeal for increase of damages is taken, and the commissioners are of opinion that their proceedings hereunder, or any part thereof, ought not to take effect, they shall enter a judgment that the prayer of the original petitioners or any part thereof, designating what part, is not granted for that reason. Upon such judgment no damages shall be allowed for that part of the prayer of the petitioners not granted, but the costs shall be paid by the county.

83 Me. 42; 111 Me. 257.

### Ways in Two or More Counties.

**Sec. 12. Petitions respecting ways in two or more counties, proceedings on them.** R. S. c. 23, § 12. When a petition is presented respecting a way in two or more counties, the commissioners receiving the petition being satisfied as aforesaid, may call a meeting of the commissioners of all the counties, to be held at a time and place named, by causing an attested copy of such petition and of their order thereon, to be served upon their chairmen; and they shall give notice of such meeting by causing a like copy to be published in the state paper and in one paper, if any, printed in every such county, and by posting it in three public places in each town interested, and serving it on the clerk thereof. These notices shall be posted, served and published thirty days before the time of meeting.

52 Me. 213; 65 Me. 214.

**Sec. 13. Proceedings.** R. S. c. 23, § 13. Each county must be represented at such meeting by a majority of its commissioners. A majority of those present may decide upon the whole matter. The duty of carrying that judgment into effect, shall be performed in each county by its own commissioners in the manner respecting ways wholly within it. When each county is not so represented, those present may adjourn the meeting to another time.

25 Me. 292; 45 Me. 424; 52 Me. 213; 73 Me. 57.

**Sec. 14. Appeals.** R. S. c. 23, § 14. When proceedings have been had by the county commissioners on a petition for laying out, altering, grading or discontinuing a way in two or more counties, an appeal may be taken in the manner provided in case of a way wholly in one county.

**Sec. 15. Proceedings in cases of appeals.** R. S. c. 23, § 15. When an appeal is so taken, it shall be filed with the commissioners of, and subsequent proceedings shall be had in, the county where proceedings originated and the commissioners with whom such appeal is filed shall immediately give notice of such appeal to the commissioners of all the counties interested, and the clerk of courts shall certify the final judgment of court to the commissioners of all said counties.

86 Me. 142.

## Town and Private Ways. Public Landings.

**Sec. 16. Power of municipal officers respecting town and private ways; notice, how given; duty of officers in laying out way.** R. S. c. 23, § 16. The municipal officers of a town may on petition therefor, personally or by agency, lay out, alter or widen town ways, and private ways for any inhabitant or for owners of cultivated land therein, if such inhabitant occupies, or such owner has cultivated land in the town which such private way will connect with a town way or highway. They shall give written notice of their intentions, to be posted for seven days, in two public places in the town and in the vicinity of the way, describing it in such notice, and they shall determine whether it shall be a town way or a private way; and if a private way, whether it shall be subject to gates and bars.

Notice. 3 Me. 439; 10 Me. 341; 11 Me. 113; 13 Me. 254; 18 Me. 185; 35 Me. 246; 43 Me. 576; 59 Me. 368, 518; 83 Me. 250.

Authority of municipal officers. 10 Me. 340; 11 Me. 113; 14 Me. 343; 18 Me. 185; 45 Me. 244; 46 Me. 427; 51 Me. 571; 57 Me. 45; 59 Me. 452; 62 Me. 328; 64 Me. 581; 84 Me. 101; 98 Me. 131; 102 Me. 161.

Legality of proceedings. 2 Me. 60; 10 Me. 25; 12 Me. 275; 25 Me. 71; 26 Me. 178; 32 Me. 568; 61 Me. 439; 83 Me. 123; 88 Me. 31; 89 Me. 251; 91 Me. 449; 109 Me. 416.

**Sec. 17. Winter roads.** R. S. c. 23, § 17. They may lay out a way as aforesaid for the hauling of merchandise, hay, wood or lumber, to be used only when the ground is so covered with snow that such hauling shall not break the soil. When so laid out, they shall state in their return the purposes for which it is laid, and that it shall be used only in the winter season, and shall order the persons for whose accommodation it is laid, to pay into the town treasury an amount equal to the damages of such location for the benefit of the owner of the land over which it is laid, and the expenses of such location, and it shall not be accepted by the town until such amount is so paid. No town shall be liable for damage to any person traveling on such way.

**Sec. 18. After municipal officers have laid out, town may accept.** R. S. c. 23, § 18. A written return of their proceedings containing the bounds and admeasurements of the way, and the damages allowed to each person for land taken, shall be made and filed with the town clerk in all cases. The way is not established until it has been accepted in a town meeting legally called after the return has been filed, by a warrant containing an article for the purpose.

Return of selectmen. 12 Me. 35, 275; 13 Me. 254; 18 Me. 186, 346; 26 Me. 178; 30 Me. 26; 40 Me. 301; 67 Me. 286.

Bounds and measurements. 14 Me. 343; 25 Me. 304; 30 Me. 25; 40 Me. 301.

Acceptance. 10 Me. 344; 11 Me. 113; 12 Me. 36; 16 Me. 302; 18 Me. 185; 21 Me. 174; 23 Me. 124; 26 Me. 180; 35 Me. 246; 40 Me. 301; 48 Me. 457; 59 Me. 518; 64 Me. 579; 67 Me. 286; 89 Me. 251; 98 Me. 131; 105 Me. 575.

**Sec. 19. Towns may discontinue ways.** R. S. c. 23, § 19. A town, at a meeting called by warrant containing an article for the purpose, may discontinue a town or private way; and the municipal officers shall estimate the damages suffered by any person thereby.

37 Me. 55, 71; 45 Me. 607; 69 Me. 440; 83 Me. 118.



**Sec. 20. Damages for ways, how estimated and paid; appeal may be taken to supreme judicial court.** R. S. c. 23, § 20. The damages for a town way shall be paid by the town; for a private way, by those for whose benefit it is stated in the petition to be, or wholly or partly by the town, if under an article in the warrant to that effect it so votes at the meeting accepting such private way; or by cities, if it is proposed in the return laying out such way. Any person aggrieved by the estimate of such damages may have them determined as provided in section eight, by written complaint to the supreme judicial court, returnable at the term thereof next to be held within the county where the land lies, after sixty days from the date of the establishment, alteration or discontinuance of such way by the town at its town meeting. The complaint shall be served at least thirty days before said term by delivering in hand an attested copy to the clerk of the town where the land lies, and by posting attested copies in two public and conspicuous places within said town and in the vicinity of the way. But the final judgment shall be recorded in said court, and shall not be certified to the county commissioners. When any person aggrieved by the estimate of damages for his land taken for a town or private way, honestly intended to appeal therefrom and has by accident or mistake omitted to take his appeal within the time provided by law, he may at any time within six months after the expiration of the time when said appeal might have been taken, apply to any judge of the supreme judicial court in term time or vacation, stating in his said application the facts of his case, and said judge, after due notice and hearing, may grant to such petitioner permission to take his said appeal to such term of said court as said judge shall direct, and on such terms as said judge shall order, and the subsequent proceedings thereon shall be the same and with the same effect as if said appeal had been seasonably taken.

11 Me. 265, 424; 12 Me. 212; 17 Me. 201; 19 Me. 316, 343; 21 Me. 391; 26 Me. 179; 28 Me. 123; 30 Me. 272; 32 Me. 568; 48 Me. 283; 57 Me. 342; 59 Me. 518; 60 Me. 537; 67 Me. 460; 83 Me. 535; 95 Me. 50; 103 Me. 436; 105 Me. 416; 106 Me. 147.

**Sec. 21. Towns may lay out public landings.** 1907, c. 87. Towns may lay out public or common landings and may alter or discontinue said landings whether laid out under the provisions of this chapter or now or hereafter established by dedication or otherwise. All procedure shall be in substance the same as is provided by law in the case of town ways.

See c. 23, § 5.

**Sec. 22. Town or private way, neglect or refusal of municipal officers to lay out or alter; proceedings.** R. S. c. 23, § 21. When the municipal officers unreasonably neglect or refuse to lay out or alter a town way, or a private way on petition of an inhabitant, or of an owner of land therein for a way leading from such land under improvement to a town or highway, the petitioner may, within one year thereafter, present a petition stating the facts to the commissioners of the county at a regular session, who shall give notice thereof to all interested and act thereon as is provided respecting highways. When the decision of the municipal officers is in favor of such laying out or alteration, any owner or tenant of the land over or across which such way has been located, shall have the same right of

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petition. When the decision of the commissioners is returned and placed on file such owner or tenant or other party interested has the same right to appeal to the supreme judicial court as is provided in sections fifty-nine to sixty-two inclusive; and also to have his damages estimated as provided in section eight.

**Sec. 23. When such way may be opened.** R. S. c. 23, § 22. No such way shall be opened or used until after sixty days from its acceptance by the town, and if within that time notice of such appeal or petition is filed with the town clerk, such way shall not be opened or used until finally located by the appellate tribunal.

91 Me. 51; 105 Me. 580.

**Sec. 24. Towns unreasonably refusing to accept, or to discontinue.** R. S. c. 23, § 23. When a town unreasonably refuses to discontinue a town or private way, or to accept one laid out or altered by the selectmen, the parties aggrieved may, within the time, and in the manner provided in section twenty-two, present a petition to the commissioners, who shall in like manner proceed and act thereon, and cause their proceedings to be recorded by their own and by the town clerk; and the rights of all parties may be preserved and determined as provided in the two preceding sections.

8 Me. 271; 10 Me. 26; 12 Me. 211, 275; 18 Me. 185; 21 Me. 380; 25 Me. 71; 30 Me. 26; 31 Me. 271, 580; 36 Me. 76; 40 Me. 301; 41 Me. 605; 42 Me. 480; 51 Me. 571; 57 Me. 341; 59 Me. 514; 60 Me. 330, 537-540; 63 Me. 102; 64 Me. 581; 68 Me. 538; 70 Me. 324; 73 Me. 57; 78 Me. 106; 83 Me. 246, 430; 84 Me. 53; 87 Me. 223, 229; 88 Me. 31, 140; 102 Me. 482.

**Sec. 25. Town ways acted on by county commissioners cannot be acted on by towns for fixed time.** R. S. c. 23, § 24. When a town way has been laid out, graded or altered by the commissioners, their proceedings cannot be affected by any action of the town, within five years; and when one has been discontinued by them, it cannot be again laid out by the town, within two years. The commissioners have the same power to alter or discontinue such ways, for five years, as they have respecting highways.

