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Chapter 46.

Steam Railroads—Management and Operation.

Fares and Tolls.

Sec. 1. Fares and tolls established.—Any railroad corporation may establish and collect for its sole benefit, fares, tolls and charges upon all passengers and property conveyed and transported on its railroad, at such rates as may be determined by the directors thereof, and shall have a lien on its freight therefor; and may from time to time by its directors regulate the use of its road; provided that such rates of fares, tolls, charges and regulations are at all times subject to alteration by the legislature or by such officers or persons as the legislature may appoint for the purpose, anything in the charter of such corporation to the contrary notwithstanding. (R. S. c. 42, § 1.)

Railroad corporations have an undoubted right to fix and determine the rates of fare on their roads, within the limits specified in their charters or by existing laws. State v. Goold, 53 Me. 279.

And to make reasonable regulations as to the time, place and mode of collecting the same from passengers. They may reasonably require payment before the arrival of the train at the station where the passenger is to leave the cars. There is no reason to question their right to require payment in advance, to be made at a convenient office, and at convenient times; certainly, where there is no positive interdict to entering the cars without a ticket. State v. Goold, 53 Me. 279.

They may allow a discount to those purchasing tickets before entering cars. — It is a reasonable regulation for a railroad corporation to fix rates of fare by a tariff posted on their stations, and to allow a uniform discount on these rates to those who purchase tickets before entering the cars. State v. Goold, 53 Me. 279.

Cited in Rogers v. Kennebee Steamboat Co., 86 Me. 261, 29 A. 1069.

Sec. 2. Rights of ticket holders.—No railroad company shall limit the right of a ticket holder to any given train, but such ticket holder may travel on any train, whether regular or express, and may stop at any of the stations along the line of the road at which such trains stop; and such ticket shall be good for a passage as above for 6 years from the day it was first issued; provided that railroad companies may sell excursion, return or other special tickets at less than the regular rates of fare, to be used only as provided on the ticket. (R. S. c. 42, § 2.)

Limitations on use of ticket must be stated thereon.—It was undoubtedly the intention of the legislature by the proviso to this section to require railroad companies to state "on the ticket" all the limitations of its use other than that imposed by his section, viz., the six-year limitation. Crabtree v. Washington County Ry., 101 Me. 485, 64 A. 842.

And ticket itself is only competent evidence of contract between passenger and railroad.—A passenger's use of an excursion ticket he had purchased was not in any way modified by any provisions in posters or advertisements that were not "provided on the ticket," even though he had knowledge of them. Evidence of such knowledge is inadmissible as the ticket itself is the only competent evidence of the contract between the passenger and

the railroad. Crabtree v. Washington County Ry., 101 Me. 485, 64 A. 842.

This section is obligatory upon a foreign corporation, doing business in this state as lessee of a domestic railroad company. Dryden v. Grand Trunk Ry., 60 Me. 512.

But it applies only to contracts for passage to be performed wholly within the state, and not to contracts performable partly within and partly without the state. Lafarier v. Grand Trunk Ry., 84 Me. 286, 24 A. 848.

This section applies only to transportation within the territorial limits of this state, and cannot be applied to an entire passage from Portland to Montreal. To hold otherwise would render the act unconstitutional. Carpenter v. Grand Trunk Ry., 72 Me. 388.

And not to sale in this state of ticket to be used in another state.—A contract for the sale of a ticket may lawfully be made here, and may lawfully place a limitation upon the time within which it shall be used, other than that stated in this section, if it is to be used in some other state or country. Such limitation will be, prima facie, binding upon the purchaser, and he can only avoid the prima facie effect of such limitation by showing that the law of the place where it was to be used did not permit it. Carpenter v. Grand Trunk Ry., 72 Me. 388.

This section cannot constitutionally be made to apply to a ticket sold in Canada for a continuous passage from a place in Canada to a place in Maine, so that the holder can rightfully stop off on such ticket and afterwards pursue the passage at any time during the period named while within the limits of this state. The section, if to be applied to such a case, is amenable to the objection of unconstitutionality as an interference with both interstate and foreign commerce. Lafarier v. Grand Trunk Ry., 84 Me. 286, 24 A. 848.

Ticket one way does not give right to go other way instead.—A railroad ticket, with the words "Portland to Boston" imprinted on it, purchased in Portland under no contract other than what is inferable from the ticket itself, does not entitle the holder to a passage, on the road of the company issuing it, from Boston to Portland. A ticket one way does not give the right to pass the other way instead. Keeley v. Boston & Maine R. R., 67 Me. 163.

Sec. 3. Railroad tickets, cancellation and exchange.—The preceding section shall not prevent railroad corporations from establishing necessary rules and regulations for the cancellation of tickets and exchange of partially used tickets; but such rules and regulations shall be publicly posted at each ticket office and on all passenger trains, and when practicable, printed upon the tickets. Any ticket or check given in exchange for the unused portion of a partially used ticket continues in force for the full term of the original ticket, as provided in said section. (R. S. c. 42, § 3.)

Sec. 4. Sale of limited tickets.—No person, other than a duly authorized agent of the railroad company issuing the same, shall sell, offer for sale or loan any railroad ticket limited to the use of a person or persons thereon specified at the time of its issuance by the railroad company, under a penalty of not less than $10, nor more than $100, for each offense, to be recovered on complaint. (R. S. c. 42, § 4.)

Sec. 5. Use of such tickets restricted to persons specified.—No person, other than one specified on any railroad ticket limited to the use of a person or persons specified thereon at the time of its issuance by the railroad company, shall offer for passage or in payment for transportation on any railroad, any such railroad ticket limited as aforesaid, under a penalty of not less than $1, nor more than $10, for each offense, to be recovered on complaint. (R. S. c. 42, § 5.)

Sec. 6. Mileage books transferable.—All mileage coupon books issued by any railroad company shall be issued without any names written thereon or therein limiting the use of said book or coupons therefrom to the persons so specified, but such books shall be absolutely transferable. (R. S. c. 42, § 6.)

Sec. 7. Issue of mileage books.—All railroad corporations or companies doing business in this state and conveying passengers over any road or roads owned or operated by any motive power, whether owned or operated by them in their own or other names under lease or otherwise, which now or hereafter may

issue a mileage ticket of 1,000 1-mile coupons for the use of the traveling public and keep the same on sale at their regular passenger stations, shall also issue a mileage ticket of 500 1-mile coupons and sell the same at all stations where the 1,000-mile ticket is now or hereafter may be sold, at the same rate per mile as the 1,000-mile ticket may be sold. The holder of any such mileage ticket shall be entitled to travel by any regular passenger train over the road issuing the same and all lines of railroad owned, operated or leased by it, as many miles as there are coupons contained in such ticket; provided, however, that the minimum mileage to be detached shall be regulated by the printed contract contained in such ticket. (R. S. c. 42, § 7.)

Sec. 8. Evading payment of fare or riding on freight train.—No person is entitled to transportation over a steam railroad, street railroad, or upon any steamboat or ferry or in a taxicab or public automobile, who does not on demand first pay the established fare. Whoever, while being transported over any steam railroad, street railroad, steamboat, ferry or in a taxicab or public automobile, willfully refuses on demand to pay the established fare, and whoever fraudulently evades payment of the established fare by giving a false answer, or by traveling beyond the place to which he has paid, or by leaving a train, street railroad car, steamboat or ferry, or taxicab or public automobile without paying the established fare, whether said fare is demanded or not, forfeits not less than $5 nor more than $20, to be recovered on complaint. No person, without right, shall loiter or remain or place or cause to be placed any property or obstruction on the right-of-way of a railroad corporation, or on land owned by a railroad corporation adjoining or adjacent to its right-of-way, or, without right, shall board or attempt to board or remain on any railroad freight train, freight car, caboose, locomotive or work equipment; any person violating any provision of this portion of this section shall be punished by a fine of not more than $100, or by imprisonment for not more than 90 days, or by both such fine and imprisonment. (R. S. c. 42, § 8.)

Cross reference.—See c. 47, § 24, re applicability of § 8 to street railroads.

Passenger must pay according to reasonable rates and rules of company.—If a passenger enters a car, without knowing anything of the rates of fare or of the rules in relation thereto, and without making any inquiries, he must be held to pay, as on an implied contract, according to the reasonable rates and rules of the company. State v. Goold, 53 Me. 279.

Conductor may compel non-paying passenger to leave car.—The conductor of a train is justified in compelling a passenger, who utterly refuses to pay his legal fare, to leave the car at a regular station. State v. Goold, 53 Me. 279.

Offense created is misdemeanor.—The offense created by this section is simply a misdemeanor. Palmer v. Maine Central R. R., 92 Me. 399, 42 A. 800.

The word "complaint" is used here in contradistinction from indictment, and of itself designates the courts which are to try and dispose of such charges. Neither the district nor the supreme judicial court ever entertained criminal complaints, except when presented on appeal, or through the intervention of the grand jury, in the form of indictments. Pooler v. Reed, 75 Me. 488.

And jurisdiction is in justice of peace.—The offence deferred in this section was first defined in chapter 107, laws of 1854, and the penalty there imposed "upon conviction thereof, before any justice of the peace in any county where such offence may have been committed," was "a fine of not less than five nor more than twenty dollars for every such offence." Neither the penalty nor the jurisdiction has been changed by subsequent revisions under which the offender "forfeits not less than five nor more than twenty dollars to be recovered on complaint." Pooler v. Reed, 75 Me. 488.

Arrest without warrant.—The fact that a conductor had reason to believe and did believe that a passenger was fraudulently evading the payment of his fare, afforded no justification, in law, for the conductor's causing the arrest of the passenger without a warrant, where the passenger was not in fact guilty of violating this section. Palmer v. Maine Central R. R., 92 Me. 399, 42 A. 800.

Cited in Elie v. Lewiston, Augusta & Waterville Street Ry., 112 Me. 178, 91 A. 786.

Police Regulations at Stations.

Sec. 9. Loitering about or soliciting passengers in any railroad or steamboat station or grounds.—No person shall loiter or remain, without right, within any car or station house of a railroad corporation or steamboat, or upon the platform or grounds adjoining such station after being requested to leave the same by any railroad officer, or officer or agent of such steamboat; and no person or driver or owner of any automobile or other vehicle shall solicit passengers in any station or on the station grounds or wharves of any railroad corporation or steamboat corporation in competition with such railroad corporation or steamboat corporation, without a written permit signed by an officer of such corporation authorized to issue the same. Whoever violates any provision of this section shall be punished by a fine of not more than $100. (R. S. c. 42, § 9.)

See c. 47, § 24, re applicability of § 9 to street railroads.

Sec. 10. Law posted.—The officers of all railroad corporations and steamboat companies shall cause a copy of the preceding section to be posted in a conspicuous place at the several stations along the line of their roads and route of their steamboats. (R. S. c. 42, § 10.)

See c. 47, § 24, re applicability of § 10 to street railroads.

Transportation.

Sec. 11. Intersecting roads.—Railroads intersecting or crossing each other shall be deemed, for all business purposes, connecting roads. (R. S. c. 42, § 11.)

Sec. 12. Trains due at same hour at crossing must wait and give time to change baggage.—When railroads cross each other and passenger trains are due at the crossing at the same hour, the train first arriving shall wait for the arrival of the other, if it comes within 20 minutes; and each shall afford suitable opportunity for passengers desiring to change with their baggage from one train to the other; and the superintendent, conductor and engineer of the road violating this provision forfeits to the state for each offense not less than $10, nor more than $50, to be recovered on complaint or by indictment. (R. S. c. 42, § 12.)

