

# MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

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1961 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES

VOLUME 2

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**Discard Previous Pocket Part Supplement**

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1961

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

**Applied in Central Maine Power Co. v. Public Utilities Comm., 150 Me. 257, 109**

A. (2d) 512; Cole's Express v. O'Donnell's Express, 156 Me. 211, 163 A. (2d) 360; Bangor v. Public Utilities Comm., 156 Me. 455, 167 A. (2d) 6.

### **Sec 72. Practice and rules of evidence; service of process.**

**Section safeguards constitutional rights of utility.**—A primary and not just a cumulative factor in the safeguarding withal of the constitutional rights of a utility in

this jurisdiction, derives from this section. Central Maine Power Co. v. Public Utilities Comm., 156 Me. 295, 163 A. (2d) 762.

### **General Penalties.**

**Sec. 84. Punishment when no penalty provided.**—If any public utility shall willfully violate any provision of this chapter or shall do any act herein prohibited or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided or shall fail or refuse to obey any lawful requirement or order made by the commission, for any such violation, failure or refusal such public utility shall forfeit and pay into the state treasury not more than \$1,000 for each offense, to be recovered in a civil action in the name of the state. In construing and enforcing the provisions of this section, the act, omission or failure of any officer, agent or other person acting for or employed by any public utility acting within the scope of his employment shall in every case be deemed to be the act, omission or failure of such public utility. (R. S. c. 40, § 82. 1961, c. 317, § 95.)

**Effect of amendment.**—The 1961 amendment substituted "a civil action" for "an

action on the case" in the first sentence of this section.

## **Chapter 45.**

### **Steam Railroads—Organization and Construction.**

Section 80. Minimum Distance for Clearance.

#### **Organizations.**

**Sec. 3. Approval of articles of association; issue of certificates; certificate conclusive as to organization.**

Cited in McGary v. Barrows, 156 Me. 250, 163 A. (2d) 747.

#### **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 one year thereafter. When no estimate is made within such time, the owner may maintain a civil action or have any remedy 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 it, 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. 1961, c. 317, § 96.)

**Effect of amendment.**—The 1961 amendment divided the first sentence of this section into two sentences, substituted “a civil action” for “an action of trespass” in the present second sentence and made other minor changes therein.

**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, and prescribe the time and manner of making them and consider this work in awarding pecuniary damages. 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 superior court, and the court, 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 a civil action, double the damage that he has sustained by such neglect. (R. S. c. 41, § 34. 1961, c. 317, § 97.)

**Effect of amendment.**—The 1961 amendment divided this section, which formerly consisted of one sentence, into two sentences; deleted “to the supreme judicial court or” preceding “to the superior court”; substituted “the court” for “either of said courts”; and substituted “a civil action” for “an action on the case” therein.

**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 superior court to be held in the county where the land is situated, within 30 days after the report of the commissioners is made, 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, when such appeal is taken, include in the complaint a statement setting forth substantially the facts of the case and shall give written notice of such appeal with a copy of the complaint to the opposite party. An appeal may be taken to the law court as in other actions. (R. S. c. 41, § 37. 1959, c. 317, § 17.)

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

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

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

**Sec. 39. When damages not paid.**—When the damages remain unpaid for more than 30 days after they are due and demanded, equitable relief may be requested, 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 requests equitable relief therefor, the court may estimate the damages, decree their payment and issue an execution therefor. The court, after summary notice to the corporation and upon proof of the facts may, without any bond filed, issue an injunction pro-

hibiting such use and occupation until all damages and costs are paid. If payment has not been made within 90 days, a permanent injunction may be issued; 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. 1961, c. 317, § 98.)

**Effect of amendment.**—The 1961 amendment rewrote this section.

**Sec. 40. Service of process and notices.**—Service of process and notice may be made as process is served in other actions. 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. 1959, c. 317, § 18.)