91 Me. 47.

**Sec. 26. County commissioners may fix amount of grading; may order half the expenses to be paid by the county.** R. S. c. 23, § 25. The county commissioners, in laying out new ways, or altering or grading ways already laid out, may direct the amount of such grading, which shall be stated in their return; and they may order a portion of the expense of such altering or grading, not exceeding fifty per cent thereof, to be paid to the town in which the altering or grading has been done, from the county treasury.

**Sec. 27. Towns may reinstate town ways discontinued by county commissioners; damages.** R. S. c. 23, § 26. When a town has accepted a town way, and said town way is subsequently discontinued by the county commissioners on appeal, before such road has been opened for travel, such town may, at its annual meeting, held within three years thereafter, by a majority of the voters present and voting, reinstate and lay out such town way, under an article for such purpose in the warrant. The damages shall be assessed, and the owners of the land over which said way passes shall be notified thereof by the municipal officers, within twenty days after said meeting; and any person aggrieved by the estimate of damages may have them determined in the manner provided in section twenty in case of town

ways laid out on petition. A town way so re-established and laid out shall not be discontinued for five years thereafter.

**Sec. 28. Municipal officers may vacate location of streets in certain cases; proceedings; damages, by whom paid, and how determined.** R. S. c. 23, § 27. When land has been plotted and a plan thereof made, whether recorded or not, showing the proposed location of streets thereon, and lots have been sold by reference to said plan, the municipal officers of the town or city where such land is situated, may on petition of owners of the fee in such of said proposed streets as are named in the petition, vacate in whole or in part the proposed location of any or all such streets as have not been accepted and located as public ways. The proceedings shall be the same as in case of the location of town ways. All damages thereby occasioned shall be paid by the petitioners, and parties aggrieved by the estimate of damages may have them determined in the manner provided respecting damages caused by the location of town ways and with the same right of appeal.

**Sec. 29. Lands shall not be taken from a railroad for any way without notice and hearing.** R. S. c. 23, § 28. No private way, town way, city street or highway, taking land of any railroad corporation, shall be located, unless a notice of the time and place of the hearing upon said location has been served upon the station agent of said railroad within such town or city, if any, otherwise upon such agent whose station is nearest to the land proposed to be so taken, at least seven days before the time for such hearing.

84 Me. 100; 86 Me. 391.

**Sec. 30. Location of ways crossing railroad tracks; manner and conditions of crossing, to be determined by public utilities commission; expense of building, how borne; commission shall report to railroad corporation and municipal officers; appeal.** R. S. c. 23, § 29. Town ways and highways may be laid out across, over or under any railroad track, in the same manner as other town ways and highways, except that before such way shall be constructed, the public utilities commission, on application of the municipal officers of the city or town wherein such way is located, or of the parties owning or operating the railroad, shall, upon notice and hearing, determine whether the way shall be permitted to cross such track at grade therewith or not, and the manner and condition of crossing the same, and the expense of building and maintaining so much thereof as is within the limits of such railroad shall be borne by such railroad company, or by the city or town in which such way is located, or shall be apportioned between such company and city or town, as may be determined by said public utilities commission. The commission shall make a report in writing of their decision thereupon, file the same in their office and cause to be sent by mail or otherwise to each of the railroad corporations, and the municipal officers of the city or town as the case may be, interested therein, a copy of such decision. Such decision shall be final and binding upon all parties unless an appeal therefrom shall be taken and entered at the next succeeding term of the supreme judicial court, to be held in the county where the crossing is located, more than thirty days after the date of the filing of the report. The appellant shall within fourteen days from the date of the filing of

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such report, file in the office of the public utilities commission, its reasons for appeal and fourteen days at least before the sitting of the appellate court, it shall cause to be served upon such other interested corporations or municipality a copy of such reasons for appeal, certified by the clerk of the public utilities commission. The presiding justice, at such term of court, shall make such order or decree thereon as law and justice may require. Exceptions may be taken to such order or decree. The final adjudication shall be recorded as provided in section thirty-three of this chapter. Costs may be taxed and allowed to either party at the discretion of the court.

See c. 56, §§ 63, 64; c. 58, § 26; 78 Me. 67; 79 Me. 391; 83 Me. 277; 85 Me. 142; 87 Me. 251; 89 Me. 561; 91 Me. 137; 92 Me. 59; 97 Me. 163; 105 Me. 116.

**Sec. 31. Maintenance of such ways already laid out.** R. S. c. 23, § 30. In case of such ways already so laid out, over or under any railroad track, and not at grade, the expense of building and maintaining so much thereof as is within the limits of such railroad, shall be borne as provided in the preceding section; the question shall be determined upon application of any company whose track is so crossed, made within sixty days after written notice has been served thereon by the municipal officers of any town in which such way is located, requesting such company to build and maintain so much of such way as is within the limits of its road.

See c. 58, § 26.

**Sec. 32. Ways over lands used for stations.** R. S. c. 23, § 31. No way shall be laid out through or across any land or right of way of any railroad corporation, used for station purposes, unless after notice and hearing the public utilities commission adjudges that public convenience and necessity require it. When the tribunal having jurisdiction over the laying out of such way is satisfied, after hearing, that public convenience and necessity requires such laying out, such proceedings shall be suspended and petition filed by such tribunal with the public utilities commission for their adjudication hereunder.

See c. 58, § 26; 97 Me. 162; 100 Me. 430.

**Sec. 33. Adjudications to be recorded.** R. S. c. 23, § 32. Adjudications of the public utilities commission relating to ways shall be recorded in the office in which the location of the way must be recorded.

### Abolishment of Grade Crossings.

**Sec. 34. Petition by selectmen, and proceedings thereon; land may be taken and damages awarded; payment; temporary ways to be provided.** 1913, c. 147, § 1. 1915, c. 325, §§ 1, 4. The municipal officers of a town or city in which a public way crosses or is crossed by a railroad, may file a petition in writing with the public utilities commission alleging that public safety requires the abolishment of or an alteration in such crossing, or its approaches; or a change in the method of crossing a public way; or the closing of a crossing and the substitution of another therefor, not at grade; or the removal of obstructions to the sight at such crossing, and praying that the same may be ordered; whereupon said commission shall appoint a time and place for a hearing thereon after notice of not less than ten

days to the petitioners, the state highway commission, the corporation, the municipality in which such crossing is situated, the owners or occupants of the land adjoining such crossing, or adjoining that part of the way to be changed in grade, and to the attorney-general of the state, whose duty it shall be by himself or through the county attorney of the county wherein the crossing is located, to represent the interests of the state at such hearing. After such notice and hearing the commission shall determine what abolishment, alteration, change or removal, if any, shall be made for public safety and by whom such abolishment, alteration, change or removal shall be made. To facilitate such abolishments, alterations, changes or removals, highways and other ways may be raised or lowered or the courses of the same may be altered to permit a railroad to pass at the side thereof. For the purposes aforesaid land may be taken and damages awarded as provided for laying out highways. The commission shall determine and fix the damages sustained by any person whose land is taken and the special damages which the owner of land adjoining the public way may sustain by reason of any change in the grade of such way. The commission shall apportion such expenses and damages between the state, the town in which the crossing is located, and the corporation owning or operating the railroad which crosses such public way, and shall order twenty-five per cent thereof to be paid by the state, ten per cent thereof to be paid by the town in which such crossing is located, and the remainder thereof shall be paid by the corporation owning or operating the railroad. While the use of any way is obstructed in carrying out the foregoing provisions of this section, such temporary way shall be provided by the corporation as the commission may order; provided, however, that the commission shall not make any order upon any petition filed under the provisions of this section until they are satisfied, by investigation or otherwise, that the financial condition of the corporation owning or operating the railroad in question will enable said corporation to comply with such order, and that the probable benefit to the public will warrant said order and the probable expense resulting therefrom, and that said order can be complied with without exceeding the state appropriation available therefor. The state highway commission shall have the same right of petition under this section as the municipal officers of a town or city; and in case a petition is filed by them, the municipal officers of any city or town interested in the subject matter of said petition shall be notified by the public utilities commission of the filing of such petition and given opportunity to appear and be heard thereon.

**Sec. 35. Proceedings when public way crosses tracks of more than one railroad.** 1913, c. 147, § 2. Whenever the public utilities commission, upon an application or petition brought under the provisions of the preceding section finds that a public way crosses or is crossed by tracks of more than one railroad and the tracks of such railroads are so near together that public convenience requires the work of abolishment, alteration, change or removal to be done under and in compliance with one order, they shall give notice to all the corporations operating such railroads to appear before them and be heard upon the application; and after such notice and hearing said commission shall determine what abolishment, alteration, change or

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removal, if any, of said crossing, shall be made and shall determine by whom such work shall be done and shall apportion the percentage of expense to be borne by the railroad corporations as hereinbefore provided between such corporations in such manner as said commission shall deem just and proper.

**Sec. 36. Orders of commission shall be in writing; appeal.** 1913, c. 147, § 3. The order of the public utilities commission relating to any matter upon which they may act under the authority of the two preceding sections shall be communicated in writing to the petitioners and to all persons to whom notice of the hearing on such petition was given; and any person aggrieved by such order, who was a party to such proceedings, may appeal from such order to the supreme judicial court within and for the county in which such way or crossing is located in the manner now provided by law for appeals from the findings of the public utility commission. Any person aggrieved by the decision or judgment of the public utilities commission in relation to damages for land taken for the purposes of the two preceding sections may appeal from said decision in the manner provided in section thirty-six of chapter fifty-six.

**Sec. 37. Amount to be paid by state limited.** 1913, c. 147, § 4. 1915, c. 325, § 2. The amount to be paid under the provisions of the three preceding sections by the state in any one year shall not exceed fifteen thousand dollars, and said sum shall be annually appropriated.