The requirement contained in this section is not for the safety of the public, or for that of travelers upon railroads. The legislature, in the passage of this statute was influenced by a laudable desire, that the travel of passengers who wished, at crossings of different railroads to go from one to the other should continue unbroken without any suspension. State v. Noyes, 47 Me. 189.

Section is not binding where it conflicts with charter.—This section, being in violation of the rights secured to a railroad company, in its charter, was not binding on that corporation. State v. Noyes, 47 Me. 189.

Sec. 13. Equal facilities to all expresses.—Every railroad operating in the state shall furnish reasonable and equal facilities and accommodations to all persons engaged in express business for transportation of themselves, agents, servants, merchandise and other property; for the use of their stations, buildings and grounds, and for exchanges at points of junction with other roads, under a penalty of not more than $500, to be recovered by indictment; and are liable to the aggrieved party in an action on the case for damages. (R. S. c. 42, § 13.)

A railroad is not required by usage, nor by common law to transport the traffic of independent express companies over its lines in the manner in which the traffic is usually carried. It may be so required by statute. Buckley v. Bangor & Aroostook R. R., 113 Me. 164, 93 A. 65.

Foreign express companies are entitled equally with domestic express companies to the facilities of transportation over our railroads, by virtue of this section, which extends equal protection "to all persons engaged in the business" within the state. International Express Co. v. Grand Trunk Ry., 81 Me. 92, 16 A. 370.

Applied in New England Express Co. v. Maine Central R. R., 57 Me. 188.

Sec. 14. Change of location of railroad tracks; refusal to operate road.—No railroad having established its business upon a line shall substantially deviate from the track as originally built without the consent of the legislature or the public utilities commission and no railroad having established its business as aforesaid shall cease to run its trains and operate its roads so long as said railroad company pays dividends to its stockholders from its earnings; but this section does not permit any railroad company to cease operating its road or running its trains. (R. S. c. 42, § 14.)

Sec. 15. Railroad corporation neglecting to run trains; order of notice; hearing; receivers.—Whenever any railroad corporation, after commencing to receive tolls, neglects or refuses regularly to run trains upon and to operate its road for the transportation of passengers and freight for 60 days at any 1 time, the public utilities commission, or any 10 citizens residing in any county through which said railroad extends, may petition the superior court in any county through which such railroad extends, setting forth therein such neglect and refusal so to run trains and operate its road; which petition, before entry in court, may be presented to any justice thereof in term time or vacation, who shall order not less than 14 days' notice thereon to be served on such corporation. The petitioners shall give written notice to the attorney general or the county attorney of the county in which said petition is filed, or the filing thereof, one of whom shall appear and take charge of proceedings in court. The court shall appoint a hearing, and at or after said hearing, if the allegations in such petition are found to be true, and if in its opinion public necessity and convenience require it, the court shall appoint some suitable person or persons or some other railroad corporation, a receiver or receivers, to take possession and control of said railroad, together with all corporation property belonging thereto, and shall require such receivers to give bond to said corporation in a reasonable sum, with sureties satisfactory to the court, for the faithful discharge of their trust and shall also determine their compensation. (R. S. c. 42, § 15.)

Sec. 16. Notice of appointment of receivers; duties and authority.—The receiver or receivers appointed under the provisions of the preceding section immediately after giving the required bond shall give notice of their appointment by publishing the same 3 weeks successively in 1 newspaper printed in each county through which said railroad extends, and shall immediately take possession and control of said railroad and all its rolling stock and stations, together with all appendages belonging to the same and necessary for the convenient use thereof, and shall diligently proceed to repair and refurnish said railroad, its rolling stock and other appendages, and operate the same for the accommodation of the public. Said receivers have the same authority to demand and receive tolls and otherwise manage said railroad, and are subject to the same restrictions as are conferred and enjoined by the charter of said railroad upon its original corporators, and as may be provided by law. (R. S. c. 42, § 16.)

Sec. 17. Receivers authorized to raise money by loan to repair railroad; lien for payment of loan.—If said railroad, its track, bridges, rolling stock and other appendages shall be found to be too much out of repair or its rolling stock and other appendages insufficient in amount to admit of safely or successfully operating the same, and the earnings are not sufficient to repair said railroad, its track, bridges, rolling stock and other appendages, or to rebuild or refurnish the same, said receivers may raise, by loan, a sufficient sum of money, not exceeding $5,000 a mile, so to repair, rebuild or refurnish said railroad, its tracks, bridges, rolling stock and other appendages, said loan to bear a reasonable rate of interest, not exceeding 8% a year, payable semiannually, and the principal payable within 20 years. A lien is created on the franchise and all the property, real and personal, road, roadbed, track, stations, buildings and equipment, pertaining to and constituting said railroad, for the payment of the principal and in-

terest thereof. Said loan, secured by such lien, takes precedence of all mortgages, bonds, stock or other title or claim of indebtedness of any kind whatsoever, then existing or thereafter created on said railroad. (R. S. c. 42, § 17.)

Sec. 18. Railroad restored to corporation.—Any justice of the superior court sitting in the county where the original petition was filed, on petition of said railroad corporation or its owners, and after reasonable notice to such receivers, may revoke their authority and restore the possession and control of said railroad to said corporation or its owners, upon their paying the principal and interest of the aforesaid loan then existing, together with the sum due said receivers for their personal services, with all the expenses incurred in operating and repairing said railroad and its appendages during their continuance in their said capacity, over and above the earnings thereof; provided, however, that said railroad corporation or its owners give bond to the state in such sum as the court orders, with sureties satisfactory to the court, conditioned that said corporation or its owners thus seeking to receive possession shall operate and keep in repair said railroad, its rolling stock and other appendages to the satisfaction of the public utilities commission for 5 years following said order. (R. S. c. 42, § 18.)

Sec. 19. Amount due receivers.—If said receivers and said railroad corporation or owners are unable to agree upon the amount due said receivers from said corporation or its owners, the question shall be referred by order of court to the determination of the public utilities commission, whose decision made to said court and accepted shall be final in the premises, and in no case shall said corporation or its owners receive possession and control of said railroad until said receivers are paid or tendered the full amount due them, as aforesaid, except by their written consent. (R. S. c. 42, § 19.)

Sec. 20. Vacancies in office of receivers.—The court may fill all vacancies in said office of receiver, and at the time of appointing said receivers or at any subsequent time during their continuing in said capacity may issue all orders or decrees necessary to aid them in the full and faithful discharge of their said trust and cause the same to be promptly enforced. (R. S. c. 42, § 20.)

Sec. 21. Questions of law.—Questions of law arising under the provisions of the 6 preceding sections shall, on motion of either party, be at once certified by the presiding justice and transmitted to the chief justice, be argued in writing by both sides within 30 days thereafter, be considered and decided by the justices of the supreme judicial court as soon as may be, and the decision thereon shall be certified to the clerk of the judicial court of the county where the case is pending, and judgment made up as of the term next preceding the time of receiving the certificate. (R. S. c. 42, § 21.)

Fences and Trespasses on Adjoining Lands.

Sec. 22. Fences; liability for injuries.—Where a railroad passes through enclosed or improved land, or woodlots belonging to a farm, legal and sufficient fences shall be made on each side of the land taken therefor, before the construction of the road is commenced, and such fences shall be maintained and kept in good repair by the corporation. For any neglect of such duty during the construction of the road, and for injuries thereby occasioned by its servants, agents or contractors, the directors are jointly and severally personally liable. For any subsequent neglect, the corporation shall be fined a sum sufficient to make or repair the fence, to be recovered by indictment and expended by an agent appointed by the court therefor. (R. S. c. 42, § 22.)

Cross reference.—See c. 47, § 24, re applicability of § 22 to street railroads.

Railroad is liable in damages for violation of section.—It is required by this section that a railroad passing by improved land shall be enclosed by a good and suffi-

cient fence, and if this shall be neglected by the company, and horses or other animals in consequence of this omission stray upon the track, and are killed or injured by the engine or its appendages, the company is liable in damages in an action at common law. Norris v. Androscoggin R. R., 39 Me. 273.

But purpose of section is to prevent escape of domestic animals.—The primary and perhaps the only purpose of this section is to prevent the escape of domestic animals, both for their own protection and that of the public. Gould v. Bangor & Piscataquis R. R., 82 Me. 122, 19 A. 84.

This section is an act for the protection of trains from collision with domestic animals and their owners from the loss or injury of such animals. Kapernaros v. Boston & Maine R. R., 115 Me. 467, 99 A. 441.

And it cannot be invoked for the protection of men or children. Kapernaros v. Boston & Maine R. R., 115 Me. 467, 99 A. 441.

And obligation is limited to owners of animals rightfully on lands.—The obligation imposed by this section upon a railroad company to fence its road, where it passes through certain lands, is limited to the owners of such animals as are rightfully upon such lands. Allen v. Boston & Maine R. R., 87 Me. 326, 32 A. 963. See Perkins v. Eastern R. R., 29 Me. 307; Russell v. Maine Central R. R., 100 Me. 406, 61 A. 899.

Railroad is liable though running road under unauthorized lease.—A railroad is liable under this section, if the plaintiff has made out his case in other respects, though running the road under a lease not authorized by the legislature, if it was in full possession and control under that lease. Gould v. Bangor & Piscataquis R. R., 82 Me. 122, 19 A. 84.

Company operating road is responsible for repairs.—The reasonable construction of this section is, that the corporation building the road must see that the fence is made, and the corporation operating it must be responsible for its repairs. Gould v. Bangor & Piscataquis R. R., 82 Me. 122, 19 A. 84.

But company may be liable though road is operated by others.—A railroad company will not be exonerated from liability for damages under this section by proof that, at the time of the accident, certain persons were operating the road under an agreement with the company that they should receive and retain the earnings, when it was further stipulated in the agreement that "the trains shall run under the direction of the company, and be under their control." Wyman v. Penobscot & Kennebec R. R., 46 Me. 162.

And fact that landowner constructed fence is no defense.—The fact that the plaintiff originally constructed the fence for the company is no defense. Norris v. Androscoggin R. R., 39 Me. 273.

Agreement to disregard section does not bind third parties.—This statute provision is an important one for the safety of the traveling public, the railroad company itself, and the whole community. An agreement to disregard it will bar the rights of no one who is not culpably consenting to it. If a railroad stipulates with adjoining proprietors to suffer it to violate this section, such an agreement will not relieve the company from any liability it may thereby incur to any innocent third party. A covenant of that description does not "run with the land." Gilman v. European & North American Ry., 60 Me. 235.

And does not run with land.—A parol agreement for the removal and discontinuance of a fence on the line of a railroad, between the owner of the land and the railroad company, does not run with the land, and cannot, therefore, bind his grantee. Wilder v. Maine Central R. R., 65 Me. 332.

The railroad is not required to fence generally, but only in particular places, viz.: where the railroad passes through "inclosed or improved land, or woodlots belonging to a farm." Allen v. Boston & Maine R. R., 87 Me. 326, 32 A. 963.

And is not liable for injury on common and unenclosed land.—A railroad company is not bound to maintain fences on the lines of their road, except when the same passes through enclosed or improved land. If an injury to another's cattle happens, through want of such fences, upon common and unenclosed land, it is not legally imputable to the negligence of the company. Perkins v. Eastern R. R., 29 Me. 307.

