

# MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

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THE MICHIE COMPANY, Inc.  
CHARLOTTESVILLE, VIRGINIA

## Chapter 45.

### Steam Railroads—Organization and Construction.

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#### Organizations.

**Sec. 1. Organization.**—Any number of persons not less than 10, a majority of whom shall be citizens of the state, may form a company for the purpose of constructing, maintaining and operating a railroad for public use in the conveyance of persons and property within the state, and for that purpose may make and sign articles of association in which shall be stated the name of the company, the gauge of the road, the places from which and to which the road is to be constructed, maintained and operated, the length of such road, as nearly as may be, and the name of each town and county in the state through which or into which it is to be made; the amount of the capital stock, which shall not be less than \$6,000 for every mile of road proposed to be constructed of the gauge of 4 feet 8½ inches, nor less than \$3,000 a mile for a narrower gauge, the number of shares of which said stock shall consist, and the names and places of residence of at least 5 persons, a majority of whom shall be citizens of the state, who shall act as directors of the proposed company and manage its affairs until others are chosen in their places. Each subscriber shall sign his name, residence and the number of shares which he agrees to take in said company. (R. S. c. 41, § 1.)

**Sec. 2. Stock requirements before articles filed.**—The articles of association shall not be filed and recorded in the manner provided in the following section until the capital stock named in section 1 has been subscribed thereto, in good faith, by responsible parties, and 5 % paid thereon in cash to the directors named in said articles, nor until there is indorsed thereon or annexed thereto, an affidavit made by a majority of the directors named therein, that the amount of stock required by the provisions of this section has been in good faith subscribed, and 5 % paid thereon in cash as aforesaid, and that it is intended in good faith to construct, maintain and operate the road mentioned in such articles, which affidavit shall be recorded therewith as aforesaid. (R. S. c. 41, § 2.)

**Sec. 3. Approval of articles of association; issue of certificates; certificate conclusive as to organization.**—The directors shall present to the public utilities commission a petition for approval of said articles of association, accompanied with a map of the proposed route on an appropriate scale. The public utilities commission shall, on presentation of such petition, appoint a day for a hearing thereon, and the petitioners shall give such notice thereof as said commission deems reasonable and proper, in order that all persons interested may have an opportunity to appear and be heard thereon. If the commission, after notice and hearing the parties, finds that all the provisions of sections 1 and 2 have been complied with, and that public convenience requires the construction of such railroad, said commission shall indorse upon said articles a certificate of such facts and the approval of the commission in writing. The secretary of state shall upon payment of the fees prescribed by section 12 of chapter 53 cause the same with the indorsement thereon to be recorded, and shall issue a certificate in the following form:

“STATE OF MAINE.

Be it known that, whereas,” (here the names of the subscribers to the articles of association should be inserted) “have associated themselves together with the intention of forming a corporation under the name of” (here insert the name of the corporation) “for the purpose of building and operating a road between” (here insert the description of the road contained in the articles of association) “and have complied with the statutes of the state in such cases made and provided: Now, therefore, I,” (here insert the name of the secretary) “Secretary of the state of Maine, hereby certify that said” (names of subscribers), “their associates and successors, are legally organized and established as an existing corporation under the name of” (name of corporation) “with the powers, rights and privileges, and subject to the limitations, duties and restrictions, which by law appertain thereto. Witness my official signature hereunto subscribed, and the seal of the state of Maine hereunto affixed, this . . . . . day of . . . . . , A. D. 19. . .” (day, month and year inserted).

The secretary of state shall sign the same and cause the seal of the state to be thereto affixed, and such certificate shall be conclusive evidence of the organization and establishment of such corporation at the date thereof. The secretary shall also cause a record of such certificate to be made, and a certified copy of such record may with like effect as the original certificate be given in evidence to prove the existence of such a corporation. (R. S. c. 41, § 3.)

**Sec. 4. Meeting for organization.**—The 1st meeting for the purpose of organizing such corporation, shall be called by a notice, signed by 5 or more of the subscribers to such articles of association, stating the time, place and purpose of such meeting, a copy of which notice shall, 7 days at least before the day appointed therefor, be given to each such subscriber or left at his usual place of business or residence, or deposited in the post office, postpaid, addressed to him at his usual place of business or residence; and whoever gives such notice shall make affidavit of his doings, which shall be recorded in the records of the company. (R. S. c. 41, § 4.)

**Sec. 5. Increase of capital stock.**—If the capital stock of any company formed under the foregoing provisions is found to be insufficient for constructing and equipping its road, such company may increase the same from time to time, to any amount, for the purposes aforesaid. Such increase must be sanctioned by a vote, in person or by proxy, of  $\frac{2}{3}$  in amount of all the stockholders at a meeting thereof called by the directors for that purpose. (R. S. c. 41, § 5.)

See §§ 21-23, re increase of capital stock of railroad corporations.

**Sec. 6. Approval of location; proceedings.**—Every corporation organized under the foregoing provisions, before commencing the construction of its road, shall present to the public utilities commission a petition for approval of location, defining its courses, distances and boundaries accompanied with the map first presented, and with a profile of the line on the relative scales of profile paper in common use, and with a report and estimate prepared by a skillful engineer from actual survey. The commission shall, on presentation of such petition, appoint a day for a hearing thereon, and the petitioners shall give such notice thereof as said commissioner deems reasonable and proper, in order that all persons interested may have an opportunity to appear and object thereto. If the public utilities commission, after hearing the petition, approves the proposed location, the corporation may proceed with the construction thereof; provided, that they first file with the clerk of the county commissioners of each county through which the road passes, a plan of the location of the road, defining its courses, distances and boundaries, and another copy of the same with the public utilities commission; but the location so filed shall not vary, except to avoid expense of

construction, from the route first presented to said commission unless said variation is approved by them. The location, together with any variation made therein, shall be filed within 2 years from the time when the articles of association are filed in the office of the secretary of state; provided, however, that the public utilities commission, upon written application made to them, may extend the time of filing such variations in their discretion; provided further, that no railroad shall be made across tidewaters where vessels can navigate without special permission of the legislature first obtained. (R. S. c. 41, § 6.)

**This section applies only to corporations created under the general law,** unless it is specially referred to in the charter, and as many if not most of the large roads existed under special charter, the legislature by § 28 of this chapter authorized any railroad corporation, under the direction of the public utilities commission, to make changes in its location. *Lowell v. Washington County R. R.*, 90 Me. 80, 37 A. 869.

**Construed with § 28.**—See note to § 28.

**Time of taking land is time of filing location.**—The time of the taking of land for a railroad location as between the land owner and the railroad company is the time of the filing of the location as required by statute; and upon payment within three years of the damages which constitute the "just compensation" for "private property taken for public uses," the title acquired by the exercise of the right of eminent domain becomes perfected and relates back to the time of such legal taking. *Currie v. Bangor & Aroostook R. R.*, 105 Me. 529, 75 A. 51.

**Variation from original location.**—Under this section it is obvious that a variation from the original location, to avoid expense of construction, could be made, subject to the approval of the public utilities commission. *Lowell v. Washington County R. R.*, 90 Me. 80, 37 A. 869.

**Imperfect and ineffective location.**—A location gave only the description of a single line, beginning at a definite point and running with definite courses and distances to another point. It did not state whether this was the center or the side line of the location, nor did it state the width of the location. It failed therefore to give, as this section requires, the "boundaries of the location." Such a "location" was plainly imperfect and ineffective. By it the company did not take any land, and had no statutory location. *Erskine v. Wiscasset & Quebec R. R.*, 105 Me. 113, 72 A. 1019.

**Applied in United States Peg Wood, Shank & Leather Board Co. v. Bangor & Aroostook R. R., 104 Me. 472, 72 A. 190.**

**Sec. 7. Building of road begun within 3 years.**—If any corporation formed under the foregoing sections does not, within 3 years after its articles of association are filed and recorded in the office of the secretary of state, begin the construction of its road, and expend thereon 10% of its capital, its corporate existence and power shall cease. (R. S. c. 41, § 7.)

See § 11, re lapsed charter may be revived; c. 10, § 22, sub-§ XXXIX, re business to commence within 2 years.

**Sec. 8. Map and profile of road filed.**—Every corporation organized as aforesaid shall, within 1 year after any part of its road has been constructed and opened for operation, cause a map and profile thereof, and of the land taken or obtained for the use thereof, to be made and filed in the office of the public utilities commission. Every such map shall be drawn on a scale and on paper to be designated by the public utilities commission and shall be signed by the president and engineer of the corporation. (R. S. c. 41, § 8.)

**Sec. 9. Location filed and recorded; defective location; subscriptions released by new location; proceedings before county commissioners.**—The railroad shall be located within the time and substantially according to the description in its charter; and the location shall be filed with the county commissioners, who shall indorse the time of filing thereon and order said location recorded. When a corporation, by its first location, fails to acquire the land actually embraced in its roadway, or the location as recorded is defective or uncertain, it may, at any time, correct and perfect its location and file a new description thereof; and in such case it is liable in damages, by reason of such new or

amended location, only for land embraced therein for which the owner had not previously been paid. Any subscriber to the stock alleging that it had not been located according to its charter may, before payment of his subscription, make written application to the county commissioners in the county where the deviation is alleged, stating it, who after 14 days' notice to the corporation, and upon a view and hearing, shall determine whether it has been located as required; if they determine that it has been, no such defense shall be made to any process to enforce payment; if they determine that it has not, the subscription of such applicant is void. The prevailing party recovers costs. Provisions in railroad charters, whenever granted, limiting the time within which such railroad shall be completed shall not affect the portion thereof completed within such time; and all charters under which railroads have been constructed for a portion of the line authorized thereby are confirmed and made valid as to such portion. (R. S. c. 41, § 9.)

**Applied** in *Eaton v. European & North American Ry.*, 59 Me. 520; *Nicholson v. Maine Central R. R.*, 97 Me. 43, 53 A. 839; *Erskine v. Wiscasset & Quebec R. R.*, 105 Me. 113, 72 A. 1019.

**Stated** in *In re Railroad Com'rs*, 83 Me. 273, 22 A. 168.

**Cited** in *Illsley v. Portland & Rochester R. R.*, 56 Me. 531; *Portland Terminal Co. v. Hinds*, 134 Me. 434, 187 A. 716.

**Sec. 10. Gauge changed.**—Any railroad corporation formed under the foregoing sections, desiring to change the gauge of its road, shall by vote increase its capital stock to the amount required by section 1 if the existing capital be not equal to such amount, and shall present to the public utilities commission a written application, subscribed and sworn to by a majority of its directors, setting forth the desire of the petitioners, and that the increased amount of capital stock has been in good faith subscribed by responsible persons, and that 5% thereof has been paid in, in cash, to the treasurer of such corporation. If such application is approved by the public utilities commission, such corporation shall make and file a new location as provided by section 8. (R. S. c. 41, § 10.)

**Sec. 11. Lapsed charter revived.**—The public utilities commission may revive the corporate existence and power of any railroad corporation, organized under the foregoing sections, which may have ceased by failure of the corporation to file its location or to begin the construction of its road within the time limited by law, on application made by the directors of said corporation to said commission, in the manner provided in section 10. (R. S. c. 41, § 11.)

**Sec. 12. Legislative incorporation.**—When a petition for a railroad corporation is presented to the legislature, it must state the places where the road is to begin and end, the distance between them, its general course and the names of the towns through which it may pass. (R. S. c. 41, § 12.)

**Sec. 13. Number of directors.**—Any railroad company may at its annual meeting fix the number of its directors, provided that in the call for said meeting notice is given of an intention to act upon said subject. (R. S. c. 41, § 13.)

**Sec. 14. Stock vote called by stockholder.**—Any stockholder or representative of any stockholder in any railroad company may call for a stock vote thereof at any meeting of its stockholders on any question legally before it, anything in the charter or by-laws of such company to the contrary notwithstanding. (R. S. c. 41, § 14.)

**Sec. 15. Roads extended.**—Any railroad corporation of this state may locate, construct, operate and maintain extensions and branches anywhere in this state of the lines of railroad now or hereafter owned, leased, constructed or operated by it; provided, however, that no railroad corporation shall begin the construction of any such extension or branch without having first obtained from the public utilities commission, upon written application and after public hearing, an order authorizing and approving the location of any such extension or branch

and a certificate stating that in the opinion of the commission public convenience and necessity require such construction. (R. S. c. 41, § 15.)