**Sec. 38. Sections 34-37 do not apply to railroads of less than standard gauge; exceptions.** 1913, c. 147, § 5. The four preceding sections shall not apply to railroads of less than standard gauge or to street railroads, excepting, however, that in all cases where a street railroad has a right of way in a public way crossing a railroad the commission shall apportion to such street railroad an equitable share of the damages and expenses of alteration which shall be paid by said street railroad, and the balance of such expenses and damages shall be apportioned as provided in section thirty-four; and in all cases where a street railroad acquires the right to lay its tracks over a crossing which has been altered under the provisions of sections thirty-four or thirty-five, the public utilities commission shall fix the amount which such railroad shall pay to the state before it shall exercise its right to lay its tracks over such crossing; and in either case the commission shall make such order for the apportionment of the expense of future maintenance of such crossing as they shall deem equitable.

#### Assessments upon Abutters on City Streets.

**Sec. 39. Assessment of damages upon abutters.** R. S. c. 23, § 33. Whenever the city council lay out any new street or public way, or widen or otherwise alter or discontinue any street or way in a city, and decide that any persons or corporations are entitled to damage therefor, and estimate the amount thereof to each in the manner provided by law, they may apportion the damages so estimated and allowed, or such part thereof as to them seems just, upon the lots adjacent to and bounded on such street or way, other than those for which damages are allowed, in such proportions as in their opinion such lots are benefited or made more valuable by

such laying out or widening, alteration or discontinuance not exceeding in case of any lot the amount of such benefit; but the whole assessment shall not exceed the damages so allowed. Before such assessment is made, notice shall be given to all persons interested of a hearing before said council, at a time and place specified, which notice shall be published in some newspaper in said city at least one week before said hearing.

70 Me. 527; 84 Me. 217; 106 Me. 531; 111 Me. 392.

**Sec. 40. Owners to be notified of assessment.** R. S. c. 23, § 34. After said assessment has been made upon such lots or parcels and the amount fixed on each, the same shall be recorded by the city clerk, and notice shall be given within ten days after the assessment by delivering to each owner of said assessed lots resident in said city a certified copy of such recorded assessment, or by leaving it at his last and usual place of abode, and by publishing the same three weeks successively in some newspaper published in said city, the first publication to be within said ten days, and said clerk within ten days shall deposit in the post-office of said city, postage paid, a certified copy of such assessment directed to each owner or proprietor residing out of said city, whose place of residence is known to said clerk, and the certificate of said clerk shall be sufficient evidence of these facts, and in the registry of deeds shall be the evidence of title in allowing or assessing damages and improvements, so far as notice is concerned.

111 Me. 392.

**Sec. 41. Arbitration when amount of assessment is not satisfactory; board of arbitration, nominated.** R. S. c. 23, § 35. Any person not satisfied with the amount for which he is assessed, may, within ten days after service of the notice provided for by the preceding section in either manner therein provided, by request in writing given to the city 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 city, 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 city, and recorded by him, shall be final and binding upon all parties. Said reference shall be had and their report made to said city clerk within thirty days from the time of hearing before the municipal officers as provided in section thirty-nine.

111 Me. 392.

**Sec. 42. Assessments shall create a lien on land assessed, also on buildings thereon.** R. S. c. 23, § 36. All assessments made under the provisions of section thirty-nine, 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 they are made, the clerk of said city 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 city; if said assessments are not paid within three months from the date thereof, the treasurer shall sell, at public auction, such of said lots

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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. 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 reconveyance.

See c. 22, § 8; III Me. 392.

**Sec. 43. Action may be maintained by city; amount recovered.** R. S. c. 23, § 37. If said assessments are not paid, and said city 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 city, in the name of said city, 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 action may recover the amount of such assessment, with twelve per cent interest on the same from the date of said assessment, and costs.

106 Me. 531; III Me. 392.

**Sec. 44. Assessment of abutters for improvement of streets; two-thirds of cost may be assessed.** 1913, c. 172. Whenever a majority of the abutters in number and value upon any street or road in the thickly settled portion of any city or town, shall in writing petition the city council or municipal officers of the town to improve said street or road by grading, parking, curbing, graveling, macadamizing, paving or in any other way making a permanent street of the same, or any part thereof, and to provide for the making and reconstructing of such street improvements, and such improvements are made, two-thirds of the cost thereof may be assessed on the property adjacent to and bounded on said street or road in the manner, and with the same right of appeal, provided in the five preceding sections, which are hereby made applicable to such assessments.

### Opening of Ways.

**Sec. 45. Way must be opened within limited time.** R. S. c. 23, § 38. When a town way, private way or highway, is wholly or partly discontinued by the commissioners, a time shall be fixed for it. And when laid out by them the way shall be regarded as discontinued, if not opened within six years from the time allowed therefor. When town or private ways are finally located by municipal officers, unless the land is entered upon and possession taken for said purpose within two years after the laying out or alteration, the proceedings are void.

12 Me. 237; 43 Me. 428; 59 Me. 543; 71 Me. 240; 79 Me. 273; 91 Me. 138; 95 Me. 51; 105 Me. 580.



**Sec. 46. Commissioners may cause highways to be opened when towns neglect; payment of expenses.** R. S. c. 23, § 39. When a town way or highway is not opened and made passable by the town liable, or a hill therein has not been graded, within the time prescribed therefor by the commissioners, they may, after notice to the town, cause it to be done by an agent, not one of themselves, on petition of those interested. The agent shall make a written contract therefor and file a copy of it in the clerk's office; and the commissioners shall forthwith certify to the assessors of the town interested, the time when such contract is to be completed, and the amount to be paid therefor. They may examine the doings of their agent, and at pleasure remove him and appoint another. His account shall not be allowed without notice to the town. When the contract has been completed and the accounts allowed, the town shall pay the amount expended, with the expenses of the agent for superintendence, and for procuring the allowance of his account. If the town neglects to pay for thirty days, a warrant of distress shall be issued by the commissioners to collect the same.

25 Me. 303; 37 Me. 120, 555; 49 Me. 145; 59 Me. 84; 64 Me. 331; 71 Me. 240; 80 Me. 429; 83 Me. 115; 105 Me. 188; 110 Me. 517.

**Sec. 47. Record location of highway, when lost, or disregarded by agent; proceedings to stop work.** R. S. c. 23, § 40. When a highway is laid out through a town and an agent appointed by the county commissioners to open and make it, and the record location thereof cannot be found on the face of the earth or consistently applied thereto, or said agent is not making said highway according to the record location, the municipal officers or town agent, may file a bill in equity in the supreme judicial court, setting forth the facts aforesaid and praying an injunction to stay the proceedings of said road agent; and any justice of said court shall issue a summary notice to said road agent to appear before him to answer said petition; and on a hearing of the parties may issue a temporary injunction upon such terms and conditions as he deems reasonable; and subsequent proceedings on the bill shall be similar to proceedings in equity in other cases.

**Sec. 48. Plantations liable as towns and have same powers.** R. S. c. 23, § 41. 1907, c. 106. Plantations organized under section one hundred and thirty-eight of chapter four have like powers and are subject to like liabilities and penalties as towns respecting ways. Their assessors have like powers and shall perform like duties, as municipal officers of towns, respecting them.

See c. 4, § 146; 20 Me. 298.

#### **Actions for Damages and Costs.**

**Sec. 49. Damages.** R. S. c. 23, § 42. A person entitled to receive payment of damages or costs, may, after thirty days from demand on the treasurer of the county, or town, or on the party liable therefor, recover them in an action of debt.

45 Me. 429; 83 Me. 246; 93 Me. 231; 105 Me. 571.

### Ways in Places Not Incorporated.

**Sec. 50. County commissioners may lay out, alter, or discontinue highways in unincorporated townships.** R. S. c. 23, § 43. The county commissioners, on petition as provided in section one, may lay out, alter or discontinue a highway on any tract of land in their county, not within any town or plantation required to raise money to make and repair highways; and all expenses for making and opening the same shall be paid by the owners thereof, excluding lands reserved for public uses, in proportion to their interest in the lands over any part of which it is laid, except as provided in chapter ten, section fifty-eight.

See c. 62, § 28; 3 Me. 133; 17 Me. 197; 27 Me. 294; 30 Me. 352; 33 Me. 458; 38 Me. 495; 46 Me. 346; 60 Me. 289; 63 Me. 255; 80 Me. 285; 83 Me. 517.

**Sec. 51. Notice of hearing.** R. S. c. 23, § 44. If they think that there ought to be a hearing, they shall cause notice to be given of the time and place appointed therefor, by service of an attested copy of the petition with their order thereon, upon the owners of such lands, if known, fourteen days before that time, and if unknown, by a publication thereof in the state paper for six successive weeks, the last, thirty days before that time. No proceedings shall take place until it is proved that such notice has been given.

38 Me. 495.

**Sec. 52. Procedure.** R. S. c. 23, § 45. After hearing the parties at the time and place appointed, they may proceed as provided in section four.

**Sec. 53. Appeal; appointment of committee; its duties; proceedings on their report.** R. S. c. 23, § 46. 1915, c. 62, § 2. Any party interested in such decision may appeal therefrom to the supreme judicial court, to be entered at the term thereof first held after such decision, in said county. And all further proceedings before the commissioners shall be stayed until a decision is made in the appellate court. If no person appears at that term to prosecute the appeal, the judgment of the commissioners shall be affirmed. If the appeal is then entered, not afterwards, the court may appoint a committee of three disinterested persons, who shall be sworn, and if one of them dies, declines or becomes interested, the court shall appoint another in his place, and they shall cause notice to be given of the time and place of hearing before them, by publication thereof in the state paper for six successive weeks, the last publication to be fourteen days, at least, before the day of hearing, and personal notice to the appellant and to the chairman of the county commissioners, thirty days, at least, before the time set for hearing; they shall view the route, hear the parties, and make their report at the next or second term of the court after their appointment, whether the judgment of the commissioners should be in whole or in part affirmed, or reversed, which, being accepted and judgment thereon entered, shall forthwith be certified to the clerk of the commissioners. If the judgment of the commissioners in favor of laying out, grading or altering a way as prayed for, is wholly reversed on appeal, the commissioners shall proceed no further. If their judgment is affirmed in whole, or in part, they shall carry into effect the judgment of the appellate court; and in all cases, they shall carry into full effect the judgment of the appellate court, in the

same manner as if made by themselves; and the party appealing or prosecuting shall pay the costs incurred since the appeal, if so adjudged by the appellate court, which may allow costs in such cases to the prevailing party, to be paid out of the county treasury. The committee shall be allowed a reasonable compensation for their services, to be fixed by the court upon the presentation of their report and paid from the county treasury upon the certificate of the clerk of courts. The costs allowed to the prevailing party, and the fees of the committee shall be collected as provided in section three:

59 Me. 514; 63 Me. 570; 64 Me. 31; 72 Me. 248; 80 Me. 285; 91 Me. 103.

**Sec. 54. No new petition for one year.** R. S. c. 23, § 47. If the final decision of the commissioners or of the committee is against the prayer of the petition, no new petition for the same road shall be entertained by the commissioners for one year thereafter.