"Improved land" defined.—"Improved" is not a technical word having a precise legal meaning, when applied to real estate, but may mean land that is occupied. As generally understood, "improved land" is that which is occupied, or made better by care or cultivation, or which is employed for advantage. Osborne v. Canadian Pacific Ry., 87 Me. 303, 32 A. 902.

Village residence lot, not inclosed on either side and not cultivated as a garden, but occupied by the plaintiff with dwellinghouse and appurtenances, and a barn on that part between the street and the

railroad, held to be "improved land" within the meaning of this section. Osborne v. Canadian Pacific Ry., 87 Me. 303, 32 A. 902.

Land used partly as mill yard.—Land of the plaintiff adjoining the defendants' road, was "inclosed" or "improved," and was therefore required to be fenced against by the defendants, where, though the land was used partly as a mill yard, it was also mowed, and occasionally used by animals for grazing. Wilder v. Maine Central R. R., 65 Me. 332.

Fence must be "legal and sufficient" as provided in c. 96, § 183.—This section specifies and requires fences that shall have exactly the same characteristics as those defined in c. 96, § 183, namely, that they shall be "legal and sufficient"; therefore it should be construed with reference to c. 96, § 183 in pari materia, to which it is proper to refer to ascertain what kind of a fence under this section is "legal and sufficient." The phrase in each statute is the same and has the same meaning. Cotton v. Wiscasset, Waterville & Farmington R. R., 98 Me. 511, 57 A. 785.

And must be sufficient to restrain domestic farm animals of ordinary docility.—This section requires a railroad company to erect and maintain, along the line of its road, a fence sufficient to restrain and exclude any of the domestic farm animals of ordinary docility from straying upon that part of its track which passes through or is contiguous to the inclosure where such animals are pastured or kept. Cotton v. Wiscasset, Waterville & Farmington R. R., 98 Me. 511, 57 A. 785.

A fence abutting a railroad four feet in height and otherwise complying with c. 96, § 183, and that will restrain horses, cows and oxen but will not restrain sheep, is not a legal and sufficient fence under the railroad statute relating to fences. Cotton v. Wiscasset, Waterville & Farmington R. R., 98 Me. 511, 57 A. 785.

The corporation is not obliged to build a sheep-tight fence along its whole line, whether it passes the inclosure of sheep or not, but only along so much of its line as passes a sheep inclosure. Cotton v. Wiscasset, Waterville & Farmington R. R., 98 Me. 511, 57 A. 785.

But fence must accomplish particular purpose for which it is required.—If the railroad passes the inclosure of horses and oxen, it must fence against horses and oxen; if it passes the pasture of sheep, it must fence against sheep; that is, it must build a fence against each man's farm or inclosure that will accomplish the particular purpose for which the fence is required. Cotton v. Wiscasset, Waterville & Farmington R. R., 98 Me. 511, 57 A. 785.

A fence is something to protect and restrain and not to destroy. To be legal it must be a compliance with the law, but not necessarily a violation of the fundamental principle that each should use his own and discharge his obligations, with a due regard to the rights of others. Gould v. Bangor & Piscataquis R. R., 82 Me. 122, 19 A. 84.

And it must not be unnecessarily dangerous to animals.—While the fence must be so built and maintained as to be a reasonable restraint against all domestic animals of ordinary docility, it is not to be made unnecessarily dangerous to that class of animals, or permitted to become so by neglect. Gould v. Bangor & Piscataquis R. R., 82 Me. 122, 19 A. 84.

Railroad is liable if animal injured by coming in contact with fence.—An action under this section can be maintained, although the injury was caused not in consequence of an escape through the fence by the injured colt, but by his coming in contact with it, where there was undue neglect in permitting the fence to get into the condition it was, and a man of ordinary care might well have anticipated that just such an accident would have been likely to happen, without imputing misconduct to the colt. Gould v. Bangor & Piscataquis R. R., 82 Me. 122, 19 A. 84.

Gate must be fastened and maintained in repair.—If, being under obligation to make and maintain a fence, a railroad company erected a gate in the line of the fence, whether for their own convenience or that of the others, it was their duty to fasten it securely, and to maintain it in good repair. If the gate fell, it should have been replaced without unreasonable delay. The gate, when erected, formed a part of the fence, and its maintenance in good repair was as essential as that of the fence of which it constituted a portion. Estes v. Atlantic & St. Lawrence R. R., 63 Me. 308.

Extreme care in operating engine is no defense.—As the defect in fence was the cause of the injury, the great moderation with which the engine was driven, the extreme care of the engineer and the agents in attendance, would be no answer to the claim for damages received. Norris v. Androscoggin R. R., 39 Me. 273.

Proximate cause.—It is a refinement quite too subtle to relieve the railroad company from liability, when an ox escaped from the owner's inclosure on to

the track by reason of a defect in the company's fence, to claim that this was not the proximate cause of the accident because he was driven thence by a railroad employee into another man's pasture, and strayed thence across his owner's land outside of his inclosure on to the track again at the place where he was killed. Gilman v. European & North American Ry., 60 Me. 235.

Negligence of plaintiff.—The presiding justice stated the rule of law correctly when he instructed the jury that the plaintiff had a right to use his land in the ordinary way, and that the mere fact that the railroad adjoining his land, was not fenced, was not proof that he was negligent in turning his horse out there. The determination of the question of fact, whether, under all the circumstances of the case, it was negligence in the plaintiff to turn his horse out as he did, was the exclusive province of the jury. Wilder v. Maine Central R. R., 65 Me. 332.

Section applies to corporations existing before its passage.—See Norris v. Androscoggin R. R., 39 Me. 273; Wilder v. Maine Central R. R., 65 Me. 332.

Applied in Currie v. Bangor & Aroostook R. R., 105 Me. 529, 75 A. 51.

Quoted in Eaton v. European & North American Ry., 59 Me. 520.

Sec. 23. Line fences built on notice of abutter.—The owner of any enclosed or improved land or woodlot belonging to a farm abutting upon any railroad which is finished and in operation may at any time between the 20th day of April and the end of October give written notice to the president, treasurer or any of the directors of the corporation owning, controlling or operating such railroad that the line fence against his land has not been built, or if built, that the same is defective and needs repair. If said corporation neglects to build or repair such fence for 30 days after receiving such notice, it forfeits to such owner $100, to be recovered in an action on the case. (R. S. c. 42, § 23.)

Cross reference.—See c. 47, § 24, re applicability of § 23 to street railroads.

Notice is not condition precedent to obligation to repair.—This section distinctly recognizes the obligation to build or repair the fence as resting upon the corporation controlling or operating; the notice being necessary to fix the liability for the penalty, and not as a condition precedent to the obligation to repair. Gould v. Bangor & Piscataquis R. R., 82 Me. 122, 19 A. 84.

Section applies to corporations existing before its passage.—See Norris v. Androscoggin R. R., 39 Me. 273.

Applied in Cotton v. Wiscasset, Waterville & Farmington R. R., 98 Me. 511, 57 A. 785.

Sec. 24. Injuring fences or turning animals into railroad enclosure.—Whoever takes down or intentionally injures any fence erected to protect the line of any railroad or turns any horse, cattle or other animal upon or within the enclosure of such railroad shall be punished by a fine of not less than $10, nor more than $100, or by imprisonment for not less than 10 days, nor more than 6 months. (R. S. c. 42, § 24.)

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

Quoted in Kapernaros v. Boston & Maine R. R., 115 Me. 467, 99 A. 441.

Sec. 25. Company liable for trespasses on adjoining land.—The corporation is liable for trespasses and injuries to lands and buildings adjoining or in the vicinity of its road, committed by a person in its employment or occasioned by its order, if the party injured within 60 days thereafter gives notice thereof to the corporation; but its liability does not extend to acts of willful and malicious trespass. The person committing a trespass is also liable. (R. S. c. 42, § 25.)

Cross references.—See c. 47, § 24, re applicability of § 25 to street railroads; c. 36, § 74 et seq., re expense of fire patrol along railroads, damage from fires, etc.

Company not liable for torts of contractors or their servants.—A railroad corporation is not to be held responsible under this section for the torts of contractors or the servants of contractors. Eaton v. European & North American Ry., 59 Me. 520. See Tibbetts v. Knox & Lincoln R. R., 62 Me. 437.

Judgments against Road Leased by Foreign Corporation.

Sec. 26. Judgment for damages collected of foreign railroad company leasing railroad.—When any foreign railroad company, which is or has been doing business in this state as the lessee of any railroad, refuses or neglects for 60 days after demand to pay and discharge any judgment recovered by any person against the company owning such leased road for damages to the property of such person by the doings, misdoings or neglects of such foreign company, its agents or servants, which judgment belongs in equity to such foreign company to pay and discharge, the superior court, on petition, may compel payment thereof by such foreign corporation and make, pass and enforce all necessary orders, decrees and processes for the purpose. (R. S. c. 42, § 26.)

Sec. 27. Judgment creditor may have remedy against lessors.—When any such judgment is recovered and such foreign company neglects, for 60 days, to satisfy it, the judgment creditor may have an action on the case against such foreign company for the recovery of the amount of such judgment, with interest and costs. (R. S. c. 42, § 27.)

Shares, Coupons and Mortgages.

Sec. 28. Shares.—Shares in the capital of such corporations are personal estate and may be transferred in the same manner and with the same rights as shares in other corporations are transferred. (R. S. c. 42, § 28.)

See c. 47, § 24, re applicability of § 28 to street railroads; c. 53, § 48, re transfer of shares of stock issued prior to July 9, 1943.

Sec. 29. Rights of holders of coupons.—When coupons for interest issued with bonds are, for a valuable consideration, detached and assigned by delivery, the assignee may maintain assumpsit upon them in his own name against the corporation engaging to pay them. (R. S. c. 42, § 29.)

Cross reference.—See c. 47, § 24, re applicability of § 29 to street railroads.

This section is not limited in its operation to bonds under seal, but applies to coupons attached to scrip issued under an act authorizing certain cities and towns to grant aid in the construction and completion of a railroad. Augusta Bank v. Augusta, 49 Me. 507.

Section applied to bonds already issued at time of passage.—See Augusta Bank v. Augusta, 49 Me. 507.

Sec. 30. Trustees; vacancies; elections affirmed; decrees enforced.—When a railroad corporation mortgages its franchise for the payment of its bonds or coupons and trustees are appointed by such corporation, by special law or by the mortgage, the bondholders, at a regular meeting called for the purpose and notified as hereinafter provided may, from time to time, elect by ballot new trustees to fill vacancies, when no other method for filling vacancies is specifically provided in the appointment, special law or mortgage. Any party interested may present the proceedings of such meeting to the superior court, or to a justice thereof in vacation, who shall appoint a time of hearing and order such notice to parties interested as he deems proper, and may affirm such elections and make and enforce any decrees necessary for the transfer of the trust property to the new trustees. Such decrees shall be filed with the clerk of the judicial courts where the hearing is had and be recorded by him. (R. S. c. 42, § 30.)

This section contemplates a deed of trust, where the trusts, the trustee and the cestui que trust are all created by one and the same instrument. In re Bondholders of York & Cumberland R. R., 50 Me. 552.

And its provisions are entirely inapplicable to an ordinary mortgage. They imply the whole estate as in the trustee and in him alone. In re Bondholders of York & Cumberland R. R., 50 Me. 552.