**Effect of amendment.**—The 1959 amendment rewrote the first sentence of this section.

**Effective date of 1959 amendment.**—See note to § 37.

**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 civil actions. (R. S. c. 41, § 41. 1961, c. 317, § 99.)

**Effect of amendment.**—The 1961 amendment substituted “civil actions” for

“chancery cases” at the end of the last sentence of this section.

### Inspection and Supervision.

**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 this section forfeits to the state \$100 for each offense, to be recovered in a civil action or by complaint and indictment; and the attorney general shall institute proceedings to recover the same. (R. S. c. 41, § 50. 1961, c. 317, § 100.)

**Effect of amendment.**—The 1961 amendment deleted “the provisions of” preceding “this section” and substituted “a civil ac-

tion” for “an action on the case” in the last sentence of this section.

**Sec. 53. Court proceedings when managers do not comply.**—If said managers do not comply with such requirements, the commission shall file a complaint to 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 complaint, 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 por-

tion of the road found to be unsafe until the order has been complied with or revoked. (R. S. c. 41, § 53. 1961, c. 317, § 101.)

**Effect of amendment.**—The 1961 amendment substituted “file a complaint” for “petition” near the end of such first sentence. “petition the supreme judicial court or” near the beginning of the first sentence of

**Sec. 56. Award returned to court for action; appeal; 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. An appeal from any ruling of the court in such proceedings, except in recommitting the report, may be taken to the law court as in other actions. 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. 1959, c. 317, § 19.)

**Effect of amendment.**—The 1959 amendment rewrote the second sentence of this section. **Effective date of 1959 amendment.** — See note to § 37.

**Crossings and Bridges.**

**Sec. 63. Crossing of public ways.**—Railroads may cross any public highways in the line of the railroad but cannot pass along them without the written consent of the officials charged by statute with the duty of maintenance of such ways; but when a railroad is hereafter laid out across a public way, it shall be constructed so as to pass either over or under such way unless the commission shall, after notice and hearing, authorize a crossing at grade. Before entering upon the construction of any railroad along or across public ways, the manner and conditions of crossing shall be determined as provided by chapter 96, section 48. (R. S. c. 41, § 63. 1959, c. 164.)

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

**Sec. 66. Damages for neglect.** — When the corporation unnecessarily neglects to perform the acts so required, those injured may recover damages in a civil action, commenced within one year after performance is required. (R. S. c. 41, § 66. 1961, c. 317, § 102.)

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

**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 a civil action. 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 chapter 96, section 63, 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 main-

tained safe and convenient as required by said section. Such persons, parties or corporations shall erect or repair such bridge or make such crossing safe and convenient within 10 days from the service of said notice. If they neglect to do so, any one of said municipal officers may apply to the superior court to compel such delinquents to erect or repair such bridge or make such crossing. After hearing, the court may make any order thereon which the public convenience and safety require and may by injunctions compel the respondents to comply therewith. 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. 1961, c. 317, § 103.)

**Effect of amendment.**—The 1961 amendment divided the former fourth sentence of this section into the present fourth, fifth, sixth, seventh, and eighth sentences and rewrote the section.

**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 22 feet above the tracks. Such guards must be approved by the 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. 1959, c. 95.)

**Effect of amendment.**—The 1959 amendment divided the first sentence of this section into two sentences, substituted “22” for “20” and struck out the words “public utilities”, formerly appearing after the word “the” and before the word “commission.”

**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 a civil action by the person damaged thereby. (R. S. c. 41, § 74. 1961, c. 317, § 104.)

**Effect of amendment.**—The 1961 amendment substituted “a civil action” for “an action on the case” in the last sentence of this section.

### Minimum Distance for Clearance.

**Sec. 80. Minimum distance for clearance.**—The public utilities commission shall have the right to prescribe a minimum distance for clearance of any structure, pole or other object over or beside any railroad track; provided, however, that the provisions of this section shall not apply to any structure, pole or other object in existence over or beside any railroad track on or before September 1, 1955. (1955, c. 259.)