78 Me. 537.

**Sec. 55. County commissioners may lay out, alter or discontinue highways, on same petition; proceedings; appeal.** R. S. c. 23, § 48. County commissioners in their counties may, upon the same petition, lay out, alter or discontinue highways, through a town or towns or a plantation or plantations, and tracts of land not in any town or plantation, and in respect to that part of the highway situate in any town or plantation required by law to raise money to make and repair highways, the same proceedings shall be had as are now provided by law in case of a petition to lay out, alter or discontinue highways leading from town to town; and in respect to that part of the highway not situate in any town or plantation required by law to raise money to make and repair highways, the same proceedings shall be had as are now provided by law in case of a petition to lay out, alter or discontinue a highway in places not incorporated. The time and place of hearing upon such petition shall be according to section fifty-one; in case of an appeal to the supreme judicial court, the appeal may be made at any time after the return of the commissioners has been placed on the files, and before the next term of said court in the county; and the proceedings upon the appeal shall be according to section fifty-three. If no appeal is made, the case shall be continued to the next regular term after the regular term to which the return is made.

**Sec. 56. Liability of persons crossing or entering upon land for purpose of hauling supplies.** R. S. c. 23, § 49. 1915, c. 21. When it is necessary for any person or persons, by themselves, or with men, teams, or log haulers, to cross or enter upon any tract of land outside of the thickly settled portion of any town, for the purpose of hauling supplies, wood, bark, logs or lumber, or to yard or land the same, such person or persons shall not be liable in an action of trespass therefor, provided, the bond is furnished as provided in the following section, but the person or persons carrying on said lumbering operation, shall be liable for all the actual damage done to said land by said men and teams or log haulers so crossing said land.

**Sec. 57. Damages, how ascertained in case of disagreement; bond; proceedings to fix amount of bond.** R. S. c. 23, § 50. Should the person or persons carrying on said lumbering operation, and the owners of said land, be unable to agree upon said damages, such person or persons before cross-

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ing, or entering upon said land for the purposes aforesaid, as provided by the preceding section, shall give bond to the owners of said land with sufficient sureties, and in such sum as the county commissioners in the county in which said land lies shall determine and approve, conditioned to pay such sum as said owners of said land may recover as damages and costs as provided by section fifty-eight. In case all or a part of the owners of said land are unknown, the county commissioners shall before fixing the amount of the bond, appoint a time and place for hearing thereon, and give notice thereof by publication in the county paper two successive weeks, the last publication to be seven days before said hearing, and in such case the bond shall be given to the treasurer of the county for the use and benefit of all the owners in proportion to their respective rights in the land.

**Sec. 58. Damages may be fixed by county commissioners; tender and its effect.** R. S. c. 23, § 51. Should the person or persons carrying on said lumbering operation, and the owners of said land be unable to agree upon said damages, either party may, within twelve months from the time said bond is approved, apply to the county commissioners of the county in which said land lies and cause said damages to be ascertained and determined in the same manner and under the same conditions and restrictions as are prescribed by law in the laying out of railroads. Failure to apply for damages within said one year shall be held to be a waiver of the same. The person or persons liable for said damages may make a tender to any land owner damaged under the provisions of the two preceding sections, and if such land owner recovers more damages than the amount tendered him for such, he shall recover costs and the expenses of the county commissioners; otherwise the person or persons liable for said damages shall recover costs and such expenses. A tender made to any person who owns an undivided interest in land thus damaged shall be sufficient under this section.

See c. 56, § 31.

**Ways in Incorporated Places.**

**Sec. 59. Proceedings before commissioners, on petition for laying out highway; appeal; stay of proceedings.** R. S. c. 23, § 52. Parties interested may appear, jointly or severally, at the time of hearing, before the commissioners, on a petition for laying out, altering, grading or discontinuing a highway; and any such party may appeal from their decision thereon, at any time after it has been placed on file, and before the next term of the supreme judicial court in said county, at which term such appeal may be entered and prosecuted by him, or by any other party who so appeared. And all further proceedings before the commissioners shall be stayed until a decision is made in the appellate court.

32 Me. 454; 42 Me. 400; 51 Me. 194, 385; 63 Me. 29, 570; 64 Me. 435, 437, 586; 68 Me. 407; 78 Me. 172, 538; 81 Me. 259; 83 Me. 437; 91 Me. 51.

**Sec. 60. Proceedings on appeal.** R. S. c. 23, § 53. If no person appears at that term to prosecute the appeal, the judgment of the commissioners may be affirmed. If the appeal is then entered, not afterwards, the court may appoint a committee of three disinterested persons, who shall be sworn, and if one of them dies, declines or becomes interested, the court may appoint some suitable person in his place, and they shall give such notice

as the court has ordered, view the route, hear the parties, and make their report at the next or second term of the court after their appointment, whether the judgment of the commissioners should be in whole or in part affirmed or reversed; which being accepted and judgment thereon entered, shall forthwith be certified to the clerk of the commissioners.

8 Me. 146; 11 Me. 473; 31 Me. 447; 32 Me. 454; 33 Me. 370; 37 Me. 448; 42 Me. 400; 53 Me. 387, 434; 56 Me. 262; 59 Me. 263, 514; 63 Me. 111; 64 Me. 586; 67 Me. 531; 81 Me. 259; 83 Me. 435; 86 Me. 185; 112 Me. 319.

**Sec. 61. Judgment on appeal; its effect.** R. S. c. 23, § 54. 1915, c. 62, § 3. If the judgment of the commissioners in favor of laying out, grading or altering a way, as prayed for, is wholly reversed on appeal, they shall proceed no further; and in all cases when the judgment of the commissioners is reversed on appeal, no petition praying, substantially, for the same thing shall be entertained by them for two years thereafter. If their judgment is affirmed in whole or in part, they shall carry into effect the judgment of the appellate court; and in all cases they shall carry into full effect the judgment of the appellate court in the same manner as if made by themselves; and the party appealing or prosecuting shall pay the costs incurred since the appeal, if so adjudged by the appellate court, which may allow costs in such cases to the prevailing party, to be paid out of the county treasury. The committee shall be allowed a reasonable compensation for their services, to be fixed by the court upon the presentation of their report and paid from the county treasury upon the certificate of the clerk of courts. The costs allowed the prevailing party, and the fees of the committee, shall be collected as provided in section three; provided, however, that this section shall not apply to any case where the judgment has been reversed on account of informality in the proceedings.

32 Me. 473; 42 Me. 401; 53 Me. 86; 59 Me. 451; 67 Me. 531; 68 Me. 485; 80 Me. 428; 83 Me. 435; 91 Me. 51.

**Sec. 62. Committee, when to be sworn.** R. S. c. 23, § 55. All such committees, whether agreed on or appointed on appeal from the county commissioners, may be sworn at any time before viewing the route and hearing the parties.

83 Me. 435.

### Liability for Repair of Ways, and for Injuries.

**Sec. 63. Ways to be kept open and in repair.** R. S. c. 23, § 56. Highways, town ways and streets, legally established, shall be opened and kept in repair so as to be safe and convenient for travelers with horses, teams and carriages. In default thereof, those liable may be indicted, convicted and a reasonable fine imposed therefor.

Ways not established by statute provisions. 2 Me. 60; 3 Me. 273; 4 Me. 272; 5 Me. 368; 11 Me. 280; 18 Me. 68, 412; 21 Me. 174; 25 Me. 299; 35 Me. 104, 169; 37 Me. 70; 40 Me. 155; 42 Me. 23; 46 Me. 427; 47 Me. 344; 48 Me. 457; 51 Me. 260; 54 Me. 364; 56 Me. 348; 73 Me. 54.

Ways presumed to be legally established. 34 Me. 245; 37 Me. 55, 507; 39 Me. 300.

Liability for repair. 5 Me. 256; 15 Me. 407; 16 Me. 189; 18 Me. 287; 35 Me. 104; 36 Me. 397; 37 Me. 251; 38 Me. 221; 46 Me. 485; 51 Me. 128, 131, 533; 57 Me. 533, 536; 62 Me. 105, 470, 472; 63 Me. 477, 550-1; 64 Me. 60; 65 Me. 37, 286, 515, 550; 68 Me. 153, 360; 69 Me. 107; 82 Me. 276; 84 Me. 23; 85 Me. 281; 98 Me. 484; 99 Me. 526; 104 Me. 211; 105 Me. 575.

Traveler and negligence. 62 Me. 470, 472; 67 Me. 168; 70 Me. 306.

Generally. 12 Me. 301; 58 Me. 57; 68 Me. 499.

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**Sec. 64. Proceedings before county commissioners against town neglecting to repair ways.** R. S. c. 23, § 57. When a town liable to maintain a way, unreasonably neglects to keep it in repair, as aforesaid, after one of the municipal officers has had five days' actual notice or knowledge of the defective condition, any three or more responsible persons may petition the county commissioners for the county, setting forth such facts, who, if satisfied that such petitioners are responsible for the costs of the proceedings, shall fix a time and place near such defective way, for a hearing on such petition, and cause such notice thereof to be given to the town and petitioners as they may prescribe. At the time appointed, the commissioners shall view the way, alleged to be out of repair, and hear the parties interested, and if they adjudge the way to be unsafe and inconvenient for travelers, horses, teams and carriages, they shall prescribe what repairs shall be made, fix the time in which the town shall make them, give notice thereof to the municipal officers and award the costs of the proceedings against the town. If they adjudge the way to be safe and convenient, they shall dismiss the petition and award the costs against the petitioners. If they find that the way was defective at the time of presentation of the petition, but has been repaired before the hearing, they may award the costs against the town, if in their judgment justice requires it.