It most obviously does not contemplate one and the same person as trustee and mortgagee, with opposing and conflicting interests, as viewed in one or the other

capacity. It does not contemplate the contemporaneous existence of a mortgage and a trust as created by and derived from one and the same instrument. In re Bondholders of York & Cumberland R. R., 50 Me. 552.

It applies only when no other method of filling vacancies is specifically provided.—The provision of this section for a meeting of the bondholders and the choice of a trustee does not apply, except "when no other method of filling vacancies is specifically provided in the appointment" of trustees. Pillsbury v. Consolidated European & North American Ry., 69 Me. 394.

This section is cumulative and not prohibitory or restrictive. In re Inhabitants of Anson, 85 Me. 79, 26 A. 996.

And does not prohibit bondholder from directly invoking aid of equity.—The special provisions of our statutes, respecting the election of trustees, must be regarded merely as auxiliary regulations designed to aid the court in the discharge of its duty and to facilitate the action of the bondholders who may desire to cooperate to secure a more efficient execution of the trust. They were not designed to prohibit any bondholder from directly invoking the aid of the court of equity in behalf of himself and others entitled to the protection of the same security. In re Inhabitants of Anson, 85 Me. 79, 26 A. 996.

Cited in Hamlin v. Jerrard, 72 Me. 62; Stratton v. European & North American Ry., 74 Me. 422.

Sec. 31. Breach of mortgage; meeting of bondholders.—The neglect of the corporation to pay any overdue bonds or coupons secured by such mortgage, for 90 days after presentment and demand on the treasurer or president thereof, is a breach of the conditions of the mortgage; and thereupon the trustees shall call a meeting of the bondholders, by publishing the time and place thereof for 3 weeks successively in the state paper and in some paper in the county where the road lies, the last publication to be 1 week at least before the time of the meeting. (R. S. c. 42, § 31.)

Quoted in In re Bondholders of York & Cumberland R. R., 50 Me. 552.

Cited in In re Inhabitants of Anson, 85 Me. 79, 26 A. 996.

Sec. 32. Bondholders may have 1 vote for every $100 of bonds.—At such meeting and all others, each bondholder present shall have 1 vote for each $100 of bonds held by him or represented by proxy; and they may organize by the choice of a moderator and clerk and determine whether the trustees shall take possession of such road and manage and operate it in their behalf. (R. S. c. 42, § 32.)

Cited in Somerset Ry. v. Pierce, 88 Me. 86, 33 A. 772.

Sec. 33. Trustees taking possession, have powers of corporation.—If the bondholders so determine, the trustees shall take possession of such road and all other property covered by the mortgage, and have all the rights and powers and be subject to all the obligations of the directors and corporation of such road, and may also prosecute and defend suits in their own name as trustees. (R. S. c. 42, § 33.)

The trustees in possession are not the agents of the bondholders, or of the new corporation to be formed under § 38. They are principals rather than agents, operating the road as an independent body, as trustees, accountable to all persons interested for the faithful discharge of their trust, but not accountable to third persons for their doings in that respect. Stratton v. European & North American Ry., 74 Me. 422.

Trustees entitled to possession by virtue of express stipulation in mortgage.—See Shepley v. Atlantic & St. Lawrence R. R., 55 Me. 395.

Sec. 34. Receipts and expenditures; trustees not liable; road surrendered.—The trustees shall keep an accurate account of the receipts and expenditures of such road and exhibit it, on request, to any officer of the corporation or other person interested. They shall, from the receipts, keep the road, buildings and equipment in repair, furnish such new rolling stock as is necessary and the balance, after paying running expenses, shall be applied to the payment of any damages arising from misfeasance in the management of the road, and after that

according to the rights of parties under the mortgage. They are not personally liable except for malfeasance or fraud. When all overdue bonds and coupons secured by the mortgage are paid, they shall surrender the road and other property to the parties entitled thereto. (R. S. c. 42, § 34.)

Cross reference.—See c. 107, § 4, sub-§ VI, re equity jurisdiction.

Trustees not liable for injury to property by fire.—The trustees named in a mortgage to secure bondholders were not liable, personally or as trustees, under § 63 of this chapter for an alleged injury to property by fire communicated by a locomotive, which injury occurred while the railroad was being operated by the trustees, before the mortgage was foreclosed, where no malfeasance or fraud was alleged, and there was no allegation of funds in the hands of the trustees. Stratton v. European & North American Ry., 74 Me. 422.

But such claim may be considered part of running expenses.—A claim for damages to property by fire, communicated by a locomotive while passing along its track at a time when the road was in the possession of and operated by trustees, does not depend upon proof of malfeasance or negligence, but is an incident to the running of the road and may be considered a part of the running expenses, and is therefore an equitable lien upon the funds liable in the hands of the trustees. Where such trustees have paid and conveyed to a new corporation, formed by the bondholders, any such funds upon which there was such a lien to that extent the new corporation would be liable in equity to the person suffering the damage. Stratton v. European & North American Ry., 76 Me. 269.

In such case the bill should contain averments that at the time of the alleged injury and demand for payment, the trustees had in their hands or under their control, any such funds, or that they subsequently conveyed any such funds to the new corporation. Stratton v. European & North American Ry., 76 Me. 269.

Applied in Kennebec & Portland R. R. v. Portland & Kennebec R. R., 59 Me. 9.

Sec. 35. Trustees to call meetings of bondholders, and report; bondholders may fix their compensation, and give instructions.—The trustees shall annually, and at other times on written request of 1/5 of the bondholders in amount, call a meeting of the bondholders in the manner prescribed in the by-laws of the corporation for calling a meeting of stockholders, and report to them the state of the property, the receipts, expenses and the application of the funds. At such meeting, the bondholders may fix the compensation of the trustees; instruct them to contract with the directors of the corporation or other competent party to operate said road while the trustees have the right of possession, if approved by the bondholders at a regular meeting, otherwise not exceeding 2 years, and to pay them the net earnings thereof; or may give them any other instruction that they deem advisable; and the trustees shall conform thereto, unless inconsistent with the terms of the trust. (R. S. c. 42, § 35.)

Cited in Stratton v. European & North American Ry., 74 Me. 422.

Foreclosure and Redemption of Mortgages.

Cross Reference.—See c. 53, § 97, re applicability of §§ 36-58.

Sec. 36. Railroad mortgages foreclosed.—The trustees, on application of 1/3 of the bondholders in amount, to have such mortgage foreclosed, shall immediately give notice thereof, by publishing it 3 weeks successively in the state paper and in some paper, if any, in each county into which the road extends, therein stating the date and conditions of the mortgage, the claims of the applicants under it, that the conditions thereof have been broken, and that for that reason they claim a foreclosure; and they shall cause a copy of such notice and the name and date of each newspaper containing it to be recorded in the registry of deeds in every such county within 60 days from the first publication; and unless, within 3 years from the first publication, the mortgage is redeemed by the mortgagors or those claiming under them, or a bill in equity as in cases of the redemption of mortgaged lands is commenced, founded on payment or a legal tender of the amount of overdue bonds and coupons, or containing an averment that the com-

plainants are ready and willing to redeem on the rendering of an account, the right of redemption shall be forever foreclosed. (R. S. c. 42, § 36.)

History of section.—See Kennebec & Portland R. R. v. Portland & Kennebec R. R., 59 Me. 9.

Statutory provisions as part of mortgage contract.—The provisions of §§ 36, 38 and 39, for perfecting the security of the mortgage bondholders, and to enable them to realize their debts, by operation of law, must be treated as part of the mortgage contract, and the rights thereby secured to the bondholders could not be abridged or taken away by subsequent enactments. But it is competent for the law-making power to change the form and method of the bondholders' remedy, provided the new method protects their rights as fully as that existing when the mortgage was given. Somerset Ry. v. Pierce, 88 Me. 86, 33 A. 772.

Averment of payment or tender necessary to sustain bill to redeem.—Payment, or on an adequate and sufficient tender of the amount of the overdue bonds and coupons appears to be a necessary averment to sustain a bill to redeem a mortgage under this section. But it will be noticed that this section refers to the redemption of mortgages of railroads after the commencement of proceedings for the purpose of foreclosure. Kennebec & Portland R. R. v. Portland & Kennebec R. R., 54 Me. 173.

Section applied to mortgages existing at its passage.—See Kennebec & Portland R. R. v. Portland & Kennebec R. R., 59 Me. 9.

Applied in State v. Maine Central R. R., 66 Me. 488.

Cited in In re Bondholders of York & Cumberland R. R., 50 Me. 552.

Sec. 37. Overdue bonds and coupons for record.—Each holder of overdue bonds or coupons shall present them to the trustees at least 30 days before the right of redemption expires, to be by them recorded; and such right is not lost by the non-payment of any claims not so presented; and the parties having the right to redeem shall have free access to the record of such claims. (R. S. c. 42, § 37.)

Sec. 38. Foreclosure constitutes holders a corporation, and trustees shall convey to it.—The foreclosure of the mortgage shall inure to the benefit of all the holders of bonds, coupons and other claims secured thereby; and they, their successors and assigns are constituted a corporation as of the date of the foreclosure, for all the purposes and with all the rights and powers, duties and obligations of the original corporation by its charter; and the trustees shall convey to such new corporation by deeds all the right, title and interest which they had by the mortgage and the foreclosure thereof, and thereupon they shall be discharged. If they neglect or refuse so to convey, the court, on application in equity, may compel them to do so. (R. S. c. 42, § 38.)

Cross reference.—See § 57, re certificate of organization to be filed.

This general law is an act of incorporation, an act by and under which corporations come into existence. It is none the less an act of incorporation because more than one may be created by action under it. State v. Maine Central R. R., 66 Me. 488.

And is to be construed with c. 53, § 2.—This section and c. 53, § 2, relating to corporations, must be construed together. State v. Maine Central R. R., 66 Me. 488.

Chapter 53, § 2, applies to corporation organized under this section.—Chapter 53, § 2, providing that the acts of incorporation shall at all times be liable to be amended, altered or repealed, at the pleasure of the legislature, is applicable to a corporation organized under this section. State v. Maine Central R. R., 66 Me. 488.

Section becomes part of mortgage contract.—See note to § 36 of this chapter.

This section sounds the death knell of the old stockholder and transfers all his property rights in the old to the stockholders of the new corporation. By reason of this change the entire management of the corporation as well as its property becomes vested in a new set of stockholders who can elect the officers and control the business. Clifford v. Androscoggin & Kennebec R. R., 121 Me. 15, 115 A. 511.

Equitable title to property of old corporation vests in stockholders of new.—There is nothing of the old corporation left except its franchises and physical property, the equitable title of which vested in the new stockholders immediately upon the consummation of the new corporation. There was consequently an assignment of a lease of the old corporation to the new

corporation by operation of law. Clifford v. Androscoggin & Kennebec R. R., 121 Me. 15, 115 A. 511.

Subject to prior liens but clear of other prior obligations.—The new corporation takes its title from the conveyance of the trustees as of the date of the foreclosure, and necessarily subject to all prior incumbrances and liens upon the road, but clear of all debts or obligations which rest upon former owners and are not legally liens upon the property. Stratton v. European & North American Ry., 74 Me. 422.