**Sec. 16. Railroad corporations.**—A railroad corporation may acquire, hold, maintain and operate steamship companies, ferries, ferryboats and docks, and either directly or through subsidiaries, may own, maintain and operate motor vehicles not running upon rails or tracks, and aircraft for the transportation of passengers or freight. A railroad corporation, or any subsidiary thereof, in maintaining and operating such vehicles shall be subject to the provisions of chapter 48 in respect to the transportation of passengers and property.

Subject to any necessary approval from the public utilities commission or the interstate commerce commission, a railroad corporation may, either directly or through subsidiaries, make use of such part of its property and assets as is not required in the performance of adequate service to the public as a common carrier by devoting the same to and engaging in non-common carrier activities and business; provided, however, that any such non-common carrier activities and business of a railroad corporation shall be limited to those which could be engaged in by a corporation organized under section 8 of chapter 53 and shall be carried on by such railroad corporation subject to the same laws, rules and regulations respecting such activities and business as govern other corporations when engaged therein. Subject to the provisions of section 47 of chapter 44, a railroad corporation may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by, any other corporation or corporations of this or any other state, territory or country, and while owners of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

The provisions of this section shall not be construed to abridge or affect any right or privilege derived from the constitution or laws of the United States. (R. S. c. 41, § 16. 1953, c. 71.)

**Sec. 17. Use of electricity.**—Any railroad corporation of this state may operate its road by electricity. (R. S. c. 41, § 17.)

**Sec. 18. Branch or connecting road aided.**—Any railroad corporation, wholly organized under the laws of this state, at any time when it has paid dividends for the preceding 3 years may, by vote of its directors, authorized or confirmed by a 2/3 vote of its stockholders, at a meeting notified for the purposes, with the consent of the public utilities commission, aid in the construction or equipment of a branch of its railroad or in the construction or equipment of a connecting railroad, and may own and hold the securities of such branch or of such connecting railroad. (R. S. c. 41, § 18.)

**Sec. 19. Shares in another road.**—A railroad corporation which has a lease of, or which operates the railroad of another railroad corporation, may purchase and hold shares of the capital stock of such corporation, subject to the approval of the public utilities commission in accordance with the procedure set forth in chapter 44. (R. S. c. 41, § 19.)

**Sec. 20. Holdings increased.**—A railroad corporation, which owns a majority of the capital stock of another railroad corporation, may purchase and hold additional shares of the capital stock of such corporation. (R. S. c. 41, § 20.)

**Sec. 21. Capital stock increased.**—A railroad corporation for the purpose of building a branch railroad track which it is or may be authorized to build, or of building a branch or extension which it is or may be authorized to build, or of aiding in the construction of another railroad pursuant to law, or of building stations, or of abolishing grade crossings, or of making permanent improvements, or of paying its floating debt, or of paying its funded debt, or for the payment

of money borrowed for any lawful purpose, or for the purchase of shares of the capital stock of any railroad corporation whose railroad is leased to or operated by it, or for the purchase of shares of the capital stock of any railroad corporation of which capital stock it owns a majority, or for improving the alignment of its road, or for acquiring land for and laying new tracks or for other necessary and lawful purposes, including the retiring or refunding of capital stock of any class, not named in section 5, from time to time, with the approval of the public utilities commission as hereinafter provided, may issue its capital stock to any amount by issuing common or preferred stock, provided such issue shall first be authorized by vote of a majority of stock present or represented at a legal meeting of the corporation duly called for that purpose. If preferred stock is issued, the character of such stock including its voting power, if any, and the rate of interest or dividend to which it shall be entitled and whether it shall be cumulative or noncumulative shall be fixed by vote of a majority of stock present or represented at such legal meeting. (R. S. c. 41, § 21.)

See § 5, re increase of capital stock.

**Sec. 22. Proceedings before public utilities commission.**—Upon petition of the railroad corporation to the public utilities commission, the amount of such issue of capital stock, after such notice by publication as the commission shall order and after hearing, shall be determined by said commission, who shall within 30 days after final hearing of said petition file in the office of the secretary of state a certificate showing the amount of the issue authorized and the purposes for which the proceeds of said new stock may be used; and the company shall not apply such issue or the proceeds thereof to any purpose not specified in said certificate, and may be enjoined from so doing by any justice of the supreme judicial court or of the superior court upon application of the board or of any interested party; the provisions of this section shall not apply to any railroad corporation subject to the interstate commerce act, while and so long as such corporation is required by federal law to make application to and procure consent from the interstate commerce commission as a condition precedent to any issue of its capital stock. (R. S. c. 41, § 22.)

**Sec. 23. New stock offered to stockholders; notice; sale of unsubscribed shares; bondholders' right to subscribe.**—Whenever a railroad corporation which is in actual possession of and operating a railroad issues capital stock having general voting rights, the new shares shall be offered, subject to the exceptions hereinafter in this section set forth, proportionately to holders of its stock having general voting rights, except to holders of such classes of stock which when issued provide that the same shall not be entitled to subscription rights or shall be entitled only to limited subscription rights or when such subscription rights are negatived by some statute applicable thereto or by the charter or by-laws of the corporation. Any provision or provisions of the charter or by-laws relating to subscription rights may be amended or any new provision or provisions relating to such rights may be adopted by the affirmative vote of the holders of 90% of the shares of the voting stock present or represented at any stockholders' meeting, the call for which shall give notice of the proposed action. Shares of stock to which the stockholders may be entitled to subscribe shall be offered to the stockholders at such price as may be determined by them or as shall be determined by the board of directors, if the stockholders, by a majority vote, delegate such authority to the board. The stockholders who shall be entitled to subscribe to such new shares shall be the stockholders of record upon the books of the company at such date as the stockholders may determine or at such date as the directors may determine, provided the stockholders shall delegate the determination of the date to the directors; the directors shall cause written notice of such issue to be given to each stockholder entitled to subscribe for the new shares, stating the amount of the issue, the number of shares or fraction of shares to which,

according to the proportionate number of his shares at the date of the accrual of his rights, he is entitled, the price at which he is entitled to take them, and fixing a date within which he may subscribe for such new stock. Each stockholder may, within the time limited, subscribe for his portion of such new stock which shall be paid for in cash, except as hereinafter provided, before the issue of a certificate therefor; in the absence of charter provisions to the contrary, subscriptions may not be made for fractions of shares, but rights to subscribe for such fractions may be combined to create rights of subscription to full shares, provided, however, that when the issue of capital stock does not exceed 4% of the existing capital stock of the corporation, the directors, without first offering the same to the stockholders, may sell the same in such manner, under such conditions, at such price and on such terms as the public utilities commission shall approve in an order issued pursuant to a petition or application filed with it under the requirements of the preceding section. If, after the expiration of the notice above provided for, any shares of such stock remain unsubscribed for by the stockholders, or their assignees, entitled to take them, the directors may sell the same in such manner, under such conditions, at such price and on such terms as the public utilities commission shall approve in an order issued pursuant to a petition or application filed with it under the requirements of the preceding section.

Provided further, that the determination by the public utilities commission, under the provisions of the preceding section as to the amount of such issue, shall be based upon the price at which such stock is to be issued as approved by the stockholders, or by the board of directors, and the said commission shall refuse to approve any particular issue of stock if, in their opinion, the price approved by the stockholders or by the board of directors is unreasonably low, or the said commission may make its approval conditional upon such stock being issued or sold at a price not less than that which the commission shall determine.

When any class of stock is issued for the purpose of retiring interest-bearing obligations, at or before maturity, or for the purpose of retiring preferred capital stock, such stock need not be offered to the stockholders but, pursuant to resolutions duly adopted by the board of directors, may be issued, in whole or in part, in exchange for the interest-bearing obligations or the preferred stock to be retired, in such amounts, at such prices and on such terms and conditions as shall be determined by the board of directors. When bonds or other interest-bearing obligations maturing at periods of more than 12 months after the date thereof are issued, or when any class of preferred stock is issued, there may be attached thereto warrants entitling the holder thereof to subscribe, at some future date or dates, for shares of common stock in such amounts, at such time or times, at such price or prices and under such terms and conditions as the stockholders, by majority vote, shall determine or as shall be determined by the board of directors if the stockholders, by majority vote, delegate such authority to the board; such securities so issued with such warrants attached need not be offered to the stockholders unless the stockholders, by majority vote, shall so require, and common stock authorized to be issued to meet the purchase rights of such warrants shall be wholly exempt from any provisions of this section requiring that issues of capital stock shall be offered to the stockholders. Bonds or other interest-bearing obligations maturing at periods of more than 12 months after the date thereof and any class of preferred stock may be issued with provision that such bonds or other interest-bearing obligations and such stock may be converted into common stock or into a specified class or classes of preferred stock, in such amounts, at such future date or dates, at such price or prices and on such terms and conditions as the stockholders, by majority vote, shall determine or as shall be determined by the board of directors if the stockholders, by majority vote, delegate such authority to the board; such securities so issued with such convertible provisions need not be offered to the stockholders unless the stockholders, by majority vote, shall so require, and capital stock of any class authorized for issuance in exchange

for any such convertible bond or other interest-bearing obligations, or any such convertible preferred stock, shall be wholly exempt from any provisions of this section requiring that issues of capital stock shall be offered to the stockholders.

None of the provisions of this chapter or of chapter 44 requiring approval of the public utilities commission as a condition precedent to the issuing of any class of securities shall apply to any railroad corporation subject to the interstate commerce act, or to the securities issued or to be issued by such corporation, while and so long as such corporation is required by federal law to make application to and procure consent from the interstate commerce commission as a condition precedent to the issuing of the securities proposed to be issued by such railroad corporation or to notes issued by such railroad corporation maturing not more than 2 years after the date thereof. (R. S. c. 41, § 23. 1947, c. 33. 1949, cc. 13, 43.)

**Sec. 24. Wrongful issue of stock; misapplication of corporate funds or credit.**—Any member of the board of directors, or any treasurer or other officer or agent of any railroad company, who knowingly votes to authorize the issue of, knowingly signs, certifies or issues stock authorized by the provisions of the 3 preceding sections, contrary to such provisions or who knowingly votes to authorize the application of, or knowingly applies the proceeds of such stock contrary to the provisions of said sections, or who knowingly votes to assume or incur or who knowingly assumes or incurs, in the name or behalf of such corporation, any debt or liability except for the legitimate purposes of the corporation, shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 41, § 24.)

**Sec. 25. Powers under existing law not affected.**—Nothing contained in the 6 preceding sections shall be construed as a repeal of any of the powers conferred upon any railroad corporation under any other provision of law. (R. S. c. 41, § 25.)

### Real Estate Taken.

**Sec. 26. Land bought or taken.**—A railroad corporation, for the location, construction, repair and convenient use of its road, may purchase or take and hold, as for public uses, land and all materials in and upon it; through woodland and forest the land so taken shall not exceed 6 rods in width unless necessary for excavation, embankment or materials, and through all land other than woodland and forest, the land so taken shall not exceed 4 rods in width unless necessary for excavation, embankment or materials. (R. S. c. 41, § 26.)

**Section 26 et seq. applicable to company incorporated before passage.**—See Bangor, Oldtown & Milford R. R. v. Smith, 47 Me. 34.

**History of section.**—See Spofford v. Bucksport & Bangor R. R., 66 Me. 26; Portland Terminal Co. v. Hinds, 134 Me. 434, 187 A. 716.

**Section is strictly construed.**—In the exercise of the right of eminent domain, a grant by the legislature to a corporation to take private property as for public uses, being in derogation of the common law right of the citizen to hold and enjoy his property, is to be construed strictly; and, to justify the taking, it must be shown that all the provisions of the statute in that respect have been fully complied with. Spofford v. Bucksport & Bangor R. R., 66 Me. 26.

**And words are taken most strongly against railroad company.**—Another rule of construction, applicable to this section, is that in all grants, made by the government to individuals, of rights, privileges and franchises, the words are to be taken most strongly against the grantee, contrary to the rule applicable to a grant from one individual to another. Spofford v. Bucksport & Bangor R. R., 66 Me. 26.

**Conflict with charter provisions.**—Where the charter of a railroad company authorized the taking of land "not to exceed six rods in width," and by an act of the legislature the time for completion was extended two years, and "all rights, privileges, and grants theretofore appertaining to said company" were thereby continued, the charter was thereby renewed in its entirety, and the company retained the right

to take land six rods in width, although this section allows but four. *Eaton v. European & North American Ry.*, 59 Me. 520.

**The term "land" in this section evidently has its comprehensive common law signification**, including not only the face of the earth but everything under it or over it, at least so far as necessary for the location, construction, repair, and convenient use of the railroad. *Lime Rock R. R. v. Farnsworth*, 86 Me. 127, 29 A. 957.