90 Me. 483; 98 Me. 109, 131; 99 Me. 526.

**Sec. 65. Petition, its presentation.** R. S. c. 23, § 58. Such petition may be presented to said commissioners at any of their sessions, or in vacation to their chairman, who shall procure the concurrence of his associates in fixing the time and place in the order of notice, and cause the petition to be entered at their next session. And they shall make full return of their proceedings on the petition, and cause the same to be recorded as of their next regular term after the proceedings are closed.

98 Me. 131; 99 Me. 526.

**Sec. 66. Proceedings when towns neglect to make repairs ordered; warrant of distress.** R. S. c. 23, § 59. If the town neglects to make the repairs prescribed by the commissioners, within the time fixed therefor in such notice to the town, they may cause it to be done by an agent, not one of themselves. Such agent shall cause the repairs to be made forthwith, and shall render to the commissioners his account of disbursements and services in making the same. His account shall not be allowed without such notice to the town, as the commissioners deem reasonable. When the account is allowed, the town becomes liable therefor, with the agent's expenses in procuring the allowance of his account, and interest after such allowance, and said commissioners shall render judgment therefor against the town in favor of the agent. If a town neglects to pay said judgment for thirty days after demand, a warrant of distress shall be issued by the commissioners to collect the same.

98 Me. 131; 99 Me. 526.

**Sec. 67. Ways on line between towns, how divided; liability of towns.** R. S. c. 23, § 60. When a way is established on a line between towns, their municipal officers shall divide it crosswise, and assign to each town its portion thereof by metes and bounds, which, within one year thereafter, being

accepted by each town, at a legal meeting, shall render each town liable, in the same manner as if the way were wholly within the town; when a division of it is not so made, the selectmen of either town may petition the county commissioners, who shall give notice by causing a copy of such application with their order thereon appointing a time and place of hearing, to be served upon the clerk of each town thirty days, or by causing it to be published in some newspaper printed in the county for three weeks, previous to the time appointed; and after hearing the parties, they may make such division.

52 Me. 214; 74 Me. 201.

**Sec. 68. Ways laid out between towns, how divided, for repair.** R. S. c. 23, § 61. A highway may be laid out on the line between towns, part of its width being in each, and the commissioners may then make such division of it and enter the same of record, and each town shall be liable in all respects, as if the way assigned to it were wholly in the town.

52 Me. 214.

**Sec. 69. Bridge in highway crossing town line.** 1905, c. 152. Whenever a highway located after the first day of January, nineteen hundred and six, crosses any river which divides towns, the expense of constructing, maintaining and repairing any bridge across such river shall be borne by such towns in proportion to their last state valuation prior to such location.

**Sec. 70. Snow to be trodden down; sudden injuries to be repaired; damage may be recovered of town.** R. S. c. 23, § 62. When any ways are blocked or encumbered with snow, the road commissioner shall forthwith cause so much of it to be removed or trodden down, as will render them passable. The town may direct the manner of doing it. In case of sudden injury to ways or bridges, he shall, without delay, cause them to be repaired. And all damage accruing to a person in his business or property, through neglect of such road commissioner or the municipal officers of such town, to so render passable, ways that are blocked or encumbered with snow, within a reasonable time, may be recovered of such town by a special action on the case.

96 Me. 133; 110 Me. 553; 112 Me. 173.

**Sec. 71. Mail routes, apparatus for opening; fences may be taken down to prevent drifting; to be replaced.** R. S. c. 23, § 63. There shall be furnished and kept in repair in each section of the town, through which there is a mail route, some effectual apparatus for opening ways obstructed by snow, to be used to break and keep open the way to the width of ten feet, and the municipal officers of towns, or any road commissioner under their direction, may take down fences upon the line of public highways when they deem it necessary to prevent the drifting of snow therein; but they shall in due season be replaced, in as good condition as when taken down, without expense to the owner.

**Sec. 72. Trees may be planted.** R. S. c. 23, § 64. A sum not exceeding five per cent of the amount raised for repair of ways and bridges may be expended by a road commissioner under the direction of the municipal officers, in planting trees about public burying-grounds, squares and ways, if the town by vote authorizes it.

See c. 4, § 98, ¶ 6.

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**Sec. 73. Materials may be taken from lands not enclosed or planted.** R. S. c. 23, § 65. A road commissioner may remove any obstacle, which obstructs or is likely to obstruct a way, or render its passage dangerous. He may dig for stone, gravel or other material suitable for making or repairing ways in land not enclosed or planted, and remove the same to the ways. If the land from which such materials were taken is not within the limits of the way, the owner of it shall be paid therefor in money by the town, to be recovered after demand and refusal by the road commissioner, in an action as on an implied promise.

11 Me. 274; 13 Me. 254; 16 Me. 190; 25 Me. 128; 32 Me. 328; 38 Me. 221;  
43 Me. 332; 51 Me. 359; 66 Me. 235; 68 Me. 361, 499; 78 Me. 30; 89 Me. 262;  
105 Me. 575.

**Sec. 74. Municipal officers may take land for highway purposes; county commissioners may ascertain damages.** 1915, c. 195. The municipal officers of any city, town or plantation may purchase, take over and hold for any city, town or plantation, for public use, such materials and land as may be necessary to provide a change of location or alignment of any highway, or to secure materials, including clay, gravel, sand and rock, with the necessary ways and access thereto, for the improvement, construction and maintenance of highways. If the municipal officers of any city, town, or plantation are unable to purchase such materials, or land with the necessary ways and access thereto, at what they deem a reasonable valuation, the county commissioners of the county wherein such material or land is located shall, on petition of the municipal officers, or interested parties, ascertain and determine the damages in the same manner as provided by statute for land taken for highway purposes and all parties aggrieved by the estimate of damages shall have like remedy as provided by statute for appraisal of damages for land taken by towns for highway purposes.

**Sec. 75. Duties of road commissioners.** R. S. c. 23, § 66. Road commissioners shall go over the roads in their towns or cause it to be done, in April, May, June, August, September, October and November in each year, remove the loose obstructions to the public travel, and whenever so directed by the selectmen, remove all shrubbery and bushes growing within the limits of highways, not planted or cultivated therein for the purpose of profit or ornamentation, having care for the proper preservation of shade trees, and repair such defects as may occur from time to time, rendering travel dangerous, or they shall give notice of such defects to the municipal officers, under a penalty of five dollars for neglect of such duty.

**Sec. 76. Repair of roads, by road machines after August tenth; state aid may be withheld, for violation.** 1915, c. 27. Whenever a road commissioner, officer or employee of any city or town improves any highway with a road machine or any similar device after the tenth day of August in any year, except by light smoothing or maintenance work, a surface of gravel to the average depth of six inches shall be immediately placed on the section of the highway so improved. Whenever a road commissioner, official or employee of any city or town violates this section, the state highway commission shall cause to be withheld all moneys due such city or town for such year, for highway purposes under chapter twenty-five. This



section shall not apply to such highways as are improved under the direction of the state highway commission.

**Sec. 77. Towns shall make annual appropriations for clearing away and beautifying roadsides.** 1915, c. 177, § 1. Each city, town or plantation shall each year set aside five per cent of the money raised and appropriated for ways and bridges, to be used in cutting and removing all trees, shrubs and useless fruit trees, bushes and weeds, (except shade trees, timber trees, cared-for fruit trees, and ornamental shrubs) growing between the road limit and the wrought part of any highway or town way, until all the trees, shrubs and worthless fruit trees, bushes and weeds, have been once removed from the limits of such highway or town way, after which the owner of the land adjoining such highway or town way, shall each year before the first day of October, remove all bushes, weeds, worthless trees and grass from the roadside adjoining his cultivated or mowing fields. The city, town or plantation shall care for all land not included in the above, except wild land.

**Sec. 78. Penalty for failure to comply with law.** 1915, c. 177, § 2. If any owner of such land fails to cut and remove said bushes, weeds, worthless trees and grass, on or before the first day of October of each year, the mayor of any city, the selectmen of any town, or the assessors of any plantation wherein said land may be located, shall cause said bushes, weeds, worthless trees and grass to be cut and removed. The actual expense of such cutting and removal shall be a lien upon said land so adjoining said highway or town way, and shall be assessed and collected as a tax thereon.

**Sec. 79. Towns shall not place materials on lands beside of the roads without clearing away of same; owner may remove at expense of town.** 1915, c. 177, § 3. If any city, town or plantation in the construction or repair of its highways places any stone, sods or other material upon land within the limit of any highway which the owner has cleared from stone and smoothed so that it is tillable land and so used, said city, town or plantation shall within thirty days remove the same from such land. Failing to do this, the owner of said land may remove such stone, sods or other material therefrom and be paid the same price per hour for such removal as is paid by said city, town or plantation for labor in the construction and repair of its roads.

**Sec. 80. Watercourses not to be so made as to do injury; remedy.** R. S. c. 23, § 67. No road commissioner without written permission from the municipal officers, shall cause a watercourse to be so constructed by the side of a way as to incommode any person's house or other building, or to obstruct any one in the prosecution of his business. Any person so aggrieved may complain to the municipal officers, who shall view the watercourse and may cause it to be altered as they direct.

See c. 22, § 26; 32 Me. 327; 63 Me. 480; 86 Me. 380; 89 Me. 427; 113 Me. 67.

**Sec. 81. Drainage of public way shall not be obstructed.** 1913, c. 19, § 1. 1915, c. 122. No person, by himself, his agents or servants, other than a person having legal supervision of a public way, shall cultivate, in connection with the improvement of lands adjacent thereto, any portion of the wrought part of any public way, in such manner as to change the drainage thereof or obstruct said way; nor shall any person, by himself,

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his agents or servants, other than a person having legal supervision of a public way, deposit within or along any ditch or drain in a public way any material that shall obstruct the flow of water in such ditch or drain or otherwise obstruct said way; provided, however, that with the written consent and in accordance with specifications of the legal authorities having supervision of such ditch or drain, any person may, to provide egress and regress to and from lands occupied by him, lawfully construct and maintain a bridge across such ditch or drain.