Duties and obligations assumed are such as relate to future management.—The new corporation takes the road subject to all the duties and obligations resting upon it, as well as the rights attached to it. But these duties and obligations are such as arise from the charter and relate to the future and not the past management of road, or of paying any debts or damages which may have accrued by virtue of any contract or wrongdoing by its predecessors. Stratton v. European & North American Ry., 74 Me. 422.

New corporation not liable for injury by fire occurring while road operated by trustees.—The new corporation formed under this section is not liable under § 63 of this chapter for an alleged injury to property by fire communicated by a locomotive engine, where the injury occurred while the road was operated by the trustees named in the mortgage to secure the bondholders and before the mortgage was foreclosed. Stratton v. European & North American Ry., 74 Me. 422. See note to § 34.

Forming of new corporation working forfeiture of lease.—The forming of a new corporation of bondholders under this section, which absorbs the old corporation, constitutes a forfeiture of a lease held by the old corporation with a provision for determination, that should the leased estate be taken from the lessee "by proceedings in bankruptcy or insolvency or otherwise," lessor may enter and forcibly remove lessee if necessary. Clifford v. Androscoggin R. R., 121 Me. 15, 115 A. 511.

The new corporation does not succeed to an exemption from general taxation, which was conferred by charter upon the defaulting corporation through whose default it exists. State v. Maine Central R. R., 66 Me. 488.

Applied in Kennebec & Portland R. R. v. Portland & Kennebec R. R., 59 Me. 9.

Sec. 39. First meeting of new corporation; may adopt new name; possession and use of mortgaged property.—The new corporation may call its first meeting in the manner provided for calling the first meeting of the original corporation, and may use therefor the old name, or by a notice, signed by 1 or more of said bondholders, setting forth the time, place and purpose of the meeting, a copy of which is to be published in a newspaper, in the county, if any, otherwise in the state paper, 7 days before the meeting; but, at that meeting, it may adopt a new name by which it shall always thereafter be known; and it may take and hold the possession and have the use of the mortgaged property, although a bill in equity to redeem is pending, and it may become a party defendant to such bill. This section applies to all corporations mentioned in section 54. (R. S. c. 42, § 39.)

Section becomes part of mortgage contract.—See note to § 36 of this chapter.

Cited in State v. Maine Central R. R., 66 Me. 488.

Sec. 40. New corporation may vote to redeem prior mortgage, and assessments.—If any part of such property or franchise is subject to a prior mortgage, such new corporation, at a legal meeting called for that purpose, may vote to redeem the same and make an assessment therefor on all holders of stock, certificates for fractions of stock, bonds or coupons in such corporation in proportion to their amounts. The directors shall immediately assess such sum and fix a time and place for the payment thereof to the treasurer, who shall publish notice accordingly 6 weeks successively in some newspaper, if any, in each of the counties where the road extends, the last publication to be 2 weeks at least before the time fixed for payment. (R. S. c. 42, § 40.)

Sec. 41. Sale of stock for non-payment; rights of delinquent stockholder.—If any person fails to pay his assessment within the time fixed, the treasurer shall sell enough of his stock at auction to pay the same, with 12% interest and the cost of advertising and selling, by first publishing notice of such sale 3 weeks successively in a newspaper printed in the county where the sale is to be,

if any, and if not, in an adjoining county. Thereupon the president and treasurer shall issue a new certificate of stock to the purchaser; and the delinquent stockholder shall surrender his certificate to be canceled and may have a new one for his unsold shares; and if he held bonds, coupons or certificates for fractions of stock, he shall not be entitled to commute them or to receive any dividends thereon until he has paid his assessment, with 12% interest. (R. S. c. 42, § 41.)

Sec. 42. Application of funds.—The directors shall apply the money realized from such assessments solely to the redemption of such prior mortgage until it is fully paid; and then all the property, rights and interests secured thereby vest in such new corporation. (R. S. c. 42, § 42.)

Sec. 43. Redemption of prior mortgages by junior mortgages.—When a subsequent mortgage of a railroad, its franchise or any part of its other property contains no provision for a sale, or contains a conditional provision depending on the application of a majority in amount of the claims secured thereby and no such application has been made to the trustees, the holder of such mortgage may redeem a prior mortgage on the same property which is under process of foreclosure at any time before it becomes absolute; and hold it in trust for those who contributed thereto in proportion to the amount paid by each. (R. S. c. 42, § 43.)

Sec. 44. Trustees to call a meeting and mortgagees may vote to redeem; contribution.—For such purpose, the trustees of such subsequent mortgage, on application of 1 or more persons interested therein, made 6 months prior to the absolute foreclosure of such prior mortgage and on payment of reasonable expenses to be incurred thereby, shall call a meeting of all interested and publish a notice thereof, stating the time, place and purpose, 3 weeks successively in the state paper and such other papers as they think proper. If at such meeting, or one called by the trustees without application, the holders of a majority of the interests there represented vote to redeem the prior mortgage, each one may contribute his proportion thereto. The trustees shall give immediate notice of such vote by publishing it as above, and shall therein state the time and place of payment and the amount to be paid on each $100 as nearly as may be. If anyone fails to pay his proportion, any other person interested in said subsequent mortgage may pay it and succeed to all his rights except as hereinafter provided. (R. S. c. 42, § 44.)

Sec. 45. Anyone interested in subsequent mortgage, may redeem.—If no such meeting is called or it is voted not to redeem, 1 or more of the persons interested in such subsequent mortgage may pay to the trustees thereof the amount required to redeem the prior mortgage; and such trustees shall redeem it accordingly and then hold it in trust for the person so paying. (R. S. c. 42, § 45.)

Sec. 46. Delinquents pay proportion and rights restored; new corporation.—When a prior mortgage has been redeemed in either mode aforesaid, and all persons interested in the subsequent mortgage have not paid their proportions thereof, the trustees shall publish a notice 10 weeks successively in the state paper, the first publication not to be until the right of redeeming the prior mortgage would have expired, that delinquents may pay the same to them or their agents, with 12% interest, within 1 year from the first publication of said notice; and any person so paying has the same rights as if he had paid originally; and those not so paying are barred. Money so paid shall be divided ratably to those who advanced the redemption money; and they may become a new corporation and new certificates of stock or fractions of stock may be issued in the manner and with the rights, powers and obligations hereinbefore provided. (R. S. c. 42, § 46.)

Sec. 47. Redemption by stockholders of old corporation. — When a prior mortgage is thus redeemed, any number of the stockholders of the old cor-

poration may redeem it within 2 years thereafter by paying to the trustees of such subsequent mortgage the amount paid therefor, with 10% interest, and also the amount secured by the subsequent mortgage due to those who had contributed to redeem the prior mortgage, after deducting the net earnings of said road or adding the net deficiencies, if operated by the trustees of the subsequent mortgage; and said stockholders may demand of said trustees an accurate account of the receipts and expenditures and amount due on the mortgage and have the same remedies for a failure as in case of mortgages of real estate. After such redemption, the redeeming stockholders have all the rights of those from whom they redeemed. (R. S. c. 42, § 47.)

Sec. 48. Noncontributors; notice; rights.—The stockholders, redeeming as aforesaid, shall give notice to the stockholders who have not contributed thereto; and the latter shall have the same rights as hereinbefore provided in the case of bondholders. (R. S. c. 42, § 48.)

Sec. 49. Extension of time of redemption after foreclosure commenced.—The persons interested in a prior mortgage on which a foreclosure is commenced, at a meeting called for the purpose, may extend the time of redemption; and thereupon the trustees of such mortgage, by a suitable writing, delivered to the party entitled to redeem, shall extend the time accordingly. (R. S. c. 42, § 49.)

Rights of Purchasers under Sale.

Sec. 50. Purchasers at sale to have rights of original corporation; redemption.—When the franchise of a railroad and its road, wholly or partly constructed, or the right of redeeming the same from a mortgage thereof, are sold by a decree of court by a power of sale in a mortgage thereof, or on execution, the purchasers have all the rights, powers and obligations of the corporation, under its charter, and may form a new corporation in the manner hereinbefore provided. If the original corporation or those claiming under it have a right to redeem, they may do so in the manner provided for the redemption of mortgaged real estate; but shall pay in addition to the amount of the sale and interest, the reasonable expenditures made by the new corporation in completing, repairing and equipping said road, and in the purchase of necessary property therefor, after deducting the net earnings thereof. (R. S. c. 42, § 50.)

Cross reference.—See § 57, re certificate of organization to be filed.

Applied in Somerset Ry. v. Pierce, 88 Me. 86, 33 A. 772.

Sec. 51. Succession to rights and obligations of original corporation.—The trustees of bondholders or other parties under contract with them operating a railroad and all corporations formed in the modes hereinbefore provided have the same rights, powers and obligations as the old corporation had by its charter and the general laws; but all said rights and privileges are also subject to amendment, alteration or repeal by the legislature and to all the general laws concerning railroads, notwithstanding anything to the contrary in the original charter. (R. S. c. 42, § 51.)

Applied in State v. Maine Central R. R., 66 Me. 488.

Sec. 52. Original corporation continues, to close business, and for suits.—The original corporation shall exist, after the foreclosure of the mortgage, for the sole purpose of closing its unsettled business; and the right of action against it or its stockholders is not thereby impaired; but in suits founded on any of the bonds or coupons secured by the mortgage, the proportional actual value of the property taken under the mortgage shall be deducted. (R. S. c. 42, § 52.)

Payment of taxes.—The old corporation exists for the sole purpose of collecting and paying its debts, etc. But it does not exist for the purpose of paying taxes. Nor is a tax a debt. State v. Maine Central R. R., 66 Me. 488.

Sec. 53. Courts have equity jurisdiction of all disputes; rights at law preserved.—The supreme judicial court and the superior court, in addition to the jurisdiction specifically conferred by this chapter, have jurisdiction, as in equity, of all other matters in dispute, arising under the preceding sections relating to trustees, mortgages and the redemption and foreclosure of mortgages; but not to take away any rights or remedies that any party has and may elect to enforce at law; and in all proceedings relating to trustees or to mortgages, their foreclosure and redemption, not otherwise specifically provided for herein, the law relating to trusts and mortgages of real estate may be applied. (R. S. c. 42, § 53.)

Cross reference.—See note to § 30 of this chapter, re jurisdiction to appoint new trustees.

Applied in In re Inhabitants of Anson, 85 Me. 79, 26 A. 996; Chalmers v. Littlefield, 103 Me. 271, 69 A. 100.

Sec. 54. Preceding sections to apply to mortgages of corporations given to trustees, as if legally foreclosed.—Sections 30 to 53, inclusive, apply to and include all mortgages of franchises, lands, property, hereditaments and rights of property of every kind whatever, whether heretofore given or hereafter to be given by any corporation to trustees, to secure the payment of scrip or bonds of said corporation, in all cases in which the principal of said scrip or bonds has been due and payable for more than 3 years, and remains unpaid in whole or in part, or on which no interest has been paid for more than 3 years, in the same way and to the same extent as if the mortgage had been legally foreclosed, subject to all rights of redemption, as provided in section 40; and the holders of said scrip or bonds shall have the benefit of said sections and all the rights and powers of the corporation under its charter, and may form a new corporation in the manner provided in this chapter whenever the holders of such scrip or bonds to an amount exceeding ½ of the same so elect in writing. Any subsequent foreclosure, in any method provided by law, of the mortgage given to secure such bonds or scrip, shall inure at once for the benefit of such corporation, and vest therein the title acquired by such foreclosure. (R. S. c. 42, § 54.)