**And railroad takes minerals upon or under strip.**—A railroad company in taking by authority of this section a strip of land for the location, construction, repair and convenient use of its road, thereby takes all the marble or lime rock upon or under the surface of such strip, although such marble or lime rock is owned separately from the rest of the land. *Lime Rock R. R. v. Farnsworth*, 86 Me. 127, 29 A. 957.

**And it may take land no matter how minutely ownership is subdivided.**—A railroad company is by this section authorized

to take land, no matter who owns it, nor how minutely its ownership is subdivided. This section does not mention estates, titles or interests in real estate, as subjects for condemnation. It speaks solely of "land and all materials in and upon it." It means not personal interests in lands, but the land itself, the res. *Lime Rock R. R. v. Farnsworth*, 86 Me. 127, 29 A. 957.

**A right of way by prescription is extinguished** when a railroad takes the land covered by its location as for public uses. *Currie v. Bangor & Aroostook R. R.*, 105 Me. 529, 75 A. 51.

**Applied** in *Kimball v. Kennebec & Portland R. R.*, 35 Me. 255.

**Quoted** in *In re Railroad Com'rs*, 83 Me. 273, 22 A. 168.

**Cited** in *Hall v. Pickering*, 40 Me. 548; *Sandy River R. R. v. Stubbs*, 77 Me. 594, 2 A. 9; *Fitzpatrick v. Boston & Maine R. R.*, 84 Me. 33, 24 A. 432; *Erskin v. Wiscasset & Quebec R. R.*, 105 Me. 113, 72 A. 1019.

**Sec. 27. Land for improving roadbed, stations, repair shops, etc.; proceedings.**—Any railroad corporation may also purchase or take and hold, as for public uses, additional land or rights therein, at any time required for improving the alignment or grades of its road, or for double tracking its road, or for protecting the tracks against erosion of adjoining or adjacent land or against the action of the elements, or reasonably necessary in the enhancement of public safety at dangerous curves or crossings; also land or rights therein, for borrow, ballast and gravel pits, necessary tracks, sidetracks, spur tracks, freight or passenger yards, stations, station grounds, approaches to stations and station grounds and to other facilities furnished by the railroad for public use, coal sheds, woodsheds, water tanks, repair shops, car, engine, freight and section houses, section dwellinghouses and storage warehouses, or other structures, which the public utilities commission, after hearing, shall find to be reasonably required in the safe, economical and efficient operation of the railroad and in rendering of adequate common carrier service to the public; but if the owner or owners of said land do not consent thereto, or if the parties do not agree as to the necessity therefor or as to the area to be taken, or if the parties are unable to agree as to the fair value of said land, the corporation may make written application to the public utilities commission requesting its approval of the taking by said railroad corporation for any of the above-named public uses, describing the estate and naming the persons interested; the commission shall thereupon appoint a time for the hearing near the premises and require notice to be given to the persons interested, as they may direct, 14 days at least before said time; the commission shall then view the premises, hear the parties and determine how much, if any, of such real estate should be taken for the reasonable accommodation of the traffic, the safe operation of the railroad and the appropriate business of the corporation. If they find that any of it is so necessary, they shall make a certificate containing a definite description thereof and furnish the corporation with a true copy thereof, attested by the clerk of the commission; and when such copy of the certificate is filed with the clerk of courts in the county where the land lies, the land shall be deemed and treated as taken; provided, however, that when land is held by a tenant for life and the reversion is contingent as to the persons in whom it may vest on the termination of the life estate, such fact shall be stated in the applica-

tion, and the commission shall, in addition to the notice to the tenant for life, give notice by publication to all others interested, in such manner as they deem proper. (R. S. c. 41, § 27.)

**History of section.**—See *Spofford v. Bucksport & Bangor R. R.*, 66 Me. 26; *Portland Terminal Co. v. Hinds*, 134 Me. 434, 187 A. 716.

**Strict construction.**—Statutes authorizing the taking of land as for public uses must be construed strictly. *Neal v. Railroad Com'rs*, 85 Me. 62, 26 A. 994.

**The purposes for which the land may be taken are specifically named** in this section, and it can only be so taken when necessary for the reasonable accommodation of the traffic and appropriate business of the corporation. *Neal v. Railroad Com'rs*, 85 Me. 62, 26 A. 994.

Condemnation of land "necessary for the reasonable accommodation of the traffic and appropriate business of said corporation," is for a purpose not within the authority of this section. *Neal v. Railroad Com'rs*, 85 Me. 62, 26 A. 994.

**Jurisdiction of public utilities commission.**—This section gives the public utilities commission jurisdiction only in cases of disagreement between the parties as to the necessity and extent of the real estate to be taken for the use specified in this section, and it has the power only to determine the necessity and extent of the real estate to be taken for those purposes, having in view the reasonable accommodation of the traffic and appropriate business of the corporation. *Spofford v. Bucksport & Bangor R. R.*, 66 Me. 26.

**Contents of petition.**—To give the public utilities commission jurisdiction, the petition should contain a description of the

estate which the corporation claims to take, naming the persons interested in it, with averments that the corporation claims to take it for some one or more of the purposes specified in this section and that the parties do not agree as to the necessity and extent of the estate, described, to be taken for the purpose or purposes named. *Spofford v. Bucksport & Bangor R. R.*, 66 Me. 26.

**Incorporated towns and cities, not otherwise interested than as civil organizations, were not "parties aggrieved,"** and had no standing to except to rulings of the public utilities commission, on petitions by railroad corporations for additions to existing road-beds, rights of way, tracks, and such like property, commonly called locations, under this section, for changes in location under § 28. *In re Maine Central R. R.*, 134 Me. 217, 183 A. 844.

**Dower not defeated by purchase of land for gravel pit.**—A widow, in 1891, unless she had barred her right, was dowerable in land, not taken by right of eminent domain, but purchased by a railroad company, during the coverture, from her husband, in a case where the land lay outside of the location of the railroad right of way, and was bought for and used as a gravel pit. *McAllister v. Dexter & Piscataquis R. Co.*, 106 Me. 371, 76 A. 891.

**Cited in** *Fitzpatrick v. Boston & Maine R. R.*, 84 Me. 33, 24 A. 432; *Stubbs v. Franklin & Megantic R. R.*, 101 Me. 355, 64 A. 625.

**Sec. 28. Change in location.**—Any railroad corporation, under the direction of the public utilities commission, may make any changes in the location of its road which it deems necessary or expedient and such changes shall be recorded where the original location was required by law to be recorded. (R. S. c. 41, § 28.)

**Purpose of section.**—This section confers the same authority upon chartered roads that was previously conferred by § 6 of this chapter upon roads organized under general law. It was intended to cure a defect in the statute. It enlarges the rights of railroads existing by charter. *Lowell v. Washington County R. R.*, 90 Me. 80, 37 A. 869.

**Section construed with § 6.**—While this section is not in terms an amendment of § 6 of this chapter, it relates to the same subject matter, and being in *pari materia*

should be construed with it. *Lowell v. Washington County R. R.*, 90 Me. 80, 37 A. 869.

**A change in location under this section did not release a county from its liability** under its original subscription for stock, and a second subscription was unnecessary. *Lowell v. Washington County R. R.*, 90 Me. 80, 37 A. 869.

**Exceptions to rulings of public utilities commission.**—See note to § 27 of this chapter.

**Sec. 29. Land taken for change.**—Any railroad corporation may purchase, or take and hold as for public uses, land and materials necessary for making

any changes authorized by the preceding section, in the manner authorized by its charter or the general provisions of law, and may cross highways and town ways in accordance with the provisions of law regulating such crossings. (R. S. c. 41, § 29.)

**Sec. 30. Limitation of right to enter on or take land.**—The land taken shall not be entered upon, except to make surveys, before the location has been filed and the damages estimated and secured as hereinafter provided; and no railroad corporation shall take, without consent of the owners, meetinghouses, dwelling houses, or public or private burying grounds. (R. S. c. 41, § 30.)

**Cross reference.**—See c. 47, § 24, re applicability of § 30 to street railroads.

**The term "dwelling house," as used in this section, means only the house, and includes no part of the garden, orchard or**

curtilage. *Wells v. Somerset & Kennebec R. Co.*, 47 Me. 345.

**Applied in** *Williams v. Morton*, 38 Me. 47.

**Sec. 31. Branch tracks; construction ordered.**—Any railroad corporation, under the direction of the public utilities commission, may locate, construct and maintain branch railroad tracks to any railroad station of another corporation or to connect with another railroad or to any mills, mines, quarries, gravel pits, log landing or yard, warehouses and storehouses, airports, piers, docks, shipyards, educational institution or manufacturing establishments erected, or in process of erection, in any town or township through which the main line of said railroad is constructed but not within any city without the consent of the city government, and for that purpose said corporation shall have all the powers and rights granted and be subject to all the duties imposed upon it by its charter.

The public utilities commission, upon petition of any party interested, after notice and hearing, may order any railroad company to construct, maintain and operate such a branch railroad track to any such mill, mine, quarry, log landing or yard, warehouse, storehouse, airport, pier, dock, shipyard or manufacturing establishment owned or operated by the petitioner, whenever said commission shall find that such track is necessary for the reasonably convenient conduct of the business of the petitioner and is warranted by the volume of business to be handled thereon and can be so constructed, maintained and operated with due regard to safety and the reasonable operation of the railroad; provided, however, that no such order shall be made by said commission unless the petitioner shall provide, at his own expense, the right of way for such portion of said track as is not located upon the land of the railroad company; shall pay all the expense of the construction and maintenance of said track; shall furnish such security for said payment and shall comply with such conditions as to fire release and the operation of such track as the commission may prescribe. Said commission shall also have authority upon petition of any party interested after notice and hearing to order any railroad company to alter any existing branch railroad track, whenever in its judgment such alteration is necessary for the reasonably convenient conduct of the business of the petitioner. All expenses of such alteration shall be paid by the petitioner. The commission, upon petition of any party interested, after notice and hearing, may permit any party owning or occupying premises adjacent to any track, constructed under the provisions of this section, to use such track for receiving or holding freight in carload lots upon such terms and conditions as it may prescribe, including the payment of a part of the original cost of such track and of its future maintenance and suitable fire releases. (R. S. c. 41, § 31.)

**Cross reference.**—See c. 47, § 24, re applicability of § 31 to street railroads.

**This section is not unconstitutional** in that it allows the private property of an individual to be taken, not for a public use, but for the private purposes of the railroad

corporation and of the manufacturer or mine owner who is primarily accommodated by the construction of such branch track. *Ulmer v. Lime Rock R. R.*, 98 Me. 579, 57 A. 1001.

**The decisive tests as to whether a branch**

**railroad track is for public or private purposes**, are these: Is the track to be open to the public, on equal terms to all having occasion at any time to use it, so that all can demand that they be served without discrimination, as of right? If so, and the track is subject to governmental control,

under general laws, as are the main lines of a railroad, then the use is public, and the case a proper one for the exercise of the right of eminent domain. *Ulmer v. Lime Rock R. R.*, 98 Me. 579, 57 A. 1001.

**Stated** in *In re Railroad Com'rs*, 83 Me. 273, 22 A. 168.

### Damages.

**Sec. 32. Estimation of damages by county commissioners; guardian may release damages; damages and costs.**—For real estate so taken, the owners are entitled to damages, to be paid by the corporation and estimated by the county commissioners, on written application of either party, made within 3 years after the location is filed, or if proceedings thus commenced fail for causes not affecting the merits, new ones may be commenced within 1 year thereafter; and when no estimate is made within such time, the owner may maintain an action of trespass or have any remedy herein provided. The guardian of a person incapable of giving a valid conveyance, whose land is taken, may settle and give a valid release for damages; and persons having any interest in such land have the rights and remedies of owners to the extent of their interest. When requested by the owner, said commissioners shall require the corporation to give security for the payment of damages and costs by depositing, at its risk, with the clerk, specie, notes or obligations of a state or public corporation, or other security satisfactory to the party requiring it. When entitled to it, so much of any specie so deposited shall be paid to him as will satisfy his judgment. Notes or obligations so deposited shall be delivered to the officer having a warrant of distress, to be by him sold as personal property is sold on execution, to satisfy the warrant and fees, and any balance shall be paid to the treasurer of the corporation. When it neglects for more than 30 days to give the security required, the owner is entitled to the remedies by injunction herein provided. (R. S. c. 41, § 32.)