**Sec. 82. Penalty; jurisdiction of prosecutions.** 1913, c. 19, §§ 2, 3. Whoever wilfully violates any provision of the preceding section shall be punished, for the first offense, by a fine of not less than five dollars nor more than ten dollars and costs, and for each subsequent offense, by a fine of not less than ten dollars nor more than twenty-five dollars and costs, and shall be further liable for double the amount of the actual damage; to be recovered in an action on the case by the city, town or plantation, or in behalf of any unorganized place, by the county, where the offense is committed. All fines recovered under the provisions of this section shall be paid to the treasurer of the city, town or plantation, or, for an unorganized place, to the treasurer of the county, where such offense is committed and shall thereafter be expended in the construction and maintenance of public ways or drains therein. In all prosecutions under this section, municipal and police courts and trial justices within their respective counties, shall have, upon complaint, original and concurrent jurisdiction with the supreme judicial court and superior courts.

**Sec. 83. Municipal officers and county commissioners shall enter complaint.** 1913, c. 19, § 4. Every municipal officer of a city, town or plantation, or for an unorganized place, every county commissioner, when his attention is directed to any violation of section eighty-one, within his jurisdiction, shall enter complaint against the offender and prosecute the same to final judgment.

**Sec. 84. Damages by raising or lowering streets, how determined.** R. S. c. 23, § 68. When a way or street is raised or lowered by a road commissioner or person authorized, to the injury of an owner of adjoining land, he may, within a year, apply in writing to the municipal officers and they shall view such way or street and assess the damages, if any have been occasioned thereby, to be paid by the town, and any person aggrieved by said assessment, may have them determined, on complaint to the supreme judicial court, in the manner prescribed in section twenty of this chapter. Said complaint shall be filed at the term of the supreme judicial court, next to be held within the county where the land is situated, after sixty days from the date of assessment.

43 Me. 332; 65 Me. 592; 79 Me. 368; 82 Me. 535; 86 Me. 369; 101 Me. 539; 102 Me. 398; 105 Me. 303; 113 Me. 67.

**Sec. 85. When appropriation insufficient, procedure.** R. S. c. 23, § 69. When the amount appropriated is not sufficient to repair the ways a road commissioner may, with the written consent of the selectmen, employ inhabitants of the town to labor on such ways, to an amount not exceeding fifteen per cent of the amount so appropriated and in addition thereto.

3 Me. 446; 13 Me. 294; 30 Me. 159; 34 Me. 406; 51 Me. 352; 55 Me. 437; 84 Me. 22.

**Sec. 86.** Towns may raise and assess moneys for bridges and ways. R. S. c. 23, § 70. Towns shall annually raise money to be expended on town ways and highways, and for the repair of bridges, and the same shall be assessed and collected, as other town taxes, and expended for said purposes, by a road commissioner or commissioners.

72 Me. 517.

**Sec. 87.** When and how money shall be expended. R. S. c. 23, § 71. Sixty-five per cent of the highway taxes assessed shall be expended upon the highways prior to the fifteenth day of July, and the balance at such time as the commissioner deems for the best good of the public.

**Sec. 88.** Powers and duties of road commissioner. R. S. c. 23, § 72. The road commissioner under the direction of the selectmen, shall have charge of the repairs of all highways and bridges within the towns and shall have authority to employ the necessary men and teams, and purchase timber, plank and other material for the repair of highways and bridges. He shall give bond to the satisfaction of the selectmen, and be responsible to them for the expenditure of money, and discharge of his duties generally. His compensation shall be such sum as the towns shall annually vote therefor, which sum shall, in no case be less than one dollar and fifty cents a day, for every day of actual service; and he shall render to the selectmen monthly statements of his expenditures, and receive no money from the treasury except on the order of the selectmen.

See c. 4, §§ 16, 17; 95 Me. 482; 102 Me. 25.

**Sec. 89.** Commissioner shall keep account of expenditures. R. S. c. 23, § 73. He shall keep accurate accounts, showing in detail, all moneys paid out by him, to whom and for what purpose; he shall settle his accounts on or before the twentieth day of February, annually, and the same shall be reported in the annual town report in detail.

**Sec. 90.** Wide wheels and watering troughs, abatement therefor; public drinking troughs and fountains. R. S. c. 23, § 74. 1911, c. 136. A town at its annual meeting may authorize its assessors to abate not exceeding three dollars of the tax of any person, upon proof that he has owned and used on the ways during that year cart wheels having felloes not less than six inches wide. And they shall abate five dollars from the tax of any inhabitant, who shall construct, and during the year keep in repair a watering trough beside the highway, well supplied with water, the surface of which shall be two feet or more above the level of the ground, and easily accessible for horses and carriages, if the assessors think such watering trough for the public convenience. If more than one person in the same locality claims to furnish it, the municipal officers shall decide where it shall be located. Such officers may establish and maintain such public drinking troughs, wells and fountains within the public highways, squares and commons of their respective towns, as in their judgment the public necessity and convenience require; and towns may raise and appropriate money to defray the expense thereof.

See c. 4, § 98, ¶ 6; 57 Me. 539; 67 Me. 138.

**Sec. 91.** Ways may be opened or repaired by contract. R. S. c. 23, § 75. Towns may authorize their road commissioners or other persons to make contracts for opening or repairing their ways.

102 Me. 437; 105 Me. 576.

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**Sec. 92.** Persons injured by defect in highways may recover damages; limitation; when previous notice must have been given; county commissioners or town officers must be notified in writing within fourteen days; damages for loss of life; view may be ordered at trial. R. S. c. 23, § 76. Whoever receives any bodily injury, or suffers damage in his property, through any defect or want of repair or sufficient railing, in any highway, town way, causeway or bridge, may recover for the same in a special action on the case, to be commenced within one year from the date of receiving such injury, or suffering damage, of the county or town obliged by law to repair the same, if the commissioners of such county, or the municipal officers or road commissioners of such town, or any person authorized by any commissioner of such county or any municipal officer, or road commissioner of such town, to act as a substitute for either of them, had twenty-four hours' actual notice of the defect or want of repair; but not exceeding two thousand dollars in case of a town; and if the sufferer had notice of the condition of such way previous to the time of the injury, he cannot recover of a town unless he has previously notified one of the municipal officers of the defective condition of such way; and any person who sustains injury or damage, as aforesaid, or some person in his behalf, shall within fourteen days thereafter, notify one of the county commissioners of such county, or of the municipal officers of such town, by letter or otherwise, in writing, setting forth his claim for damages and specifying the nature of his injuries and the nature and location of the defect which caused such injury. If the life of any person is lost through such deficiency, his executors or administrators may recover of such county or town liable to keep the same in repair, in an action on the case, brought for the benefit of the estate of the deceased, such sum as the jury may deem reasonable as damages, if the parties liable had said notice of the deficiency which caused the loss of life; at the trial of any such action the court may, on motion of either party, order a view of the premises where the defect or want of repair is alleged, when it would materially aid in a clear understanding of the case.

When and how ways should be constructed. 18 Me. 288; 26 Me. 240; 33 Me. 460; 39 Me. 115; 46 Me. 485.

Defective ways. 11 Me. 273; 14 Me. 200, 203; 16 Me. 189; 17 Me. 201; 18 Me. 287; 26 Me. 239; 32 Me. 49; 35 Me. 104; 36 Me. 398; 37 Me. 251; 39 Me. 115; 42 Me. 253, 526; 46 Me. 485; 51 Me. 186, 314, 533; 55 Me. 48; 56 Me. 17; 62 Me. 470; 64 Me. 60, 62; 65 Me. 285; 66 Me. 348, 402; 68 Me. 366; 69 Me. 73; 72 Me. 250, 540; 74 Me. 536; 76 Me. 427; 82 Me. 437; 87 Me. 265; 90 Me. 487; 91 Me. 566; 94 Me. 165; 95 Me. 374; 98 Me. 484; 104 Me. 211.

Damage. 14 Me. 205; 16 Me. 191; 20 Me. 248; 29 Me. 311; 31 Me. 301; 32 Me. 273, 538; 33 Me. 272; 41 Me. 533; 50 Me. 223; 51 Me. 440; 61 Me. 203; 82 Me. 438.

Defect sole cause of damage. 18 Me. 288; 20 Me. 50; 32 Me. 50, 576; 38 Me. 206, 445; 42 Me. 335, 347; 43 Me. 496; 51 Me. 127; 61 Me. 572; 64 Me. 53; 65 Me. 550; 66 Me. 402; 68 Me. 154; 69 Me. 73; 74 Me. 533; 97 Me. 519.

Due care. 11 Me. 337; 14 Me. 200; 18 Me. 288, 381; 21 Me. 31; 26 Me. 240; 31 Me. 301; 32 Me. 54, 576; 38 Me. 207, 445; 42 Me. 336; 43 Me. 496; 50 Me. 224; 64 Me. 544; 65 Me. 285; 70 Me. 306; 72 Me. 541; 77 Me. 44; 78 Me. 200; 81 Me. 188; 82 Me. 438; 84 Me. 334; 97 Me. 519; 109 Me. 467.

Notice of defects. 7 Me. 445; 21 Me. 31; 23 Me. 558; 32 Me. 272; 42 Me. 203; 51 Me. 533; 56 Me. 17; 68 Me. 360, 513; 69 Me. 74; 70 Me. 123; 72 Me. 252; 74 Me. 147, 533; 75 Me. 559; 77 Me. 384; 80 Me. 598; 82 Me. 65, 75, 437; 84 Me. 147; 87 Me. 188, 231, 528; 88 Me. 297, 467; 90 Me. 131, 213, 487; 93 Me. 361; 94 Me. 268; 96 Me. 320; 98 Me. 305; 104 Me. 208, 498; 105 Me. 148; 108 Me. 543; 109 Me. 370.

Notice of claim. 64 Me. 134; 66 Me. 333, 454, 549; 68 Me. 513; 69 Me. 196; 70 Me. 124; 73 Me. 486; 75 Me. 81, 115; 83 Me. 428; 84 Me. 278, 577; 87 Me. 231; 88 Me. 474; 94 Me. 234; 99 Me. 239; 104 Me. 498; 105 Me. 145; 106 Me. 225; 110 Me. 538; 113 Me. 509.

Evidence. 15 Me. 27; 31 Me. 301; 33 Me. 460; 35 Me. 104; 37 Me. 251; 39 Me. 301; 109 Me. 469.

Generally. 12 Me. 301; 57 Me. 376; 63 Me. 477, 550; 65 Me. 37, 38; 67 Me. 167; 69 Me. 280; 76 Me. 532; 83 Me. 416.

As to liability of state when cause of action relates to state or state aid highways, c. 25, § 29.