Cross references.—See c. 39, re applicability of section to § 54; § 57, re certificate of organization to be filed; c. 53, § 97, re railroad mortgages given to trustees; c. 47, § 24, re applicability of § 54 to street railroads.

Trustees should convey to new corporation.—Trustees under the mortgage should release and convey whatever legal title remains in them to the new corporation on payment of any sums that may be due them for services or disbursements. Somerset Ry. v. Pierce, 88 Me. 86, 33 A. 772

Purchase by new corporation at execution sale.—Where a new corporation was formed by the bondholders as provided in this section, and purchased, at execution sale, the equity of redemption from the mortgage, from which sale no redemption has been had, full title has thereby been acquired by the new corporation, and under this section, the new corporation represents all the mortgage bondholders, and its title to and possession of the mortgaged property enure to their benefit. Somerset Ry. v. Pierce, 88 Me. 86, 33 A. 772.

Effect of transfer of mortgage bonds.—The fact that some holders of mortgage bonds, who participated in the organization of the new corporation, and voted upon their bonds, have since transferred them to other parties not bondholders at the time the new corporation was organized, cannot affect the status of the corporation. Somerset Ry. v. Pierce, 88 Me. 86, 33 A. 772.

Any subsequent transfer of the mortgage bonds, unexchanged for stock, operated only as a transfer of the bondholders' share in the property originally conveyed by the mortgage, if the property was of sufficient value to pay all the mortgage bonds and the amount paid for the equity of redemption for the mortgage; if insufficient for that, the transfer of the bonds carried that share as property, and the balance of the bonds unpaid by the property as an unsecured debt of the old company. Somerset Ry. v. Pierce, 88 Me. 86, 33 A. 772.

Applied in Pierce v. Somerset Ry., 171 U. S. 641, 19 S. Ct. 64, 43 L. Ed. 316.

Sec. 55. Holders of unpaid scrip and bonds may foreclose mortgages.—A corporation formed by the holders of such scrip or bonds, or if no

such corporation has been formed, the holders of not less than a majority of such scrip or bonds, may commence a suit in equity to foreclose such mortgage, and the court may decree a foreclosure thereof, unless the arrears are paid within such time as the court orders. (R. S. c. 42, § 55.)

Applied in Somerset Ry. v. Pierce, 88 Me. 86, 33 A. 772.

Sec. 56. Amount of capital stock of new corporation; value of shares; not liable to further assessment.—The capital stock of such new corporation shall be equal to the amount of unpaid bonds and overdue coupons secured by such mortgage, taken at their face value at the time of the organization of the new corporation, together with the amount required to redeem any prior mortgage, and shall be divided into shares of $100 each. All stock issued under the aforesaid provisions shall be taken and considered as paid for in full, and shall not be liable to further assessment; and no person, taking or holding the same, shall by reason thereof be liable for the debts of such corporation. (R. S. c. 42, § 56.)

Each mortgage bondholder becomes a shareholder in the property covered by the mortgage, in the proportion that his bonds bore to the whole issue secured by the mortgage, and the bonds themselves are paid to the extent of the value of the mortgaged property, full title to which passed to the new corporation. Somerset Ry. v. Pierce, 88 Me. 86, 33 A. 772.

It is optional with the bondholder to exchange his bonds for stock; he cannot be compelled to do so. Somerset Ry. v. Pierce, 88 Me. 86, 33 A. 772.

Status of bondholders who do not exchange bonds for stock.—The bondholders who have exchanged their bonds for stock in the new corporation par for par, are stockholders; those who have not so exchanged, remain shareholders, and are entitled to receive from the earnings of the road, the same pro rata dividends as the stockholders,—if they decline to exchange their bonds for stock,—but the possession and operation of the railroad will continue in the new corporation. Somerset Ry. v. Pierce, 88 Me. 86, 33 A. 772.

If any bondholder declines ultimately to exchange his bonds for stock, an amount of stock of the company equal to such bonds cannot be issued at all. Somerset Ry. v. Pierce, 88 Me. 86, 33 A. 772.

Sec. 57. Certificate of organization filed with secretary of state; if railroad corporation, filed with public utilities commission.—Whenever a corporation is organized under the provisions of sections 38, 50 or 54, or under any other provision of law by which a return is not specifically required, such corporation shall file with the secretary of state and, if a railroad corporation, also with the public utilities commission, a certificate signed and sworn to by the president, treasurer and a majority of the directors of such corporation, therein setting forth the name of the corporation and all facts as to such organization which are necessary to give full information in relation thereto; the organization of such corporation shall date from, and it shall have the authority and rights of a corporation, only after filing said certificate. (R. S. c. 42, § 57.)

Sec. 58. New corporation may buy right of redemption.—Any corporation formed under the provisions of this chapter by the holders of railroad bonds may acquire, by purchase, the right of redemption under the mortgage securing such bonds. (R. S. c. 42, § 58.)

See note to § 54, re rights of corporation having purchased right of redemption.

Sec. 59. When franchise lost, suit in equity for dissolution.—Whenever any railroad corporation, by foreclosure of a mortgage or in any other method authorized by law, has finally parted with its franchise to construct, operate and maintain the railroad described in its charter, any stockholder may maintain a suit in equity in the supreme judicial court or in the superior court for the winding up of the affairs and dissolution of such corporation. In such case

the court shall order such notice to all parties interested as it may deem proper and proceed according to the usual course of suits in equity; but no trustee shall be appointed, except upon motion of some party to the proceedings, and then only in the discretion of the court. (R. S. c. 42, § 59.)

Safety Provisions.

Sec. 60. Brakemen.—No train of passenger cars, moved by steam, shall be run without 1 trusty and skillful brakeman to every 2 cars. (R. S. c. 42, § 60.)

Instruction as to effect of violation of section as evidence of negligence.—See Wood v. Maine Central R. R., 101 Me. 469, 64 A. 833.

Sec. 61. Danger signals, where disconnected cars left on track.—No car disconnected from a train shall be left or permitted to remain standing on the main track of any railroad, unless accompanied by danger signals, such as flagging by day and lanterns by night, placed at such distances from such obstruction on the main line of the road as will insure safety to and from moving trains; and such signals shall be in charge of and constantly attended by employees of the corporation owning or operating the road. (R. S. c. 42, § 61.)

Sec. 62. Violation of § 61.—A railroad corporation violating any provision of the preceding section forfeits for each offense, $100 to the state, to be recovered in an action on the case or by complaint and indictment; and the attorney general shall prosecute therefor. Said section does not apply to street railroads. (R. S. c. 42, § 62.)

Sec. 63. Railroad liable for damages by fire from locomotives; entitled to benefit of any insurance.—When a building or other property is injured by fire communicated by a locomotive engine, the corporation using it is responsible for such injury, and it has an insurable interest in the property along the route for which it is responsible, and may procure insurance thereon; but such corporation shall be entitled to the benefit of any insurance upon such property effected by the owner thereof less the premium and expense of recovery. The insurance shall be deducted from the damages, if recovered before the damages are assessed or, if not, the policy shall be assigned to such corporation which may maintain an action thereon, or prosecute, at its own expense, any action already commenced by the insured, in either case with all the rights which the insured originally had. (R. S. c. 42, § 63.)

I. General Consideration.
II. Property to Which Section Applies.
III. Nature and Extent of Railroad's Liability.
  A. In General.
  B. Benefit of Insurance Effected by Owner.
IV. Procedure and Evidence.

Cross References.

See note to §§ 34, 38, re liability where fire occurred while property was in possession of and being operated by trustees.

I. GENERAL CONSIDERATION.

History of section.—See Bean v. Atlantic & St. Lawrence R. R., 63 Me. 293; Stratton v. European & North American Ry., 76 Me. 269; Leavitt v. Canadian Pacific Ry., 90 Me. 153, 37 A. 886; Dyer v. Maine Central R. R., 99 Me. 195, 58 A. 994, overruled in Farren v. Maine Central R. R., 112 Me. 81, 90 A. 497.

The purpose of this section was to create a right of action where, except by early English common law, afterwards abrogated by statute, there was none unless negligence could be shown. Cleveland Co. v. Bangor & Aroostook R. R., 133 Me. 62, 173 A. 813.

It was not an unauthorized exercise of legislative power to render a railroad corporation liable for damages, as provided by this section, and to require that degree of care that will prevent any such injury as the section was designed to provide against.

And, if any such injury occur, the corporation cannot be regarded as without legal fault. Stearns v. Atlantic & St. Lawrence R. R., 46 Me. 95. See Chapman v. Atlantic & St. Lawrence R. R., 37 Me. 92; Pratt v. Atlantic & St. Lawrence R. R., 42 Me. 579; Stearns v. Atlantic & St. Lawrence R. R., 46 Me. 95; Sherman v. Maine Central R. R., 86 Me. 422, 30 A. 69.

This section was passed in consideration of hazard arising from the use of the engine, not to the landowner particularly, or chiefly, but to the citizens generally, and without a consideration moving from any citizen, except that general right of protection which all may claim from the sovereign power, which gives no vested right to any one, but rests in the discretion of the legislature. Stratton v. European & North American Ry., 76 Me. 269.

It does not apply exclusively to the owner of land taken, but as well to every person who owns property liable to be burned, and within the reach of fire that may be communicated by the engine, though not entitled to damages on account of the location of the railroad. Stratton v. European & North American Ry., 76 Me. 269.

The legislature may modify or even repeal this section as it sees fit. Stratton v. European & North American Ry., 76 Me. 269.

Fire danger as element of damages for taking of land by railroad.—See Bangor & Piscataquis R. R. v. McComb, 60 Me. 290.

Section applies to corporations chartered before its enactment.—See Pratt v. Atlantic & St. Lawrence R. R., 42 Me. 579.

Railroad not exempt from section by charter.—See Pratt v. Atlantic & St. Lawrence R. R., 42 Me. 579.

Applied in Jones v. Maine Central R. R., 106 Me. 442, 76 A. 710; Warner v. Maine Central R. R., 111 Me. 149, 88 A. 403; Warner v. Maine Central R. R., 113 Me. 129, 93 A. 53; Bilodeau v. Narragansett Mut. Fire Ins. Co., 116 Me. 355, 102 A. 42; Interstate Mfg. Co. v. Maine Central R. R., 123 Me. 549, 121 A. 90.

Cited in Hayden v. Skillings, 78 Me. 413, 6 A. 830.

II. PROPERTY TO WHICH SECTION APPLIES.

Railroad is liable for injury only to property lying along its route.—It is very manifest that a railroad company, under this provision, is not liable for an injury to property in which it has no insurable interest; and it has such interest only in property which lies along its route. Pratt v. Atlantic & St. Lawrence R. R., 42 Me. 579.

But distance from road is not limited or defined.—The words "along the route," describe property being near and adjacent to the route of the railroad, so as to be exposed to the danger of fire from engines, but without limiting, or defining the distance. Pratt v. Atlantic & St. Lawrence R. R., 42 Me. 579; Cleveland Co. v. Bangor & Aroostook R. R., 133 Me. 62, 173 A. 813.

And right of recovery is not limited to property "adjacent" to route.—The right to recover is not restricted to cases where the property injured is "adjacent" to the route of the railway. Martin v. Grand Trunk Ry., 87 Me. 411, 32 A. 976.