**Cross references.**—See c. 47, § 24, re applicability of § 32, to street railroads; c. 112, § 113, re actions for damages for land taken for public purposes; c. 163, § 1, sub-§ VII, re license to guardian to sell, etc., real estate of ward.

**Written application necessary to give county commissioners jurisdiction.**—There must be a written application, either by the landowners whose land is damaged, or by the railroad corporation, to the county commissioners, to give them jurisdiction. *Littlefield v. Boston & Maine R. R.*, 65 Me. 248.

**A mortgagee whose mortgage is recorded has an interest as an owner** within the meaning of this section. *Wilson v. European & North American Ry.*, 67 Me. 358.

**And should have notice of pendency of proceedings.**—A mortgagee, whose mortgage is recorded, not being in actual possession of the mortgaged premises, should have notice of the pendency of proceedings instituted by a railroad corporation before county commissioners to ascertain the damages of land owners for land taken for the track of its road. *Wilson v. European & North American Ry.*, 67 Me. 358.

**If no notice is given mortgagee may bring action of trespass.**—Where no notice is given to the mortgagee, and the damages are awarded and paid to the mortgagor, the mortgagee may recover therefor in an action of trespass against the company by virtue of the provision of this section. *Wilson v. European & North American Ry.*, 67 Me. 358.

**Petition may be filed for assessment of damages to owner of minerals.**—If marble or lime rock is owned separately from the ownership of the rest of the land, the railroad company can maintain a petition for the assessment of the damages that the owner of the marble or lime rock has sustained from such taking. *Lime Rock R. R. v. Farnsworth*, 86 Me. 127, 29 A. 957.

**Elements of damages.**—When such damages as may be anticipated from future construction of the railroad, if it has not been made, are assessed, they are made up on the whole injury done or expected to be done, including not only the loss of the use of the land produced by the road, but the probable expense of fences, and the diminution of the value of the land, by a separation from each other of different

parts. *Mason v. Kennebec & Portland R. R.*, 31 Me. 215.

**Damages may be assessed for injury to property not situated on land taken.**—If an injury is done to property not situated upon the land taken for the road, in the operations for its construction, the means not being inappropriate for the purpose, the damages therefor are to be estimated by the county commissioners, under the same authority by which they determine the more direct injury. *Mason v. Kennebec & Portland R. R.*, 31 Me. 215.

**And for interruption of passage from one part of land to another.**—The statute provision for the assessment of damages extends to the injury occasioned by the interruption of the proprietor's passage from one part of his land to another, as well as to any other injury which may be caused by the construction and use of the road. *Mason v. Kennebec & Portland R. R.*, 31 Me. 215.

If the ground has been excavated or elevated at the place where the communication between the two parts must be, the expense of a way under or over the road is to be considered, and if from the situation one portion cut off from the other will be greatly diminished in value, or rendered worthless, such facts may properly make an element in the computation. *Mason v. Kennebec & Portland R. R.*, 31 Me. 215.

**Liability of railroad for consequential damages.**—See *Boothby v. Androscoggin & Kennebec R. R.*, 51 Me. 318.

**Title relates back to time of filing location.**—The time of the taking of land for a railroad location as between the land owner and the railroad company is the time of the filing of the location as required by § 6, and upon payment within three years of the damages which constitute the "just compensation" for "private property taken for public uses," the title acquired by the exercise of the right of eminent domain becomes perfected and relates back to the time of such legal taking. *Currie v. Bangor & Aroostook R. R.*, 105 Me. 529, 75 A. 51.

**And as soon as a railroad is located, the corporation has the right to take possession.** *Davis v. Russell*, 47 Me. 443.

The provisions of this section clearly indicate that it was not the intention of the legislature to require an assessment and payment of damages to be made before an exclusive occupation of the land was authorized for the purpose of making the road. *Cushman v. Smith*, 34 Me. 247.

**But upon application to county commissioners, right is suspended until security**

**given.**—The owner of land taken for the road by such location, failing to agree with the company as to his damages, may, at any time within three years, apply to the county commissioners, who shall estimate his damages, and, if requested, require the corporation to give security for their payment; whereupon the right of the corporation to enter upon the premises, except for making surveys, is suspended until the security is given. *Davis v. Russell*, 47 Me. 443.

**Otherwise trespass will not lie against corporation within three years.**—Where no application has been made to the county commissioners to estimate the damages, an action of trespass, brought within three years after the location, against the railroad company or its agent, cannot be maintained. *Davis v. Russell*, 47 Me. 443. See *Perkins v. Maine Central R. R.*, 72 Me. 95.

**For remedy given by this section is exclusive.**—See *Mason v. Kennebec & Portland R. R.*, 31 Me. 215.

**Landowner may waive assessment or payment of damages.**—It is manifestly competent for the owner of land taken by a railroad for public uses to waive the formality of a statutory assessment of damages, and when he voluntarily accepts a satisfactory amount agreed upon between the company and himself, the constitutional guaranty of a just compensation is fulfilled. It is also competent for the land owner to waive the payment of any compensation whatever. *Currie v. Bangor & Aroostook R. R.*, 105 Me. 529, 75 A. 51.

**Lapse of time may be sufficient evidence of waiver.**—The lapse of three years for the special mode of proceeding, and six years thereafter limited for the common law action for trespass to land, without resort to either, would be sufficient evidence of waiver of the right to damages in any case in which the evidence disclosed nothing to remove the inference naturally to be drawn from the delay. *Perkins v. Maine Central R. R.*, 72 Me. 95.

**But does not of itself bar landowner's right to sue for continuing trespass.**—Where the circumstances show that there has been no waiver, and no title acquired by prescription, simple lapse of time would not bar the landowner's right to bring suit against the road for an obstruction which was a continuing trespass, though there would be a limitation of damages to the period of six years immediately preceding the date of the writ. *Perkins v. Maine Central R. R.*, 72 Me. 95.

**County commissioners cannot compel**

**payment for their services.**—As the county commissioners cannot exercise any power not conferred upon them by statute, they cannot compel payment for their services performed for the benefit of railroad corporations in assessing damages under this section, unless some statute provision is found authorizing them to do so. *Atlantic & St. Lawrence R. R. v. Cumberland County Com'rs*, 28 Me. 112.

**Guardian not authorized to permit railroad to take dwelling houses.**—An earlier statute corresponding to the second sentence of this section was held not to authorize a guardian to agree with a railroad

corporation, to permit it to take dwelling-houses, and to settle the damages therefor. *Williams v. Morton*, 38 Me. 47. See § 30.

**Applied** in *Eaton v. European & North American Ry.*, 59 Me. 520; *Portland & Ogdensburg R. R. v. Cumberland County Com'rs*, 64 Me. 505; *Pennell v. Card*, 96 Me. 392, 52 A. 801; *True v. Maine Central R. R.*, 113 Me. 375, 94 A. 183.

**Quoted** in *Illsley v. Portland & Rochester R. R.*, 56 Me. 531.

**Cited** in *Sandy River R. R. v. Stubbs*, 77 Me. 594, 2 A. 9; *Canadian Pacific Ry. v. Moosehead Tel. Co.*, 106 Me. 363, 76 A. 885.

**Sec. 33. Petitions for assessment of damages.**—In all cases of petition to the commissioners of any county praying for the assessment of damages on account of any railroad corporation having taken lands therein, the notice to the adverse party of the time and place of the hearing thereon shall be a personal notice of 14 days or by publication of the petition and order of notice thereon in some newspaper published in said county, 2 weeks successively, the last publication to be 14 days before said hearing. (R. S. c. 41, § 33.)

**Cross reference.**—See c. 47, § 24, re applicability of § 33, to street railroads.

**One evident purpose of this general statute was to secure uniformity of procedure** over the whole state in all cases, and therefore this section, being subsequent, must be held to have repealed an inconsistent

provision in an earlier charter of a railroad company. *Hunt v. Card*, 94 Me. 386, 47 A. 921.

**Evidence held sufficient** that the notice required by this section was given or waived. *Hunt v. Card*, 94 Me. 386, 47 A. 921.

**Sec. 34. Cattle guards and passes made and maintained; double damages.**—The county commissioners shall order the corporation to make and maintain such cattle guards, cattle passes and farm crossings as they think reasonable; prescribe the time and manner of making them and consider this work in awarding pecuniary damages; and if the corporation after 48 hours' notice in writing to its president or superintendent neglects to commence the work or complete it within a reasonable time, the owner may apply to the supreme judicial court or to the superior court, and either of said courts, after due notice to said corporation, shall issue all necessary processes to enforce the specific performance of such orders or restrain it by injunction; or the party interested may recover, in an action on the case, double the damage that he has sustained by such neglect. (R. S. c. 41, § 34.)

**Cross reference.**—See c. 47, § 24, re applicability of § 34, to street railroads.

**History of section.**—See *Hewett v. Knox County Com'rs*, 85 Me. 308, 27 A. 179; *True v. Maine Central R. R.*, 113 Me. 375, 94 A. 183.

**The terms, cattle-guard, cattle-pass and farm-crossing,** have significance only in connection with the construction of a railroad that has divided a farm in such a manner as to expose the stock of the owner to the danger of passing trains, to deprive him of access to some part of his pasture or some part of his tillage land. *True v. Maine Central R. R.*, 113 Me. 375, 94 A. 183.

These terms, separately analyzed, each

have a distinct and limited application. Cattle-guard signifies some kind of a device alongside a railroad crossing to keep cattle off the track. Cattle-pass applies to a narrow passage-way, under a railroad track, wide enough and high enough to admit the passage of a cow, horse or ox to and from a pasture. Farm-crossing means a roadway over the tracks at grade, for the purpose of reaching the tillage land cut off. *True v. Maine Central R. R.*, 113 Me. 375, 94 A. 183.

**Structure cannot exceed in cost full measure of damages.**—The county commissioners acting under this section cannot order a cattle-pass or any other structure that will exceed in cost the full meas-

ure of damages. *True v. Maine Central R. R.*, 113 Me. 375, 94 A. 183.

**Nor can the commissioners assess the full measure of damages and order, in addition, any of the structures authorized by this section.** They can assess the full measure of damages and order one of the structures prescribed in part payment, or they can "consider the work (the cattle-pass) in awarding pecuniary damages." *True v. Maine Central R. R.*, 113 Me. 375, 94 A. 183.

**And section is limited to crossings for agricultural purposes only.**—The plain language of this section limits the powers of the commissioners, in this behalf, to crossings needed for agricultural purposes only. It is not broad enough to confer powers that may require railroads to maintain private crossings for any landowner, regardless of the use and necessity. *Hewett v. Knox County Com'rs*, 85 Me. 308, 27 A. 179.

This section does not authorize the

county commissioners to award that the railroad company should keep open a road used to and from a kiln. *Hewett v. Knox County Com'rs*, 85 Me. 308, 27 A. 179.

**An underpass fourteen feet high and twelve feet wide is not such a structure as is contemplated by this section.** *True v. Maine Central R. R.*, 113 Me. 375, 94 A. 183.

**No appeal from order for cattle-pass, etc.**—To the order of a cattle-guard, cattle-pass and farm-crossing, under this section there is no appeal. An appeal lies only to the assessment of pecuniary damages; to the order for the cattle-pass it is expressly denied, as will appear from the last sentence of § 35. *True v. Maine Central R. R.*, 113 Me. 375, 94 A. 183.

**Assessment of damages as working estoppel to dispute existence of way.**—See *Hewett v. Knox County Com'rs*, 85 Me. 308, 27 A. 179.

**Applied in** *Fitzpatrick v. Boston & Maine R. R.*, 84 Me. 33, 24 A. 432.

**Sec. 35. County commissioners, in awarding damages may prescribe terms and conditions.**—Said commissioners in awarding damages for land or other property taken by any railroad company may, on the application of such railroad company, prescribe such terms and conditions, in all respects, for the use of the land or property taken, by the owners thereof and the railroad company respectively, as will secure the best accommodation of the owners, and the proper and convenient use of the same by such railroad company. In case of appeal by either party, the only question in issue shall be the amount or measure of damages on the terms and conditions imposed by the commissioners. (R. S. c. 41, § 35.)

**Cross reference.**—See c. 47, § 24, re applicability of § 35, to street railroads.

**No appeal from order for cattle-pass, etc.**—See note to § 34.

**Sec. 36. Commissioners to report damages and rights of each party; notice.**—Said commissioners shall at a regular session make a report of their general estimate of damages, stating therein specifically the terms and conditions imposed by them and the rights and obligations of each party and cause it to be recorded; their clerk shall then make out a notice to each person, stating the amount of damages awarded to him, which shall be served by an officer on those resident in the state and upon others, if any, by a publication 3 weeks successively in a newspaper printed in the county, if any; if not, in the state paper. The expense of notices shall be added to the costs of the proceedings and paid accordingly. (R. S. c. 41, § 36.)