**Sec. 93. Repair within six years, proof of way.** R. S. c. 23, § 77. When on trial of any such action or indictment, it appears that the defendant county or town has, within six years before the injury, made repairs on the way or bridge, it shall not deny the location of such way or bridge.

5 Me. 368; 12 Me. 237; 51 Me. 187; 54 Me. 94; 58 Me. 349; 66 Me. 349.

**Sec. 94. No liability if load exceeds six tons.** R. S. c. 23, § 78. No town is liable for such an injury when the weight of the load, exclusive of the carriage, exceeds six tons. Proof of its weight must be made by the plaintiff.

See c. 26, § 11.

**Sec. 95. Slippery sidewalk no cause of action.** R. S. c. 23, § 79. No town is liable to an action for damages to any person on foot, on account of snow or ice, on any sidewalk or cross-walk, nor on account of the slippery condition of any sidewalk or cross-walk.

**Sec. 96. Railroad company may be notified of suit against town for defective crossing.** R. S. c. 23, § 80. In an action against a town for damages alleged to have occurred by reason of a defect in a railroad crossing, constituting part of a highway which said town is obliged to keep in repair, the railroad company owning or occupying such crossing, may be notified of the pendency of the suit, and take upon itself the defense of the same.

**Sec. 97. Liability of railroad company.** R. S. c. 23, § 81. In such trial, after notice as provided in the preceding section, if the plaintiff recovers, and the jury finds specially that the damage was occasioned by the fault of such company, it shall be liable to the defendants in said suit in an action of debt for all damage and costs paid by them.

66 Me. 486; see c. 25, § 29.

**Sec. 98. Notice to company.** R. S. c. 23, § 82. The notice required in section ninety-six, shall be by copy of the writ served upon the company at least thirty days before the sitting of the court in which it is returnable, or by such notice as the court may order after entry.

**Sec. 99. One indictment only at a term.** R. S. c. 23, § 83. One indictment only for neglect to open ways or to keep them in repair shall be presented against a town at the same term of court; but it may contain as many counts as are necessary to describe all portions of ways alleged to be defective. The word "highway" used therein includes town ways, causeways and bridges.

See c. 1, § 6, ¶ 6; c. 26, § 1; 18 Me. 69; 59 Me. 452.

**Sec. 100. Agents appointed to expend fines; their duties.** R. S. c. 23, § 84. All fines imposed shall be appropriated to the repair of such ways. The court imposing them shall appoint one or more agents to superintend their collection and application. Within three months after collection, they shall make return of their doings to the clerk of the court, to remain on file for the inspection of those interested, and subject, on their motion, to be

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audited and corrected by the court. If an agent is guilty of gross neglect of duty, or fraudulently misapplies or retains the fine, he forfeits to the town double its amount, to be recovered by indictment.

65 Me. 212.

**Sec. 101. Clerk of court to certify fines to assessors; how collected and paid.** R. S. c. 23, § 85. When a fine is imposed on a town, the clerk of the court shall certify it forthwith to the assessors; who shall assess the amount thereof, as other town taxes, certify the same to said clerk, and cause the amount to be collected by their collector, who shall pay the same to such agent at such time as the court orders. If not paid by that time, the clerk, on application of such agent, shall issue a warrant for its collection, as the treasurer of state may do for the collection of a state tax.

65 Me. 211; see c. 10, § 89.

**Sec. 102. If way is not repaired in four months, fine to be collected.** R. S. c. 23, § 86. If the assessors neglect to make such assessment and to certify it to the clerk, and the defective way is not repaired to the acceptance of such agent within four months after notice of the fine, the court may issue a warrant to collect of the town the fine and costs, or the unpaid part thereof.

**Sec. 103. When gates, bars, and fences on ways may be removed.** R. S. c. 23, § 87. Any person may take down and remove gates, bars or fences, upon or across any highway or town way, unless they are there to prevent the spread of infectious disease, or were placed there by license of the county commissioners or municipal officers of the town. To those granting such license, a person aggrieved by such removal may apply, and on proof that such erections were made by their license, they may order them to be replaced by the person who removed them.

12 Me. 38; 59 Me. 144.

**Sec. 104. Road commissioner may remove logs and lumber as a nuisance; proceedings.** R. S. c. 23, § 88. When logs, lumber or other obstructions, without necessity are left on such ways, any road commissioner may remove them; and he shall not be liable for loss or damage thereof, unless occasioned by design or gross negligence. When no one appears to pay the expense and trouble of removal, he may sell at public auction so much thereof, as is sufficient for the purpose, with charges of sale, posting notice of the time and place of sale in two public places in the town seven days prior thereto. The person, through whose neglect or wilful default they were left, may be prosecuted as for a nuisance.

12 Me. 38; 35 Me. 253; 46 Me. 485; 47 Me. 162; 51 Me. 262; 54 Me. 47; 68 Me. 361.

**Sec. 105. Persons convicted of nuisance to pay, if materials are not sufficient.** R. S. c. 23, § 89. When any thing has been adjudged to be a nuisance and to be abated, and the materials of which it is composed do not, on sale as aforesaid produce sufficient to pay the charges of prosecution, removal and sale, the court may order the deficiency to be raised by levy on the personal property of the person convicted of causing such nuisance.

**Sec. 106. When buildings and fences on a street or way become bounds; estoppel created by writing under seal.** R. S. c. 23, § 90. When buildings

or fences have existed more than twenty years fronting upon any way, street, lane or land appropriated to public use, the bounds of which cannot be made certain by records or monuments, such buildings or fences shall be deemed the true bounds thereof. When the bounds can be so made certain, no time less than forty years will justify their continuance thereon, and on indictment and conviction they may be removed. Persons owning lands beside a highway or town way, on which are buildings or fences that encroach within the limits of said way, may by a writing under seal, by them signed and acknowledged, and recorded in the registry of deeds for the county or registry district, in which the land lies, admit to the municipal officers of the town in which said way exists, the true bounds or limits of said way, and the extent of their wrongful occupancy thereof. And thereafter such persons, and all claiming title under or through them, shall be estopped from asserting any right to the continuance of such buildings or fences within said limits, for the full term of forty years from the date of such deed.

See c. 23, § 11; 59 Me. 144; 73 Me. 359; 79 Me. 273; 82 Me. 395; 83 Me. 511; 85 Me. 422; 90 Me. 136, 234; 94 Me. 527; 110 Me. 364.

**Sec. 107. Towns required to maintain guide-posts at crossings of ways.** R. S. c. 23, § 91. 1911, c. 27. 1915, c. 60. Towns shall erect and maintain at all crossings of highways, and where one public highway enters another, substantial guide-posts not less than eight feet high, and fasten to the upper end of each a board, on which shall be plainly printed, in black letters on white ground, the name of the next town on the route, and of such other place as the municipal officers direct, with the number of miles thereto, and a figure of a hand with the forefinger pointing thereto. If erected on state or state aid highways, such guide-posts and guide-boards shall be of such reasonable form, height and design as the state highway commission may direct; and for any neglect hereof towns are subject to a fine of not less than ten, nor more than fifty dollars, to be recovered by complaint or indictment. Judges of municipal and police courts and trial justices within their respective counties shall have original and concurrent jurisdiction with the supreme judicial and superior courts; and of all fines provided for by this section, and recovered on complaint, one-half shall go to the prosecutor and one-half to the county where the town committing the offense is situated.

See c. 25, § 6; c. 129, § 24; 72 Me. 287; 100 Me. 402.

**Sec. 108. Penalty for neglect by town or plantation officers.** R. S. c. 23, § 92. If the municipal officers of any town unreasonably neglect to cause a guide-post to be erected in their town as provided by law, they forfeit five dollars for each month's neglect, to be recovered in an action on the case by any person suing therefor. Plantations assessed in state or county taxes, and their officers, are under the same obligations and subject to the same penalties in these respects as towns.

72 Me. 287.

**Sec. 109. Excavations near ways, how to be made; responsibilities.** R. S. c. 23, § 93. Persons desiring to make an excavation near a street or public way, may make written application to the municipal officers setting forth its nature and extent, and requesting their direction thereon; such officers

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shall in writing direct whether it may or not be made, and if permitted, the manner of making it; and when so made, no liability is incurred thereby. If not so made, the person making it is liable to the town, in an action on the case, for all damages occasioned by the repair of the way, or paid to persons injured by defects therein, caused by such excavation.

54 Me. 47; 57 Me. 377.

**Sec. 110. Ice bridges may be made; penalty for injuring.** R. S. c. 23, § 94. Ice bridges may be constructed and maintained by persons for their own and the public use across any river or body of water, when its ordinary navigation is obstructed by ice. Whoever wilfully destroys such bridge to prevent its use, forfeits not less than five, nor more than twenty dollars, to be recovered by complaint, half to the complainant, and half to the state. No person shall take down or injure any fence or occupy any land for the construction or use of such a bridge without consent of the owner first obtained.

18 Me. 435.

**Sec. 111. Removal of trees at or near railroad crossings.** 1913, c. 189, § 1. Whenever the state highway commission deems that trees, bushes, or other encroachments within the limits of a public way obstruct the view at railroad crossings, or where one public way enters another, and thereby renders such way dangerous to travelers, it shall cause the removal of such obstructions. The state highway commission may also enter upon private property at such places and from time to time cause the removal of trees and bushes growing thereon and obstructing the view as aforesaid. Any damages sustained by such removal, after due notice given, shall be assessed and awarded by the state highway commission and paid in the same manner as prescribed by law in the case of damages by the laying out of highways, and appeals from the findings of the state highway commission shall be entered and prosecuted in like manner and be subject to like limitations.

**Sec. 112. Placing of turf in streets, etc., regulated.** 1913, c. 189, § 2. Placing turf in the traveled part of any highway, street or town way by any municipality, its employees or contractors is prohibited, unless said turf is cut fine or covered up. Upon violation of this section the state highway commission shall cause payment of state money for highways to such municipality to be withheld until such turf is removed at the expense of the municipality and the way restored to the satisfaction of the state highway commission.

**Sec. 113. Advertising signs regulated.** 1913, c. 189, § 3. No advertising signs shall be erected or maintained within five hundred feet of crossings of highways or within five hundred feet of where one public way enters another within the limits of such ways. The state highway commission shall cause any signs so erected to be removed at the expense of the person erecting or maintaining the same, to be recovered in an action on the case. Such person shall also be subject to fine not exceeding fifty dollars to be paid to the treasurer of state, and credited to the highway fund. The state highway commission shall cause the provisions of sections one hundred and seven and one hundred and eight of this chapter to be enforced on all state and state aid roads.