It is not deemed reasonable, that the legislature should limit the liability of railroad corporations to a fire caused by its engine to property upon land immediately adjoining the railroad track, when that upon a strip of land a few feet distant, owned by another proprietor, equally exposed, should be excluded. Pratt v. Atlantic & St. Lawrence R. R., 42 Me. 579.

Property is "along the route" if it is so near the railroad as to be exposed to danger of fire from the engine. Martin v. Grand Trunk Ry., 87 Me. 411, 32 A. 976. See Pratt v. Atlantic & St. Lawrence R. R., 42 Me. 579.

And if property in fact took fire from the engine, it must have been so near as to be exposed to the danger of fire from the engine, and must therefore be deemed to be situated "along the route" of the defendant's railway. Martin v. Grand Trunk Ry., 87 Me. 411, 32 A. 976.

Railroad may be liable for injury to property situated on its own land.—If the land on which the injured property was situated, although it belonged to the defendant railroad, was occupied by the plaintiff under the license of the defendant, then such occupation was lawful, and the plaintiff's rights and the defendant's liability with respect to injury by fire from a locomotive, are the same as they would be if the plaintiff was the owner of the land. Boston Excelsior Co. v. Bangor & Aroostook R. R., 93 Me. 52, 44 A. 138.

The fact that a building in which goods are kept or stored extends a few feet into the location of a railroad, if placed there, or permitted to remain there, by license of the railroad company or its officers, will not exempt the company from liability for injuries to the goods by fires communicated by its locomotive engines. Sherman v. Maine Central R. R., 86 Me. 422, 30 A. 69.

Liability is not confined either to real estate or personal property.—The property for which a railroad company may be liable in damages arising from a loss occasioned by fire communicated from a locomotive engine, is not confined either to real estate or personal property. Insurance may be effected upon either. And when a subject of insurance, this section will apply, other things existing which will bring the case under its provisions. Pratt v. Atlantic & St. Lawrence R. R., 42 Me. 579.

But is co-extensive with opportunity to insure.—The liability of the company is co-extensive only with its practical opportunity to insure the property along its route for which it might be liable. Pierce v. Bangor & Aroostook R. R., 94 Me. 171, 47 A. 144.

And thus extends only to property permanently existing along route.—The liability of railroad corporations, under this statute, extends only to property permanently existing along their route, and capable of being insured, and as to movable property, having no permanent location, the liability of such corporations is to be determined by the principles of the common law. Chapman v. Atlantic & St. Lawrence R. R., 37 Me. 92.

The section does not include movable articles that are only temporarily left near the railroad track and are liable to be changed at any time. Lowney v. New Brunswick Ry., 78 Me. 479, 7 A. 381.

A railroad company is not liable for the destruction of property, under the statute, temporarily located along its route and which may be so soon and so easily moved that the company cannot, by the exercise of reasonable diligence, protect itself against liability by insurance; but the company is liable under the statute for merchandise, lumber or other chattels regularly and permanently located along its route. Pierce v. Bangor & Aroostook R. R., 94 Me. 171, 47 A. 144; Bangor & Aroostook R. R. v. Hand, 133 Me. 99, 174 A. 380.

There must be such permanency as to give reasonable opportunity to insure.—The liability of the railroad company is co-extensive with the right given to the company, by this section, to insure the property and that, therefore, there must be such elements of permanency in the situation of the property as to give reasonable opportunity to procure insurance. Bangor & Aroostook R. R. v. Hand, 133 Me. 99, 174 A. 380.

It is, however, unnecessary that the identical articles should remain situated along the route for any particular length of time; these may be constantly changing as do the various articles in a stock of goods, while the stock itself, replenished from time to time, remains permanently in the place designed for it. The permanency here referred to means the permanent use of the particular place for the same kind of articles or goods. Pierce v. Bangor & Aroostook R. R., 94 Me. 171, 47 A. 144; Bangor & Aroostook R. R. v. Hand, 133 Me. 99, 174 A. 380.

Property for which recovery allowed.—See Pratt v. Atlantic & St. Lawrence R. R., 42 Me. 579 (growing timber); Stearns v. Atlantic & St. Lawrence R. R., 46 Me. 95 (chair factory and all machinery, tools, and other apparatus, lumber and other materials used in manufacture of chairs, and wholly and partially completed chairs); Bean v. Atlantic & St. Lawrence R. R., 63 Me. 293 (stock of goods in store occupied by plaintiff near track); Thatcher v. Maine Central R. R., 85 Me. 502, 27 A. 519 (lumber piled in permanent lumber yard near track).

Property for which recovery not allowed.—See Chapman v. Atlantic & St. Lawrence R. R., 37 Me. 92 (cedar posts piled by plaintiff on land of another by his consent near track); Lowney v. New Brunswick Ry., 78 Me. 479, 7 A. 381 (sleepers owned by plaintiff and piled near track, to be delivered from place where they were piled to defendant's cars).

III. NATURE AND EXTENT OF RAILROAD'S LIABILITY.

A. In General.

This section makes the railroad in effect an insurer. Pine Spring Sanatarium Co. v. Grand Trunk Ry., 120 Me. 99, 112 A. 905. See Bangor & Piscataquis R. R. v. McComb, 60 Me. 290.

And negligence is not an issue.—In an action based on this section the question of the defendant's negligence is not an issue. The simple fact that the fire causing the injury was communicated by one of the defendant's locomotive engines is sufficient to establish the cause of action. The absolute liability thereby cast upon the defendant, cannot be defeated by proof of the highest possible degree of care in the management of its railroad trains. Boston Excelsior Co. v. Bangor & Aroostook R. R., 93 Me. 52, 44 A. 138.

For requisite degree of care is such as will prevent all injury.—The degree of care which is required to protect such railroad corporation against liability for

damages, occasioned by fire so communicated, is such as will prevent all such injury. If they exercise such care they are safe, otherwise they are not. Stearns v. Atlantic & St. Lawrence R. R., 46 Me. 95.

And doctrine of contributory negligence is inapplicable.—The fact that the destroyed property was located near the line of the railroad does not deprive the owners of the protection of this section, certainly if it was placed where it was under a license from the defendant, and the doctrine of contributory negligence is not applicable to this class of case. Boston Excelsior Co. v. Bangor & Aroostook R. R., 93 Me. 52, 44 A. 138.

But this section, while giving a remedy, does not compel its adoption. In spite of the section, there can be no doubt that one whose property has been destroyed by fire can lawfully refrain from prosecution of his rights and in the absence of such prosecution, the railroad company can fail to pay without violation of law. Cleveland Co. v. Bangor & Aroostook R. R., 133 Me. 62, 173 A. 813.

And agreement releasing railroad from liability is valid.—As an individual landlord can lawfully enter into such an agreement with his tenant, so a railroad company, though a public carrier, can in a contract not involving public carriage, take a valid release of liability for destruction by fire of leased property, whether the same be on its right of way or not, if it be "along the route." Such an agreement not only does not offend this section but is not contrary to public policy. Cleveland Co. v. Bangor & Aroostook R. R., 133 Me. 62, 173 A. 813. See Bangor & Aroostook R. R. v. Hand, 133 Me. 99, 174 A. 380.

Even where fire is communicated by negligence of the railroad company, an agreement may release it from liability if it enters into such contract in its private capacity. Cleveland Co. v. Bangor & Aroostook R. R., 133 Me. 62, 173 A. 813.

The legislature never intended that the responsibility should rest upon the owner of a locomotive because of his ownership, nor unless the damage was caused by his use of it, nor to relieve the corporation that was using the engine which set the fire if they did not chance to own it. It was the possession and use of the engine which made it the engine of the corporation. Bean v. Atlantic & St. Lawrence R. R., 63 Me. 293.

Liability under this section has always rested upon the corporation using the locomotive, and the title to the locomotive was never the test of liability. Bean v. Atlantic & St. Lawrence R. R., 63 Me. 293.

But company may be liable though it has leased road to another.—Under a statute authorizing the lease of a railroad and expressly providing that nothing in such lease shall exonerate the lessors from any duty or liability imposed by their charter or any general law of the state, the use of the engine by lessees must be deemed a use of which the lessors are responsible, within the meaning of this section. Bean v. Atlantic & St. Lawrence R. R., 63 Me. 293.

A corporation was not relieved from the liability imposed by this section, by reason of having leased their road to another railroad, who were in possession, controlling and managing the leased road, at the time of the injury; and notwithstanding the fire was communicated by a locomotive engine which the lessees had themselves furnished. Stearns v. Atlantic & St. Lawrence R. R., 46 Me. 95.

Plaintiff may recover for whole injury though he holds land as security for debt.—Under this section the corporation is liable for the injury, the whole injury. And if the plaintiff had an absolute title to the whole property destroyed, the facts that he actually held the title as security for a debt and had agreed that upon payment of the debt he would reconvey, cannot affect his right to recover for the whole injury. If he recovers more than the amount of his debt, it is a matter to be adjusted between him and his debtor. Bean v. Atlantic & St. Lawrence R. R., 58 Me. 82.

B. Benefit of Insurance Effected by Owner.

Railroad is liable only for difference between amount of insurance and amount of injury.—The effect of this section as it now stands is to make railroad companies liable for the difference only between the net amount of insurance recovered by the property owner and the amount of the injury suffered. Leavitt v. Canadian Pacific Ry., 90 Me. 153, 37 A. 886.

And insurer is not entitled to subrogation.—Under this section the railroad company is absolutely responsible, and is entitled to the benefit of the insurance, whether the fire was caused by its negligence or not. Hence an insurer which has paid a loss occasioned by fire from a locomotive engine is not subrogated to the owner's rights against the railroad company, and cannot maintain an action against it to recover the amount paid. Farren v. Maine Central R. R., 112 Me. 81, 90 A. 497, overruling Dyer v. Maine Central R. R., 99 Me. 195, 58 A. 994.

This provision is constitutional. — The act of 1895, whereby this section was so amended that the liability of railroad corporations was limited to the excess of the injury suffered by the property owner over the net amount of insurance recovered, if received before the damages are assessed, and which provides that if the insurance is not recovered before the damages are assessed, the policy shall be assigned to the railroad corporation, which may maintain an action thereon, or prosecute an action already commenced by the insured, with all the rights which the insured originally had, is not in violation of any provision of the federal constitution. Leavitt v. Canadian Pacific Ry., 90 Me. 153, 37 A. 886.

And applies to insurance policy issued before its passage.—See Leavitt v. Canadian Pacific Ry., 90 Me. 153, 37 A. 886.

IV. PROCEDURE AND EVIDENCE.

Section not unavailing because form of action not prescribed.—This section will not be held to be unavailing to the person whose property has been thus injured because neither this section, nor any other statute, provides a remedy, or prescribes a form of action; for then he may declare specially on his own case. Stearns v. Atlantic & St. Lawrence R. R., 46 Me. 95.

Notice and demand previous to the suit are not required by this section. Stearns v. Atlantic & St. Lawrence R. R., 46 Me. 95.

It is necessary to allege that the engine causing the fire was in the use of the defendant company, or of their lessees. Frye v. Atlantic & St. Lawrence R. R., 47 Me. 523.

A declaration was sufficient where it distinctly alleged that the fire was in fact communicated by the defendant's engine to the plaintiff's land, and that the growth of wood thereon was in fact greatly injured by burning. Martin v. Grand Trunk Ry., 87 Me. 411, 32 A. 976.