**Cross reference.**—See c. 47, § 24, re applicability of § 36, to street railroads.

**Applied in** *Cassidy v. Kennebec & Portland R. R.*, 45 Me. 263; *Portland & Ogdensburg R. R. v. Cumberland County*

*Com'rs*, 64 Me. 505; *Littlefield v. Boston & Maine R. R.*, 65 Me. 248; *Knight v. Aroostook River R. R.*, 67 Me. 291; *Clark v. Maine Shore Line R. R.*, 81 Me. 477, 17 A. 497.

**Sec. 37. Appeal; notice and proceedings.**—Any person, aggrieved by the decision or judgment of the county commissioners in relation to damages for land taken for railroad purposes, may appeal to the next term of the superior court to be held in the county where the land is situated, more than 30 days from the day when the report of the commissioners is made, excluding the day of the commencement of the session of said court, 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 and issue execution for the damages recovered, with costs to the party prevailing in the appeal, but no committee or jury shall alter the requirements in the report of the commissioners. The appellants shall serve written notice of such appeal upon the opposite party 14 days at least before the session of said court and shall at the first term file a complaint setting forth substantially the facts of the case. On the trial exceptions may be taken as in other cases. (R. S. c. 41, § 37.)

**Cross reference.**—See c. 47, § 24, re applicability of § 37 to street railroads.

**History of section.**—See *Clark v. Maine Shore Line R. R.*, 81 Me. 477, 17 A. 497.

**Time for taking appeal.**—In the construction of this section the time in which an appeal may be taken is not to be enlarged so as to give an appellant the next term of court after service of notice, instead of the next term after the report of the commissioners is made, in which to enter an appeal. *Clark v. Maine Shore Line R. R.*, 81 Me. 477, 17 A. 497.

**To be a prevailing party does not depend upon the degree of success at different stages** of the suit, but upon whether at the end of the suit or other proceeding the party who has made a claim against the other has successfully maintained it. *Bangor & Piscataquis Ry. v. Chamberlain*, 60 Me. 285.

**Costs are to be paid by party losing at last trial.**—The costs of all the trials upon the appeal are to be paid by the party

losing at the last trial. *Goodwin v. Boston & Maine R. R.*, 63 Me. 363.

**Landowner held prevailing party though damages reduced by jury.**—A landowner who makes and successfully maintains a claim for damages against a railroad company for land taken for their road is a prevailing party, and entitled to costs, notwithstanding there are two trials, one before the county commissioners, and another, on appeal, before a jury, and the amount awarded by the jury is less than the amount awarded by the county commissioners. *Bangor & Piscataquis Ry. v. Chamberlain*, 60 Me. 285; *Goodwin v. Boston & Maine R. R.*, 63 Me. 363.

**View by jury.**—See *Snow v. Boston & Maine R. R.*, 65 Me. 230.

**Opinion evidence.**—See *Snow v. Boston & Maine R. R.*, 65 Me. 230.

**Applied in** *Knight v. Aroostook River R. R.*, 67 Me. 291.

**Cited in** *Pencbscot v. Bangor*, 70 Me. 497; *True v. Maine Central R. R.*, 113 Me. 375, 94 A. 183.

**Sec. 38. Company may deposit damages, interest and costs.**—When the proceedings are closed, the corporation may deposit with the clerk the amount of damages, with interest thereon from the time when the estimation was recorded, and legal costs, in full satisfaction therefor, unless a demand had been previously made and payment neglected. (R. S. c. 41, § 38.)

See c. 47, § 24, re applicability of § 38 to street railroads.

**Sec. 39. When damages not paid.**—When the damages remain unpaid for more than 30 days after they are due and demanded, a bill in equity may be filed in court, in term time or vacation, by the person entitled to them, praying for an injunction against the use or occupation of his land taken. If proceedings for an estimation of damages are not commenced within 3 years and the owner of the land files a bill praying therefor, the court may estimate the damages, decree their payment and issue an execution therefor; and the plaintiffs shall be entitled to a bill for an injunction; and in either case, any justice of the court, after summary notice to the corporation and upon proof of the facts may, without any bond filed, issue an injunction prohibiting such use and occupation until all damages and costs are paid. The bill shall be entered, service of it made and continued at the next term after the injunction is issued. At the second term, if payment has not been made, the injunction may be made absolute; and all rights acquired by taking the land and all rights of property in and to whatever has been placed upon it cease, and the owner may maintain an action for its recovery and protection. (R. S. c. 41, § 39.)

**Cross reference.**—See c. 47, § 24, re applicability of § 39 to street railroads.

**Remedy is cumulative.**—The statutory methods of procedure provided in this

section are cumulative and not exclusive. *Perkins v. Maine Central R. R.*, 72 Me. 95.

**It is given to landowner only.**—This special remedy by injunction is given to the owner of land, and as owner, and to no one else. *Illsley v. Portland & Rochester R. R.*, 56 Me. 531.

**And not to assignee of judgment for damages.**—This section does not authorize the assignee of a judgment of the county commissioners, recovered in favor of the owner of land against a railroad company, for land damages, to maintain a bill for an injunction against the use or occupation of the land taken, and in which the complainant has no interest. *Illsley v. Portland & Rochester R. R.*, 56 Me. 531.

**Regular and formal demand must be shown.**—This section requires that the damages must remain unpaid for more than thirty days after they are due and demanded. A regular and formal demand on the company must be shown. It is not enough to make the usual and general allegation, as in a writ, that, though often requested, etc. A specific demand, on a day certain, more than thirty days before filing the bill, must be stated, or the bill will be bad on demurrer. *Mooers v.*

*Kennebec & Portland R. R.*, 58 Me. 279.

**If the plaintiff could not recover in a suit on his claim, he cannot have this summary remedy by injunction.** His legal right to the payment of damages, and to enforce that right at law, must be shown before this extraordinary power will be interposed. *Mooers v. Kennebec & Portland R. R.*, 58 Me. 279.

The first point to be established in a suit under this section is, that damages are due and unpaid. There must be an existing right to demand payment, and, if not complied with, a right to enforce the claim. *Mooers v. Kennebec & Portland R. R.*, 58 Me. 279.

**Thus where judgment is barred by limitations, plaintiff cannot have injunction.**—A judgment in the court of county commissioners for damages for land taken by a railroad is barred by the six-year statute of limitations. And a claim, whether in judgment or otherwise, cannot be said to be existing, within the meaning of this section, when it is barred by the statute of limitations. *Mooers v. Kennebec & Portland R. R.*, 58 Me. 279.

**Cited in** *Spofford v. Bangor & Bucksport R. R.*, 66 Me. 51.

**Sec. 40. Service of process and notices.**—Service of process and notice may be made upon the president of the corporation; when no president, upon any of its officers; and when no officer, upon a stockholder. Service of an injunction issued against any person, whether a party to the bill or not, may be made upon him and he shall be liable to all the penalties and consequences provided for a breach of it. (R. S. c. 41, § 40.)

See c. 47, § 24, re applicability of § 40 to street railroads.

**Sec. 41. Breach of injunction.**—The court may order persons violating such injunction, after service or using the land, to show cause at a time fixed, why a decree should not be entered and execution issued against them individually, and their goods and estate, for the damages, interest, costs and for additional damages and costs for breach of the injunction. Upon service and return of such order, the court may enter such decree as is just and equitable against such persons and issue execution accordingly; or may proceed against them as for breach of injunction in other chancery cases. (R. S. c. 41, § 41.)

See c. 47, § 24, re applicability of § 41 to street railroads.

### Railroad Construction Aided by Towns.

**Sec. 42. City or town may aid in construction of road; proceedings.**—A city or town by a 2/3 vote, at any legal meeting called for the purpose, may raise by tax or loan, from time to time or all at once, a sum not exceeding in all 5% on its regular valuation for the time being, to aid in the construction of railroads in such manner as it deems proper, and for such purpose may contract with any person or railroad corporation. At such meetings the legal voters shall ballot, those in favor of the proposition voting "Yes," and those opposed voting "No." The ballots cast shall be sorted, counted and declared in open town meeting and recorded, and the clerk shall make return thereof to the municipal officers

who shall examine such return, and if  $\frac{2}{3}$  of the ballots cast are in favor of the proposition, said officers shall forthwith proceed to carry the same into effect. (R. S. c. 41, § 42.)

**Cross references.**—See Me. Const., Art. 9, § 15, re limitation of municipal indebtedness; c. 47, § 24, re applicability of § 42, to street railroads.

**Raising of money, appropriation and manner thereof, to be settled by two-thirds vote.**—To exercise the power conferred by this section effectively, so as to bind the town, it must be shown that not only the raising of the money, but its appropriation to aid in the construction of the railroad and the manner of its appropriation were all settled by the requisite two-thirds vote. *Portland & Ogdensburg R. R. v. Standish*, 65 Me. 63.

**Majority cannot waive or modify terms of two-thirds vote.**—A town by the vote of a majority cannot waive, change, or modify the terms and conditions of a vote of two-thirds, so as to bind the town by such waiver, change, or modification, in cases where, as under this section, the vote of two-thirds was required to bind the

town. *Portland & Oxford Central R. R. v. Hartford*, 58 Me. 23.

**Special act authorizing raising of not exceeding \$100,000.**—The words "not exceed the sum," in a special act authorizing a town to raise not exceeding the sum of \$100,000 in aid of the construction of a railroad, and the words "not exceeding in all the five per cent" in this section, must be construed as having reference to the amount to be raised under the particular law in which they are used. Thus the two statutes may stand together and so standing they give the town the necessary authority to raise a sum greater than is authorized by either statute alone. *Stevens v. Anson*, 73 Me. 489.

**Vote to issue bonds on condition road completed and cars running on specified date.**—See *Portland & Oxford Central R. R. v. Hartford*, 58 Me. 23.

**Applied in Bucksport & Bangor R. R. v. Brewer, 67 Me. 295.**

**Sec. 43. Payment of loan.** — A city or town raising money by loan as aforesaid or under authority conferred by special act of the legislature shall raise and pay or fund besides the interest, each year after the third, not less than 3% of the principal. Any city or town receiving money, bonds, certificates of indebtedness or other evidence of debt in consideration of exchange, release or sale of its securities held to indemnify said city or town for having loaned its credit, or issued its bonds in aid of any railroad shall hold such money, bonds, certificates of indebtedness or other evidence of debt, or the proceeds thereof as a trust fund to liquidate such outstanding liabilities so long as they may continue. (R. S. c. 41, § 43.)

See c. 47, § 24, re applicability of § 43, to street railroads.

**Sec. 44. Call for meetings in cities and proceedings.** — Meetings for the purposes aforesaid in cities shall be called by the municipal officers, on the order of the common council, like meetings for the election of city officers; and said council shall set forth in their order the substance of the proposition to be inserted in the warrant. At such meetings, the voters shall vote in wards by ballot, those in favor of the proposition in the warrant voting "Yes," and those opposed voting "No," and the ballots cast shall be sorted, counted and declared in open ward meeting and recorded; the clerks shall make returns thereof to the municipal officers who shall examine the same; and if  $\frac{2}{3}$  of the ballots cast are in favor of the proposition, said officers shall forthwith proceed to carry it into effect. Lists of voters for use at such meetings shall be prepared in the same manner as for meetings for elections of town or city officers, and such lists shall be used at all meetings held under the provisions of this section and section 42. (R. S. c. 41, § 44.)

**Cross reference.**—See c. 47, § 24, re applicability of § 44 to street railroads.

**Warrant need not allude to §§ 42 to 47.**—The act from which §§ 42 to 47 were codified, by virtue of which the vote for

the loan of a town's credit was passed, is a public one, of which every person is presumed to have knowledge and of which all interested must take notice. It was therefore unnecessary to allude to it in the

article in the warrant under which the vote in question was passed. *Canton v. Smith*, 65 Me. 203.

**Meeting need not be for sole purpose of lending town's credit.**—It was not necessary under this section to call the meeting for the purpose of making a loan of the town's credit and no other purpose. True, it must be called for that purpose, as it was, by the insertion of the proper article in the warrant. It was no less for that purpose because other articles were put

into the same warrant calling attention to other business to be done. *Canton v. Smith*, 65 Me. 203.