**Sec. 114. Contracts for construction of bridges, how awarded.** 1909, c. 202, § 3. Whenever any bridge within the state is to be constructed or repaired, at a cost of one thousand dollars or more, and the cost of such construction or repairs is to be paid wholly or in part by the state, the contract for the same shall be awarded as follows: The state highway commission, county commissioners or municipal officers within the county where said new construction or repairs are to be made shall advertise for sealed proposals not less than two weeks in such papers as the state highway commission may direct, the last advertisement to be at least one week before the time named therein for the closing of such bids. Sealed proposals submitted in accordance with said advertisement shall be addressed to the state highway commission or county commissioners having the construction in charge and shall remain sealed until opened in the presence of said commission or commissioners at such times as the state highway commission may direct.

**Sec. 115. Bond for performance of contract.** 1909, c. 202, § 4. No contract shall be awarded unless its faithful performance shall be secured to the state by a bond in penal sum of not less than twenty per cent of the amount of the contract.

Note. Chapter 319 of the Public Laws of 1915, entitled "An Act to Provide for State and County Aid in the Construction of Highway Bridges," approved April 2, 1915, was enacted subject to the approval of the voters of the state at the election held September 11, 1916. It was therefore omitted from this revision. The approval of this act was announced by proclamation of Governor Curtis, dated September 28, 1916; the act is printed in the appendix, page 1647.

### Excavations in City Streets.

**Sec. 116. Opening of streets in cities, regulated.** 1911, c. 34, § 1. Whenever the paving or repairing of any street or public highway shall have been ordered by the city council, the commissioner of public works or such officer as the city government may appoint, shall duly serve upon owners of property abutting on such street or highway, and upon all corporations, persons, firms, bridge or water districts occupying such street or highway, a notice directing such owners, corporations, persons, firms, bridge or water districts, to make such sewer, water, and conduit connections or other work, as may be designated, within sixty days from date of such notice. At the expiration of the time fixed, and after such street has been paved or repaired, no permit shall be granted to open such street for a period of five years except as hereinafter provided.

See c. 25, § 15.

**Sec. 117. Permits for digging or making excavations in case of emergency.** 1911, c. 34, § 2. If the owners, corporations, persons, firms, bridge or water districts comply with the notice given under the preceding section, the commissioner of public works, or such officer as the city government may appoint, may, in the case of an emergency, grant and renew permits for digging or making excavations in the driveways of any of the public highways of the city for the laying of gas, water, steam or ammonia pipes or conduits, or for any other lawful purpose. Every permit shall specify the time prescribed by resolution or ordinance, or when no time is prescribed, the commissioner of public works or such officer as the city government may appoint, shall specify a time during which said excavation

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may remain open, the place where such excavation may be made and the number of square yards of surface which may be disturbed.

**Sec. 118. Penalty.** 1911, c. 34, § 3. Any person or persons, firm, corporation, bridge or water district, who shall dig or make an excavation in the driveway of any public highway without first obtaining such permit as aforesaid or who having obtained such permit shall disturb a greater area of surface than specified in such permit, shall be punished by a fine of twenty-five dollars for each offense.

**Sec. 119. A record of all permits shall be kept; fees for permits.** 1911, c. 34, § 4. The commissioner of public works or such officer as the city government may appoint, shall keep a record of all permits granted by him, and before any permit is granted (work done by the city employees excepted) the applicant shall pay to the city treasurer for every permit for making an excavation within the driveways of any public highway paved with broken stone, granite block, wood block, brick, hassam, bitulithic or other permanent pavement as follows: For bitulithic, brick or wood block pavement, four dollars per square yard; and for all other pavements two dollars and fifty cents per square yard. All such fees paid to the city treasurer shall be regularly accounted for by him in his report to the city council, and shall constitute a special fund for the repaving of said cuts; when such cuts are repaired by the street department, the cost thereof shall be charged to said fund.

**Sec. 120. Unlawful to leave trench or excavation open, except by permission; method of filling trenches.** 1911, c. 34, § 5. It shall be unlawful for any person or persons, firm, corporation, bridge or water district, having the right of opening or making excavations within the driveways of public highways in the city, to leave open at any time any trench or excavation of a greater length than two hundred feet, except by permission of the officer granting such permit; and such person or persons, firm, corporation, bridge or water district, shall fully and completely fill up such trench to the surface of the bed upon which the pavement is to be relaid, before making any further trench or excavation; such filling shall be puddled or rammed as the nature of the soil may require, and shall be done and completed within the time designated in the permit for completing such trench or excavation; any person or persons, firm, corporation, bridge or water district, failing to comply with the requirements, or infringing on the prohibitions of this section, shall be punished by a fine of fifty dollars for each offense; provided, that these requirements, prohibitions and penalties shall not apply to excavations in grading, building or repairing any of the public highways under the supervision of the city authorities.

**Sec. 121. Paving shall be protected on either side of opening.** 1911, c. 34, § 6. Such person or persons, firm, corporation, bridge or water district, shall protect the paving on either side of the opening by the use of sheet piling or such other means as will prevent the escape of sand from underneath it; and in determining the number of square yards of paving disturbed, there shall be included such area of paving adjoining the trench actually opened, as will in the opinion of the commissioner of public works or such officer as the city government may appoint, be required to be taken up and relaid by reason of such failure to properly protect the same.

**Sec. 122. Work of repairing or filling trenches shall be skilfully done.** 1911, c. 34, § 7. If the work or any part thereof mentioned in the preceding sections of repairing or filling the trenches or excavations aforesaid, shall be unskilfully or improperly done, the commissioner of public works or such officer as the city government may appoint, may forthwith cause the same to be skilfully and properly done, and shall keep an account of the expense thereof; and in such case such person or persons, firm, corporation, bridge or water district, in default as aforesaid, shall forfeit and pay a penalty equal to the whole of said expense incurred by said commissioner of public works or such officer as the city government may appoint, with an addition of fifty per cent; and thereafter, that is to say, upon the completion of the work and the determination of the costs thereof, the said commissioner of public works or such officer as the city government may appoint, shall issue no further or new permit to any person or persons, firm, corporation, bridge or water district so in default, until he shall receive in addition to the fees herein above provided, the amount of the penalty as by this section provided and determined.

**Sec. 123. Relaying of pavements.** 1911, c. 34, § 8. When any excavation shall be made in any paved public highway and the trench shall have been filled as required by the two preceding sections, the commissioner of public works or such officer as the city government may appoint, shall relay the pavement; the cost thereof, including materials, labor and inspection, shall be paid out of any moneys in the city treasury standing to the credit of the regular fund for this purpose.

**Sec. 124. Map or sketch of location to be filed.** 1911, c. 34, § 9. The party applying for a permit for said excavation must file a map or sketch with the commissioner of public works or such officer as the city government may appoint, showing the location and size of cuts to be made.

**Sec. 125. Duty of commissioner of public works.** 1911, c. 34, § 10. When any excavation shall be made in any paved public highway and said pavement is repaired by a contractor or the commissioner of public works or such officer as the city government may appoint, the commissioner of public works or such officer as the city government may appoint, where said pavements are laid on a concrete base, shall have the concrete cut back on each side of the ditch a distance of eight inches, and in issuing the permits for cutting the pavements, this extra width shall be charged to the person applying for the same.

Note. The provisions of §§ 116 to 125, both inclusive, may be enforced by the state highway commission wherever state or state aid highways are affected, c. 25, § 15.

### **Repair of Private Ways Owned in Common.**

**Sec. 126. Owners of private ways and bridges may call meetings; proceedings.** R. S. c. 23, § 95. When four or more persons are owners and occupants of a private way or bridge, any three of them may make written application to a justice of the peace to call a meeting, who may issue his warrant setting forth the time, place and purpose thereof, a copy of which shall be posted at some public place in the town seven days before such time. When so assembled they may choose a clerk and a surveyor, to be sworn, and they may determine what repairs are necessary, and the ma-

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materials to be furnished or amount of money to be paid by each owner therefor and the manner of calling future meetings.

**Sec. 127. Surveyor's duties; penalty for neglect of owners to pay. R. S. c. 23, § 96.** The surveyor so chosen, with respect to such way or bridge, has the powers of a road commissioner. For refusing to accept the trust or to take the oath he forfeits four dollars, to be recovered as provided in section one hundred and twenty-nine. If any owner or occupant, on requirement of the surveyor, neglects to furnish his proportion of labor, materials or money, the same may be furnished by the other owners and occupants, and recovered of him in an action on the case.

**Sec. 128. Owners may contract for repair, and cause money to be assessed and collected. R. S. c. 23, § 97.** The owners, at such meeting, may authorize a contract to be made for making and keeping such way or bridge in repair, by the year or for a less time; may raise money for that purpose, and choose assessors to assess it on such owners and occupants in proportion to their interests, who shall deliver their assessment with a warrant for its collection to the surveyor. Such warrant shall be in substance such as is prescribed for collection of town taxes. The surveyor shall collect the same as town taxes are collected; and be liable for neglect of duty, as town collectors are for similar neglects.

See c. 11, § 8.

**Sec. 129. Penalties and process. R. S. c. 23, § 98.** Money recovered under the two preceding sections is for the use of such owners. In any process for its recovery, a description of them in general terms as proprietors and occupants of the way or bridge, clearly describing it therein, is sufficient. Such process is not abated by the death of any owner, or by the transfer of his interest.

**Note.** Ditches and drains may be constructed by municipal officers when necessary for care of highways, c. 22, § 26.

Jurisdiction of county commissioners to free toll-bridges, c. 27, §§ 24-27.

Municipal officers to grant permits for opening streets, c. 60, § 13, for erection of poles and wires therein, c. 60, § 27; as to damages occasioned thereby, c. 60, §§ 14, 16.

Owners of unincorporated tracts of land may raise money for roads, c. 62, § 28.

Protection of ways from overflow, c. 97, §§ 37-42.

Penalty for advertising upon rocks, or other natural objects in highway, c. 129, § 18.

Penalty for injuring guide-boards, c. 129, § 24.