**The adjournment of the meeting by a majority vote cannot be any objection to its legality.** The adjourned meeting was merely a continuance of the original one and, while the meeting lasts, the voters have the same control of the business before them as they originally had. *Canton v. Smith*, 65 Me. 203.

**Sec. 45. City or town may vote only once a year on same question.**

— Whenever a city or town has voted at any legal meeting thereof upon any question of loaning its credit to, or taking stock in, or in any way aiding any person or corporation, said city or town shall not vote again upon the same subject, except at its annual meetings. (R. S. c. 41, § 45.)

See c. 47, § 24, re applicability of § 45 to street railroads.

**Sec. 46. Town agents may vote on town stock.**—When a city or town holds stock in a railroad, the municipal officers thereof, or an agent appointed by them in writing, may vote thereon at any meeting of the corporation. (R. S. c. 41, § 46.)

See c. 47, § 24, re applicability of § 46 to street railroads.

**Sec. 47. Citizens eligible as directors.**—Whenever any city or town in the state, in its corporate capacity, holds 1/5 or more of the shares in the capital stock of any railroad incorporated by the legislature, any citizen thereof, being a freeholder and resident therein, is eligible as a director of such railroad company. (R. S. c. 41, § 47.)

See c. 47, § 24, re applicability of § 47 to street railroads.

**Contractors' Laborers Protected.**

**Sec. 48. Liability of railroad companies for payment of laborers.**—Every railroad company, in making contracts for the building of its road, shall require sufficient security from the contractors for the payment of all labor thereafter performed in constructing the road by persons in their employment; and such company is liable to the laborers employed for labor actually performed on the road if they, within 20 days after the completion of such labor, in writing, notify its treasurer that they have not been paid by the contractors; but such liability terminates unless the laborer commences an action against the company, within 6 months after giving such notice. (R. S. c. 41, § 48.)

**Cross references.**—See c. 47, § 24, re applicability of § 48 to street railroads; c. 36, § 82, re liability for damages caused by fires during construction of railroad.

**Construction of section.**—This section is not strictly remedial; while it confers benefits, it also imposes burdens; while it gives protection to one of the parties it compels the other party to pay a debt which he had no voice in contracting. The correct rule for the interpretation of such a statute is to neither extend nor restrict its operation beyond the fair meaning of the words used. *Blanchard v. Portland &*

*Rumford Falls R. R.*, 87 Me. 241, 32 A. 890.

**Section is for benefit of laborers only.**—This section was evidently intended, not for the benefit of contractors, but for the benefit of laborers. The railroad company is made liable to laborers only. *Rogers v. Dexter & Piscataquis R. R.*, 85 Me. 372, 27 A. 257.

**"Laborer" defined.**—In the language of the business world, a laborer is one who labors with his physical powers in the service and under the direction of another for fixed wages. This is the common

meaning of the word, and hence its meaning in this section. *Rogers v. Dexter & Piscataquis R. R.*, 85 Me. 372, 27 A. 257; *Blanchard v. Portland & Rumford Falls R. R.*, 87 Me. 241, 32 A. 890.

**One who performs physical labor, however severe, in his own service or business, is not a laborer** in the common business sense. A contractor, who takes the chance of profit or loss, is not a laborer in that sense. *Rogers v. Dexter & Piscataquis R. R.*, 85 Me. 372, 27 A. 257.

One who contracts to do a certain specific portion of the work of construction of a railroad, and personally labors in the performance of his contract, along with others hired by him for the same purpose, is not a "laborer employed," within the meaning of this section. *Rogers v. Dexter & Piscataquis R. R.*, 85 Me. 372, 27 A. 257.

**Bookkeeper or superintendent is not laborer.**—The word "laborers" as here used

does not include one who at an agreed compensation of seven dollars a day superintends the building of bridges, keeps an account of the men's time, and makes out the payrolls. It is immaterial whether such employee is called a bookkeeper, or a superintendent, or both; for in neither capacity are his services within the protection of this section. *Blanchard v. Portland & Rumford Falls R. R.*, 87 Me. 241, 32 A. 890.

**What is "railroad company."**—A lumber company organized as a manufacturing corporation, having constructed a railroad on its own land to facilitate its lumbering operations, is not a railroad company within the meaning of this section. *Palangio v. Wild River Lumber Co.*, 86 Me. 315, 29 A. 1087.

**Cited in** *Littlefield v. Morrill*, 97 Me. 505, 54 A. 1109.

### Inspection and Supervision.

**Sec. 49. Railroads examined; annual report.**—The public utilities commission, or 1 member thereof, or some competent person by said commission duly appointed, on application or whenever they think necessary, shall carefully examine the tracks, rolling stock, bridges, viaducts and culverts of any railroad; and shall annually make a report to the governor of their official doings, with such facts as they deem of public interest or which he may require; and all persons managing railroads shall give the commission such information as they at any time require. Said commission shall maintain no permanent full-time employees for making such inspections. (R. S. c. 41, § 49.)

See c. 47, § 24, re applicability of § 49 to street railroads.

**Sec. 50. Certificate of safety for passenger trains.** — No passenger train shall be run over any new railroad, or over any railroad in process of construction, until the public utilities commission has made an inspection of such railroad and granted a certificate of its safety for public travel; and a copy of said certificate, attested by the clerk of the commission, shall be furnished the corporation operating said railroad. Any person or corporation violating the provisions of this section forfeits to the state \$100 for each offense, to be recovered in an action on the case or by complaint and indictment; and the attorney general shall institute proceedings to recover the same. (R. S. c. 41, § 50.)

**Sec. 51. Experienced engineer to examine bridges.** — Every railroad corporation shall, when requested by the public utilities commission, have an examination made of any iron bridge or other structure by a competent and experienced mechanical engineer, who shall report to the commission forthwith the results of his examinations, his conclusions and recommendations, and transmit a copy of the same to the corporation. The report shall furnish such information in detail and with such drawings and prints as may be in writing requested by the public utilities commission. (R. S. c. 41, § 51.)

**Sec. 52. Managers notified when road unsafe.**—If the public utilities commission, at any examination, finds the track, culverts, bridges or rolling stock in use so out of repair as to be unsafe for travelers, they shall immediately notify the managers of said road of its condition and the time in which the repairs shall

be made; and may require them to reduce the speed of all trains until the repairs are made. (R. S. c. 41, § 52.)

See c. 47, § 24, re applicability of § 52 to street railroads.

**Sec. 53. Court proceedings when managers do not comply.**—If said managers do not comply with such requirements, the commission shall petition the supreme judicial court or the superior court in any county where the railroad extends, setting forth their examination, the condition of the road, the notice and requirement and refusal to comply; and shall notify the attorney general or the attorney of such county of the filing of said petition, one of whom shall appear and take charge of the proceedings in court. The court shall order a notice thereon and appoint a hearing; and after a hearing, may order such things to be done by the managers of the road as they deem necessary to secure the safety of travelers; and unless such managers execute a bond to the state, with sufficient sureties, for such sum as the court deems necessary to make the repairs, conditioned that they will, within the time fixed by the court, make the repairs or otherwise satisfy the court that they will be so made, the court shall issue an injunction on said corporation and its managers, prohibiting the running of any passenger trains over the portion of the road found to be unsafe until the order has been complied with or revoked. (R. S. c. 41, § 53.)

See c. 47, § 24, re applicability of § 53 to street railroads.

**Sec. 54. Commission to prohibit passenger trains from running over railroads when unsafe.**—When, in the opinion of the public utilities commission, the passage of passenger trains over any portion of a railroad would be attended with imminent danger, they may notify the president or superintendent of such road and order the immediate stopping of all passenger trains about to run over such portion thereof. If their order is not obeyed, said commission shall at once apply to some justice of the supreme judicial court or of the superior court who may, upon satisfactory proof of the necessity for such order and without notice to said company, issue an injunction prohibiting the running of passenger trains over said road until further order of the court. (R. S. c. 41, § 54.)

See c. 47, § 24, re applicability of § 54 to street railroads.

**Sec. 55. When connecting railroads do not agree as to transportation of passengers and freight.**—When the managers of a railroad authorized to cross or connect with another road are unable to agree therewith as to transportation of passengers and freight over their roads, and upon other matters, or when the managers of the latter road neglect or fail or refuse to perform the requirements, provisions or conditions of the charter under which they hold and operate their railroad and acts additional and amendatory thereto, they may apply to the public utilities commission in writing, and any commissioner may indorse an order of notice thereon to all interested, fixing a time and place for hearing; and the applicant shall cause such order to be complied with. At such hearing any corporation or person claiming to be interested may be made a party and be heard thereon though not named in the application; said commission has the authority of courts of law to summon witnesses and compel their attendance and testimony, and depositions may be taken and used as in suits at law. When the hearing is closed, the public utilities commission shall determine and award the rates for transporting passengers, freight or cars over the road of each, or over any road on which either is a common carrier by contract or otherwise, and all other matters in controversy between the 2 roads arising from such connecting or crossing or the times of doing so; and may require either party to give security to the other for the payment of balances resulting from their mutual business, on such terms as they deem equitable; and may determine that their award may be suspended,

after its acceptance, at the election of the party injured by the non-performance of the conditions thereof by the other. (R. S. c. 41, § 55.)

**History of section.**—See Lewis Poultry Co. v. New York Central R. R., 117 Me. 482, 105 A. 109.

**Sec. 56. Award returned to court for action; exceptions; award binding when accepted.** — The award shall be returned to the court in the county where the hearing was had and accepted, or for good cause, rejected or recommitted. Exceptions to any ruling of the court in such proceedings may be taken and allowed within the rules of the court, except in recommitting the report; and when so allowed, a certified copy thereof and of all papers used at the hearing, shall be forthwith sent by the clerk of the court to the chief justice; and the parties shall be heard thereon by the law court; but if such court does not sit within 30 days after the papers are received by the chief justice, he shall, at the request of either party, detail a majority of the justices to hear the case at the time and place ordered by him; send the order to the clerk of the court where the matter is pending and he shall enter it on the docket under the case, and that shall be sufficient notice to the parties; and the case shall then and there be heard as if at a regular law term. When the award is accepted and judgment rendered thereon, it is binding on all parties notified, whether they appeared or not, until a new award is made on another application; the court has full power to make the award effectual by process of contempt or otherwise as in equity cases; and if the corporation or managers of any such road, after they are notified of the acceptance of such award, fail to comply with it, the directors, superintendent or other agents operating the same shall be punished by a fine of not less than \$10, nor more than \$50, for each day of such failure, to be recovered by indictment in the county where it occurs. (R. S. c. 41, § 56.)

**Sec. 57. Station grounds not to be taken by another company.**—No railroad corporation shall take the grounds occupied by any other railroad company and necessary for its use for station purposes, without its consent. When application is made to take such grounds, the public utilities commission, upon notice and hearing thereon, shall determine whether the land proposed to be taken is necessary as aforesaid or not and whether any public necessity requires it to be taken. (R. S. c. 41, § 57.)

**Sec. 58. Use of railroad passenger stations.** — Whenever any railroad passenger station shall be erected or maintained in any city or town in this state, any railroad corporation having or using a track or passenger station within such city or town shall have the right to run its passenger trains to and from such station, over any railroad track or tracks leading thereto as herein provided, and to use the same for the purpose of delivering and receiving through passengers, under such reasonable terms and regulations and over such tracks as may be agreed upon by the owner of such station; the railroad whose tracks are used in running to and from the same and the railroad corporation so desiring its use for said purpose, and in case of disagreement, upon petition, notice and hearing thereon, the public utilities commission shall fix and determine such terms, tracks and regulations. No corporation which shall deny, in any proceedings, the authority of the public utilities commission to proceed and make the determination as herein provided, or which shall refuse to abide by their decision rendered therein, shall avail itself of the provisions of this section. (R. S. c. 41, § 58.)

**Sec. 59. Station erected.**—The public utilities commission, upon petition of responsible parties, representing that public convenience and necessity require the erection and maintenance of a station for freight and passengers or for passengers alone on the line of any railroad, after 14 days' notice by copy of said petition upon such corporation and by publishing said petition, with the order of said

commission thereon, in such public newspaper as is designated in said order, 2 weeks successively, the last publication to be prior to the time fixed for said hearing, shall hear the parties and determine whether the prayer of the petitioners shall be granted; and if such prayer is granted, they shall determine at what place or places a station shall be erected or maintained if erected, and whether for passengers or for passengers and freight. (R. S. c. 41, § 59.)

**Constitutionality.**—The constitutional power of the legislature to confer such jurisdiction and authority over this subject upon the public utilities commission as conferred by this section is unquestionable, since the legislature has the right to provide for the correction and prevention of all abuses of the franchises of railroad corporations. *Railroad Com'rs v. Portland*

& *Oxford Central R. R.*, 63 Me. 269.

**Section not an infringement upon corporation's charter.**—See *Railroad Com'rs v. Portland & Oxford Central R. R.*, 63 Me. 269.

**Cited in** *In re Railroad Com'rs*, 87 Me. 247, 32 A. 863; *Northern Pacific R. R. v. Dustin*, 142 U. S. 492, 12 S. Ct. 283, 35 L. Ed. 1092.

**Sec. 60. Site and kind of station.**—Said commission shall designate the site and the kind of buildings to be erected and maintained, as the case seems to demand, and the time in which such corporation shall comply with said order. (R. S. c. 41, § 60.)

**Sec. 61. If company refuses.**—If said corporation refuses or neglects to comply with the order of said commission, within the time prescribed therein, they shall enforce a compliance as provided in section 53. (R. S. c. 41, § 61.)

**Applied in** *Railroad Com'rs v. Portland & Oxford Central R. R.*, 63 Me. 269.

**Sec. 62. Costs of hearing paid by losing party.**—In all cases heard before the commission under the 3 preceding sections, the expenses and costs attending the same shall be paid by the corporation against whom the complaint is made if the prayer of the petitioners is granted, but if their prayer is denied, such expenses and costs shall be paid by the petitioners. If the party against whom costs are so adjudged refuses or neglects to pay them within 30 days after such adjudication, upon complaint for such costs made by said commission to any justice of the superior court, such justice may cause execution to issue therefor. (R. S. c. 41, § 62.)

### Crossings and Bridges.

**Statutes relating to railroad crossings construed together.**—The various statutes relating to railroad crossings, being in pari materia, should be construed together, as if they were one law. *Maine Central R. R. v. Bangor & Old Town Ry.*, 89 Me. 555, 36 A. 1050.

**Full jurisdiction is conferred upon public utilities commission.**—The statutes relating to railroad crossings indicate the purpose of the legislature to confer upon the public utilities commission full jurisdiction as to all crossings of ways by railroads, and of railroads by railroads, and of all matters connected with or incidental thereto, which are necessary or conducive to the safety of travelers. *Maine Central R. R. v. Bangor & Old Town Ry.*, 89 Me. 555, 36 A. 1050.

**And its decision should not be altered unless manifestly illegal or unjust.**—The evident intention of the legislature was to leave the whole question of how railroad crossings should be constructed and main-

tained, and how the expense of such crossings should be borne, in the first instance to the sound judgment and discretion of the public utilities commission, and its decision should not be altered or reversed unless manifestly illegal or unjust. *Maine Central R. R. v. Waterville & Fairfield Ry. & Light Co.*, 89 Me. 328, 36 A. 453; *Orono v. Bangor Ry. & Elec. Co.*, 105 Me. 428, 74 A. 1022.

**Private right of way.**—Whatever private right of way a landowner may have had prior to the location of the railway, was enjoyed subject to the taking of the land for public use, and after a legal location of the railway the safety of public travel required that the intersection of any highway or town way with the railway track should be under the regulation and control of the public utilities commission. *Currie v. Bangor & Aroostook R. R.*, 105 Me. 529, 75 A. 51.

**Sec. 63. Crossings of highways and streets.**—Railroads may cross highways or town ways in the line of the railroad, but cannot pass along them without leave of the town, but when a railroad is hereafter laid out across a highway or other public way, it shall be constructed so as to pass either over or under such way, unless the public utilities commission after notice and hearing authorize a crossing at grade. Before entering upon the construction of any railroad, the manner and conditions of crossing shall be determined as provided by section 48 of chapter 96; but no crossing of a street in a city, not a highway, shall be made without the written consent of the mayor and aldermen. Crossings not so made are nuisances and may be so treated, and the directors of railroad corporations making them are personally liable. (R. S. c. 41, § 63.)

**Cross reference.**—See c. 47, § 26, re applicability of § 63 to street railroads.

**This section was designed to afford greater security to the public,** having occasion to use our public highways while railroads are in process of construction, and to protect such ways from injury, as far as practicable, by the construction of such railroads. It is only the exercise of that police power which is always necessarily retained by the people in their sovereign capacity, for the security of the public safety, and of which they cannot be divested by legislative enactment or chartered immunities. *Veazie v. Mayo*, 45 Me. 560.

**A railroad could extend a curve in a branch track partly over or along a highway,** but without crossing it, without leave of the town. *Bangor, Oldtown and Milford R. R. v. Smith*, 47 Me. 34.

**The city council of Bangor is a body entirely distinct from the mayor and aldermen;** and the assent of the former to the construction of a railroad, across a street in that city, was nugatory and conferred

no authority for that purpose. *Veazie v. Mayo*, 45 Me. 560.

**This section makes that a nuisance which was not one** under any other provision of law. *State v. Portland, Saco & Portsmouth R. R.*, 58 Me. 46.

**Sufficiency of indictment for maintaining nuisance.**—See *State v. Portland, Saco & Portsmouth R. R.*, 58 Me. 46.

**Compliance with section does not absolve railroad from duty of exercising reasonable care.**—See note to § 73.

**Liability of railroad for consequential damages resulting from excavation.**—See *Boothby v. Androscoggin & Kennebec R. R.*, 51 Me. 318.

**Highway crossing railway.**—See *In re Railroad Com'rs*, 87 Me. 247, 32 A. 863.

**Application of section to corporations chartered before its enactment.**—See *Veazie v. Mayo*, 45 Me. 560; *Veazie v. Mayo*, 49 Me. 156.

**Applied in Bangor, Oldtown & Milford R. R. v. Smith, 49 Me. 9; *Portland, Saco & Portsmouth R. R. v. York County Com'rs*, 65 Me. 292.**

**Sec. 64. Ways raised or lowered; course altered.**—Highways and other ways may be raised or lowered, or the course of the same may be altered, to facilitate a crossing or to permit a railroad to pass over or under the same or at the side thereof, on application to the public utilities commission, and proceedings as provided by section 48 of chapter 96; and for such purposes land may be taken and damages awarded as provided for laying out highways and other ways. The commission may prescribe the manner in which the work shall be done by the corporation. While the use of any way is thereby obstructed, a temporary way shall be provided by the corporation. (R. S. c. 41, § 64.)

**Cross reference.**—See c. 47, § 26, re applicability of § 64 to street railroads.

**History of section.**—See *Maine Central R. R. v. Bangor & Old Town Ry.*, 89 Me. 555, 36 A. 1050.

**Duty to use reasonable care.**—The act permitted should be done in such a manner that the use of the road should not be unnecessarily obstructed, and reasonable care should be used, by the erection of barriers, and otherwise, to warn and protect the citizens from danger and injury.

*Veazie v. Penobscot R. R.*, 49 Me. 119.

**Location of highway connecting crossing with existing highway.**—Under the statutes all crossings of highways by railroads, fall within the jurisdiction of the public utilities commission, and when, to effect an overhead crossing for the safety of the public, it becomes necessary to locate a short piece of highway, to connect the crossing with the existing highway, the public utilities commission alone is authorized to make such location, and as-

sess damages for the land taken. *Maine Central R. R. v. Bangor & Old Town Ry.*, 89 Me. 555, 36 A. 1050.

**Finality of judgment of public utilities commission.**—The question whether public safety requires a highway to pass over or under a railroad at a crossing, is left by this section in the first instance to the judg-

ment of the public utilities commission, and its decision should not be reversed by the supreme court unless it is manifestly erroneous. *Maine Central R. R. v. Bangor & Old Town Ry.*, 89 Me. 555, 36 A. 1050.

**Cited** in *Whittier v. Portland & Kennebec R. R.*, 38 Me. 26; *Veazie v. Penobscot R. R.*, 49 Me. 119.

**Sec. 65. Discontinuance of railroad crossings.**—Any railroad corporation, the state highway commission or the municipal officers of a city or town in which a public way crosses or is crossed by a railroad, whether at grade or otherwise, may file a petition in writing with the public utilities commission alleging that such crossing is no longer required by the public and praying that it may be closed or discontinued. The commission shall thereupon appoint a time for hearing thereon after notice of not less than 10 days to the petitioners, the state highway commission, the railroad corporation owning or operating such railroad and the city or town in which such crossing is located. After such notice and hearing, if the commission shall find that such crossing is no longer required by the public, it may order that the same be closed or discontinued. (R. S. c. 41, § 65.)

See c 47, § 26, re applicability of § 65 to street railroads.

**Sec. 66. Damages for neglect.**—When the corporation unnecessarily neglects to perform the acts so required, those injured may recover damages in an action on the case, commenced within 1 year after performance is required. (R. S. c. 41, § 66.)

**Cross reference.**—See c. 47, § 26, re applicability of § 66 to street railroads.

**This section refers to damages sustained by towns, counties and turnpike corporations** and not those suffered by individuals on account of the flow of surface water being obstructed. *Morrison v. Bucksport &*

*Bangor R. R.*, 67 Me. 353.

**Liability of railroad for consequential damages resulting from excavation.**—See *Boothby v. Androscoggin & Kennebec R. R.*, 51 Me. 318.

**Applied** in *Veazie v. Penobscot R. R.*, 49 Me. 119.

**Sec. 67. Railroad may be carried over or under a canal or railroad; bridges and abutments kept in repair; proceedings when bridge or crossing is unsafe.**—A railroad may be carried over or under a canal or railroad in such manner as not unnecessarily to impede the travel or transportation on them. The corporation making such crossing is liable for damages occasioned thereby in an action on the case. Bridges and their abutments, constructed for a crossing of any way, shall be kept in repair by the corporation, or by persons or parties running trains on any railroad crossing a highway or town way. The municipal officers of any city or town may give notice in writing to such persons, parties or corporations that a bridge required at such crossing has not been erected, or is out of repair and not safe and convenient, within the requirements of section 63 of chapter 96, or that the crossing of any such highway or town way passing such railroad at grade, within their respective cities or towns, is not made or maintained safe and convenient as required by said section; and such persons, parties or corporations shall erect or repair such bridge or make such crossing safe and convenient, as aforesaid, within 10 days from the service of said notice; and if they neglect to do so, any one of said municipal officers may apply to any justice of the supreme judicial court or of the superior court, in term time or vacation, to compel such delinquents to erect or repair such bridge or make such crossing, as aforesaid; and after hearing, such justice or court may make any order thereon which the public convenience and safety require and may by injunctions compel the respondents to comply therewith; or said officers may, after 10 days from the service of such notice, cause necessary repairs to be made and the

expense thereof shall be paid by the persons, parties or corporations whose duty it is to keep such crossing safe and convenient. (R. S. c. 41, § 67.)

**Cross reference.**—See c. 47, § 26, re **Applied** in Chapin v. Maine Central R. applicability of § 67 to street railroads. R., 97 Me. 151, 53 A. 1105.

**Sec. 68. Temporary crossings for lumbering operations.**—A railroad company may, for the purpose of accommodating lumbering operations and for the transportation in ordinary vehicles of wood, coal, ice, hay or other commodities, establish and maintain temporary crossings of any railroad operated by it, by agreement with any person who may request such crossing for such purposes; and upon petition, the public utilities commission, after notice and hearing, may direct any railroad company to establish and maintain such temporary crossings at such places on its line of road as said commission shall deem expedient, and thereupon said railroad company shall establish such crossing and maintain the same in accordance with the provisions of this section and the 3 following sections.

Whenever in the opinion of the public utilities commission any temporary railroad crossing established under the provisions of this section is no longer necessary, said commission may, on its own motion or on petition of any interested party, after notice and hearing, order such crossing discontinued. (R. S. c. 41, § 68.)

See c. 47, § 26, re applicability of § 68 to street railroads.

**Sec. 69. Crossing signs placed on each side of track; whistle and bell sounded.**—At every temporary crossing, established in accordance with the preceding section, boards with the words "Temporary railroad crossing, stop, look, listen" distinctly painted thereon, on each side in letters plainly legible, shall be placed on each side line of the railroad right-of-way at such crossing, on a post or other structure, in such position as to be easily seen by persons about to cross the railroad at such places. For any such crossing so established, engine bells shall be rung and engine whistles sounded as provided in section 73. (R. S. c. 41, § 69.)

See c. 47, § 26, re applicability of § 69 to street railroads.

**Sec. 70. Precautions at such crossings.**—No team or vehicle shall be driven over any such crossing unless such team or vehicle shall first be stopped at the line of the railroad right-of-way and the driver thereof shall look and listen, and such driver or some other person for him shall go upon such crossing, ahead of such team or vehicle, and be satisfied that such team or vehicle may safely be driven over such crossing. Nothing in the provisions of this section shall prevent the public utilities commission from making such further regulations for safety at any such crossing established under their direction, as they may deem expedient or necessary. (R. S. c. 41, § 70.)

See c. 47, § 26, re applicability of § 70 to street railroads.

**Sec. 71. Crossings kept open part of year; expense apportioned.**—Each such crossing shall be kept open only during such time each year as the parties interested therein may agree upon, or as the public utilities commission may specify in cases where the commission directs such crossings to be established. When the public utilities commission shall direct any such temporary crossing to be established, they shall determine who shall bear the expense of establishing and maintaining such crossing and they may, if they see fit, apportion such expense between the railroad company and the person or persons who shall have petitioned for such crossing; provided, however, that the expense of the crossing

signs and the planking between the rails shall in any event be borne by the railroad company. (R. S. c. 41, § 71.)

See c. 47, § 26, re applicability of § 71 to street railroads.

**Sec. 72. Company to erect and maintain bridge guards.** — Every railroad corporation shall erect and maintain suitable bridge guards at every bridge or other structure, any portion of which crosses the railroad less than 20 feet above the tracks; such guards must be approved by the public utilities commission and be erected and adjusted to their satisfaction. Any corporation refusing or neglecting to comply with the provisions of this section, for each month of continuance in such neglect or refusal, forfeits \$50; and whoever willfully destroys or breaks any such bridge guard forfeits not more than \$100, and may be imprisoned for not more than 30 days. (R. S. c. 41, § 72.)

See c. 47, § 26, re applicability of § 72 to street railroads.

**Sec. 73. Signboards maintained at grade crossings; bell on engine and when rung.** — Every railroad corporation shall cause signboards with the words "Railroad Crossing" distinctly painted on each side thereof in letters plainly legible, to be placed and constantly maintained at the side of highways and town ways where they are crossed at grade by such railroads, on posts or other structures, in such position as to be easily seen by persons passing upon such ways; and every such corporation shall cause a whistle and a bell of at least 35 pounds in weight to be placed upon each locomotive used upon its railroad, and such whistles shall be sounded as a warning beginning at a distance of 60 rods on standard or narrow gauge railroads from all crossings of such ways on the same level, unless the public utilities commission upon petition of the corporation or of the municipal officers or of 10 or more residents of any city or town in which such crossing is located, after notice and hearing, shall order the sounding of such whistle to be discontinued in any city or village until further order of the commission; and such bell shall be rung at a distance of 60 rods, on standard or narrow gauge railroads, from such grade crossings and be kept ringing until the engine has passed the same; provided, however, that upon petition of 10 or more residents of the state, after notice to the railroad corporation and a public hearing, the public utilities commission may in writing order such corporation to give additional warning to travelers upon such ways by requiring the sounding of such whistles or the ringing of such bells at other places where said railroads cross such public ways other than at grade or run contiguous thereto, and such orders shall have the same force and place the same obligations upon railroad corporations as when required under the provisions of this section. (R. S. c. 41, § 73.)

**Cross reference.**—See c. 47, § 26, re applicability of § 73 to street railroads.

**Railroad must observe such other precautions as are required by reasonable care.**—A compliance with this section and § 63 on the part of a railroad corporation, does not absolve it from observing such other precautions as reasonable and ordinary care may require in crossing a

thoroughfare leading to and from a city. *Webb v. Portland & Kennebec R. R.*, 57 Me. 117.

**Applied in** *Dyer v. Maine Central R. R.*, 120 Me. 154, 113 A. 26; *Ham v. Maine Central R. R.*, 121 Me. 171, 116 A. 261.

**Cited in** *Grows v. Maine Central R. R.*, 67 Me. 100; *Chapin v. Maine Central R. R.*, 97 Me. 151, 53 A. 1105.

**Sec. 74. Neglect of § 73; damages.** — For unnecessarily neglecting to comply with any provision of the preceding section, the corporation forfeits not more than \$500. Any person, whose duty it is to open or close such gates for the passage of an engine or traveler on a way, neglecting to do so forfeits not more than \$50. The corporation is liable for damages for its neglect to comply with these provisions, or for the neglect of any agent or for the mismanagement of an

engine, to be recovered in an action on the case by the person damaged thereby. (R. S. c. 41, § 74.)

**Cross reference.**—See c. 46, § 89, re installation of automatic signals; c. 47, § 26, re applicability of § 74, to street railroads.

**Cited** in Perkins v. Eastern R. R., 29 Me. 307; Webb v. Portland & Kennebec R. R., 57 Me. 117.

**Sec. 75. Manner in which railroads shall cross each other; application, notice and hearing.**—The public utilities commission shall determine the manner and conditions of one railroad of any kind crossing another. Any corporation or party operating such railroad may apply to said commission for a change in the then existing condition, construction or manner of any such crossing. Such application shall be in writing, giving the location of the crossing, and said commission shall give a hearing thereon after they have ordered such notice to be given by the applicants as to the time, place and purposes of such hearing as the commission shall deem proper. The public utilities commission shall determine at such hearing what changes, if any, are necessary, and how such crossings shall be constructed and maintained, the expense thereof to be borne as the commission may order. (R. S. c. 41, § 75.)

**History of section.**—See Maine Central R. R. v. Bangor & Old Town Ry., 89 Me. 555, 36 A. 1050.

**Apportionment of expense.**—This section undoubtedly authorizes the public utilities commission to apportion the expense of a change in the condition of a crossing, but it does not require them to do so. It leaves the question to their sound judgment and discretion. Maine

Central R. R. v. Waterville & Fairfield Ry. & Light Co., 89 Me. 328, 36 A. 453.

**Proceedings relating to railroad crossing highway, and being crossed by another railroad.**—See Maine Central R. R. v. Bangor & Old Town Ry., 89 Me. 555, 36 A. 1050.

**Stated** in Boston & Maine R. R. v. Saco Valley Elec. R. R., 98 Me. 78, 56 A. 202.

**Sec. 76. Crossing over railroad already built; application, notice and hearing.**—In the case of a railroad company of any kind whose tracks are to be constructed across the tracks of any railroad already built, such crossings shall be made, constructed and maintained in such manner and under such conditions as shall be ordered by the public utilities commission, the expense thereof to be borne as the commission may order. The parties contemplating making such crossing shall apply to the commission in writing, giving the location of the crossing desired, and said commission shall give a hearing thereon after they shall have ordered such notice to be given by the applicants of the time, place and purposes of such hearing as said commission shall deem proper. At such hearing the public utilities commission shall determine the manner and conditions of construction and maintenance of such crossing and make their report as hereinafter provided. (R. S. c. 41, § 76.)

**Cross reference.**—See note to § 75, re costs and discretion of commission.

**Decree held void.**—A decree under this section which showed upon its face that it did not represent the sound judgment and discretion of the commissioners, but was

intended as a temporary expedient until they could make up their minds what ought to be done in the premises, was void. Boston & Maine R. R. v. Saco Valley Elec. R. R., 98 Me. 78, 56 A. 202.

**Sec. 77. Plant railroad and definition.**—The provisions of section 48 of chapter 96, sections 90 to 93, inclusive, of chapter 23, and sections 63, 64, 73, 75 and 76 of this chapter, so far as applicable, shall apply to plant railroads as defined in this section. The term "plant railroad" shall be construed to mean a railroad of the owners of any mills, mines, quarries, gravel pits, log landings or yards, warehouses, storehouses, stock yards, bulk storage yards, airports, piers, docks, shipyards, educational institutions, power plants, gas works, petroleum tank farms or bulk stations, or other manufacturing, processing or mercantile establishments, and including state and federal institutions and developments, erected

or in process of erection, which said railroad is located on land provided or acquired for such purpose by the owners thereof, and whether operated by such owners, or by state or federal government or an agency thereof, or through connection with a public railroad under operating contract with it and by operation of its equipment over said plant railroad. (R. S. c. 41, § 77. 1947, c. 71.)

**Sec. 78. Bridges erected by municipalities maintained.** — Bridges erected by any municipality, over which any railroad passes, shall be constructed and maintained in such manner and condition as to safety as the public utilities commission may determine. The commission may require the officers of the railroad company and of the municipality to attend a hearing in the matter, after such notice of the hearing to all parties in interest as said commission may deem proper. The public utilities commission shall determine at such hearing the repairs, renewals or strengthening of parts, or if necessary the manner of rebuilding such bridge required to make the same safe for the uses to which it is put. They shall determine who shall bear the expenses of such repairs, renewals, strengthening or rebuilding, or they may apportion such expense between the railroad company and the city or town, as the case may be, in such manner as shall be deemed by the commission just and fair and shall make their report as hereinafter provided. (R. S. c. 41, § 78.)

**Purpose of section.**—At the time of passage of this section, under statutory provisions railroads were permitted to pass along and over our highways and bridges which our municipalities were then maintaining safe and convenient only for travelers with their horses, teams and carriages. Hence arose a necessity that all the bridges in our highways over which any railroad passes should be made and maintained sufficiently strong for this added use. To secure a prompt and efficient fulfillment of this necessity this section was passed. *Orono v. Bangor Ry. & Elec. Co.*, 105 Me. 428, 74 A. 1022.

**Section applies to all bridges which municipalities are bound to maintain.**—This section is not necessarily limited to bridges actually "erected" by the municipality, but includes all highway bridges which municipalities are bound to maintain and keep in repair, and over which any street railroad passes. *Orono v. Bangor Ry. & Elec. Co.*, 105 Me. 428, 74 A. 1022.

**And it is not necessary to pass upon questions involving the sufficiency of the town's title** to the bridge structure, for the application of this section to any particular bridge cannot depend upon the correct determination of nice questions respecting the title to the structure. *Orono v. Bangor Ry. & Elec. Co.*, 105 Me. 428, 74 A. 1022.

**Apportionment of expenses is in discretion of public utilities commission.**—Under this section the public utilities commission was given authority to apportion that expense between the railroad and the town "in such manner as shall be deemed by the board just and fair." They had full

discretion in the matter. Their apportionment must stand unless manifestly illegal or unjust. *Orono v. Bangor Ry. & Elec. Co.*, 105 Me. 428, 74 A. 1022.

**But section does not prevent parties from contracting with each other.**—This section does not prevent the parties from determining for themselves the necessity of repairs, nor from contracting with each other with reference thereto. Of course, they cannot thereby deprive the commission of its jurisdiction to determine that other repairs are necessary, and to order the same. *Augusta v. Lewiston, Augusta & Waterville Street Ry.*, 114 Me. 24, 95 A. 267.

**And commission cannot apportion expenses of repairs already made under contract.**—The public utilities commission has no jurisdiction to apportion the expenses of repairs to a highway bridge which have already been made in accordance with an agreement between the municipality and a street railroad company whose road crosses the bridge. *Augusta v. Lewiston, Augusta & Waterville Street Ry.*, 114 Me. 24, 95 A. 267.

**But it may provide for rebuilding bridge upon terms other than those previously agreed on.**—Notwithstanding that under the condition upon which the location of a bridge was granted by a municipality and accepted, the railroad company was obliged to replace the bridge at its own expense, the legislature, in the exercise of its general legislative power, could confer upon the public utilities commission authority under this section to provide for rebuilding the bridge upon terms other than

those imposed by the municipal officers. **Cited** in *Boston & Maine R. R. v. Saco* In re Knox County Elec. Co., 119 Me. 179, 109 A. 898. *Valley Elec. R. R.*, 98 Me. 78, 56 A. 202.

**Sec. 79. Report of decisions, and copies to parties interested.**—The public utilities commission shall make a report in writing of their decision in all matters named in sections 75, 76 and 78, file the same in their office, and cause a copy of such decision to be sent by mail to each of the railroad corporations and to the municipal officers of the cities or towns, as the case may be, interested therein. (R. S. c. 41, § 79.)

See c. 36, §§ 78-80, re duties of railroad companies in the prevention of forest fires; c. 96, § 47, re ways may not be located over land of railroad company without notice to company; c. 96, § 48, re public utilities commission to determine whether crossing shall be at grade or not; c. 96, §§ 51-53, re whether grade crossing shall be abol-

ished; c. 96, § 93, re railroad companies may be notified and take upon themselves defense of action for damages at crossing; c. 96, § 108, re state highway commission may cause removal of tree, bushes and other encroachments obstructing view at crossing.