The burden of proof is upon the plaintiff to show by competent evidence that the defendant's locomotive caused the fire. Alden v. Maine Central R. R., 112 Me. 515, 92 A. 651. See Lowney v. New Brunswick Ry., 78 Me. 479, 7 A. 381.

Evidence of other fires set by defendant's locomotives is admissible.—Evidence tending to show fires communicated by the locomotives used on the defendant's road at different times about the same time that the plaintiff's property was destroyed and in the same vicinity is admissible, where the issue is whether the fire was communicated from a locomotive. Thatcher v. Maine Central R. R., 85 Me. 502, 27 A. 519; Dunning v. Maine Central R. R., 91 Me. 87, 39 A. 352.

Although engine setting fire in question has been identified.—This rule is applicable although, before the testimony of other fires was admitted, defendant's counsel claimed that the plaintiff had already identified the engine as one drawing a certain train, which was true, and gave notice that the engine drawing that train would be fully identified by the defendant, and although the defendant subsequently identified the engine by number, and although, before the evidence was admitted, defendant's counsel expressly admitted the possibility of an engine setting fires. Dunning v. Maine Central R. R., 91 Me. 87, 39 A. 352.

And although it is not shown that engines setting other fires were of same type.—Evidence was properly admitted that other engines of the defendant had set fires in the vicinity about the time of the fire in question, although it was not previously shown that the engines setting such fires were of the same type, equipment and construction as the engine supposed to have set the fire in question. The evidence was relevant and admissible for the purpose of showing the capacity of locomotive engines to set fires by the emission of sparks or the escape of coals. Libby v. Maine Central R. R., 116 Me. 231, 100 A. 1025.

Sufficiency of proof of plaintiff's ownership of damaged land.—See Shepherd v. Maine Central R. R., 112 Me. 350, 92 A. 189.

Sec. 64. Intoxication of railroad employees while on duty.—Whoever, having charge of a locomotive engine or acting as conductor, brakeman, motorman or switchman, is intoxicated while employed on a railroad shall be punished by a fine of not more than $100 or by imprisonment for not more than 6 months. (R. S. c. 42, § 64.)

See c. 47, § 24, re applicability of § 64 to street railroads.

Sec. 65. Negligence of employee.—Any person employed in conducting trains, who is guilty of negligence or carelessness causing an injury, shall be

punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months; but the corporation employing him is not thereby exempt from responsibility. (R. S. c. 42, § 65.)

Cross reference.—See c. 47, § 24, re applicability of § 65 to street railroads.

This section subjects railroad corporations to liability for injuries occasioned by the negligence or carelessness of any person employed in conducting their trains. Mahoney v. Atlantic & St. Lawrence R. R., 63 Me. 68.

Liability of railroad to employee injured by negligence of fellow servant.—See Carle v. Bangor & Piscataquis Canal & R. R., 43 Me. 269.

Liability of railroad for employee's willful and malicious assault upon passenger.—See Goddard v. Grand Trunk Ry., 57 Me. 202.

Sec. 66. No liability for death of person walking on road.—No railroad corporation shall be liable for the death of a person walking or being on its road contrary to law or to its valid rules and regulations. (R. S. c. 42, § 66.)

Two-year-old child playing on track.—In view of the provisions of this and the following section, a two-year-old child playing on a railroad track was a trespasser upon the track, and the railroad owed him no duty save to refrain from wantonly or wilfully injuring him. Kapernaros v. Boston & Maine R. R., 115 Me. 467, 99 A. 441.

Applied in Willey v. Maine Central R. R., 137 Me. 223, 18 A. (2d) 316.

Sec. 67. Forfeiture for standing or walking on track or bridge; for entering upon track with team.—Whoever, without right, stands or walks on a railroad track or bridge or passes over such bridge except by railroad conveyance forfeits not less than $5, nor more than $20, to be recovered by complaint; and whoever, without right, enters upon any railroad track with any team, or any vehicle however propelled or drives any team or propels any vehicle upon any railroad track shall be punished by fine of not less than $50, or by imprisonment for not less than 30 days. (R. S. c. 42, § 67.)

That a railroad company does not prosecute violators of this section does not legalize the act of walking upon railroad tracks nor protect violators from its consequences. Copp v. Maine Central R. R., 100 Me. 568, 62 A. 735.

Quoted in Kapernaros v. Boston & Maine R. R., 115 Me. 467, 99 A. 441; Willey v. Maine Central R. R., 137 Me. 223, 18 A. (2d) 316.

Cited in Archibald v. Order of United Commercial Travelers, 117 Me. 418, 104 A. 792.

Sec. 68. Printed copy of preceding section posted.—A printed copy of the preceding section shall be kept posted in a conspicuous place in every railroad passenger station; for neglect thereof, the corporation forfeits not more than $100 for every offense. (R. S. c. 42, § 68.)

Sec. 69. Stranger getting upon or leaving train when in motion; liability of corporation not affected.—Any person, other than a servant or employee of the road, or a passenger holding a ticket for a passage over the same, or mail agent or expressman, who gets upon or leaves any steam engine, tender or car at any place outside of a railroad station while such engine, tender or car is in motion, shall be punished by a fine of not more than $10, or by imprisonment for not more than 30 days; but this provision does not affect the liability of any railroad corporation for injuries or damages caused by the fault or negligence of the corporation or its servants. (R. S. c. 42, § 69.)

Sec. 70. Disorderly conduct on any public conveyance.—Any person in a state of intoxication and not in the custody of an officer who enters or remains in or on or loiters about the rolling stock, stations, station grounds, waiting rooms, platforms or yards of any steam or street railroad, bus or other public transportation system or the right-of-way, bridges or tracks of any steam railroad or the boats, wharves or ships of any steamboat or ferry company, and any person who behaves in a disorderly or riotous manner or drinks intoxicating liquors or uses

indecent or profane language in any such place, car, vehicle or boat is guilty of a breach of the peace and shall be punished by a fine of not less than $5, nor more than $500, or by imprisonment for not less than 30 days, nor more than 11 months, in addition to any other penalty provided by law. (R. S. c. 42, § 70.)

Applied in Robinson v. Rockland, Thomaston & Camden Street Ry., 87 Me. 387, 32 A. 994.

Cited in Gosselin, Petitioner, 141 Me. 412, 44 A. (2d) 882.

Sec. 71. Officer in charge may refuse to permit such person to enter; may eject such offender; may arrest and hold such offender.—Any person or persons in charge of the property mentioned in the preceding section and any person or persons thereunto authorized or called upon by such person or persons in charge of said property may refuse to permit any person in a state of intoxication and not in the custody of an officer to enter said premises or property and may eject in a reasonable manner and at reasonable places any person found violating the preceding section and may arrest and temporarily hold any person found violating the provisions of the preceding section until a warrant can be obtained or he can be placed in the custody of the proper officers of the law. It shall be the duty of every sheriff, deputy sheriff, constable, city or deputy marshal or police officer to arrest and detain, until a legal warrant can be obtained, any person found violating the provisions of the preceding section. (R. S. c. 42, § 71.)

Sec. 72. Size and construction of caboose-cars.—Except as otherwise provided in the following section, no common carrier by railroad shall use on its lines any caboose-car, or other car used for like purposes, unless such caboose or other car shall be at least 29 feet in length, exclusive of platforms, and equipped with 2 four-wheel trucks and shall be of constructive strength equal, at least, to that of the 20-ton capacity freight-cars constructed according to master car-builder standards and shall be provided with a door in each end thereof and an outside platform across each end of said car. Each platform shall be not less than 24 inches in width and shall be equipped with proper guardrails, and with grab-irons and steps for the safety of persons getting on and off said car. The steps shall be equipped with a suitable rod, board or other guard at each end and at the back thereof, properly designed to prevent slipping from said step. Caboose-cars shall be of standard height, with a cupola or with an observation compartment extending from each side of the car, and with necessary closets and windows. (R. S. c. 42, § 72. 1949, c. 17.)

See § 74, re penalty.

Sec. 73. Persons and corporations to whom § 72 applies.—The provisions of the preceding section shall apply to any corporation, or to any person or persons, while engaged as common carriers in the transportation by standard gauge railroad of passengers or property within this state to which the regulative power of this state extends. Provided, however, that said provisions shall not apply to any railroad company operating less than 20 miles of single track, nor to caboose-cars used between the following points, namely: between Waterville and Skowhegan; between Pittsfield and Hartland; between Burnham and Belfast; between Leeds Junction and Farmington; between Bangor and Bucksport; between Calais and Princeton; between Livermore Falls and Canton; and between Lewiston lower station and Bath, via Brunswick. (R. S. c. 42, § 73.)

Sec. 74. Violation of § 72.—Any common carrier who violates any of the provisions of section 72 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 nor more than $500, for each offense, to be enforced on complaint or by indictment. (R. S. c. 42, § 74.)

Sec. 75. Frogs and guardrails to be blocked for protection of em-

ployees.—Every railroad corporation operating a railroad or part of a railroad in the state shall adjust, fill or block the frogs and guardrails on its track, with the exception of guardrails on bridges, in a manner satisfactory to the public utilities commission, so as to prevent the feet of employees from being caught therein. Any railroad corporation failing to do so shall be punished by a fine of not less than $100 nor more than $500. (R. S. c. 42, § 75.)

This section is not conclusive upon a railroad company whose road was only just built and was still unfinished at the time of the injury to an employee who caught his foot in a guardrail. The company was entitled to a reasonable time within which to comply with the requirement of the legislature. This section alone, therefore, did not justify the employee in assuming that the guardrail was blocked or filled. Gillin v. Patten & Sherman R. R., 93 Me. 80, 44 A. 361.

Sec. 76. Method of heating cars approved. — No passenger, mail or baggage car on any railroad in the state shall be heated by any method of heating or by any furnace or heater, unless such method or the use of such furnace or heater shall first have been approved in writing by the public utilities commission; provided, however, that in no event shall a common stove be allowed in any such car; and provided also, that any railroad corporation may, with the permission of said commission, make such experiment in heating their passenger cars as said commission may deem proper. (R. S. c. 42, § 76.)

Sec. 77. Lighting by naphtha.—No passenger car on a railroad shall be lighted by naphtha, nor by an illuminating oil or fluid made in part of naphtha, or which will ignite at a temperature of less than 300° Fahrenheit. (R. S. c. 42, § 77.)

Sec. 78. Violation of §§ 76, 77.—Any railroad corporation violating any provision of the 2 preceding sections forfeits not more than $500. (R. S. c. 42, § 78.)

Sec. 79. Head and rear lights on cars.—Every person, firm or corporation operating or controlling any railroad running through or within the state shall equip each of its track motor cars used during the period from 30 minutes before sunset to 30 minutes after sunrise with a headlight of such construction and with sufficient candle power to render plainly visible at a distance of not less than 300 feet in advance of such track motor car, any track obstruction, landmark, warning sign or grade crossing, and further shall equip such track motor car with a red rear light of such construction and with sufficient candle power as to be plainly visible at a distance of at least 300 feet. It shall be unlawful for any person, firm or corporation operating or controlling any railroad running through or within this state to operate or use any track motor car from 30 minutes before sunset to 30 minutes after sunrise, which is not equipped with lights of the candle power, construction and utility described in this section.

Any person, firm or corporation operating or controlling any railroad running through or within this state using or permitting to be used on its line in this state a track motor car in violation of the provisions of this section shall be liable to a penalty of $100 for each violation, to be recovered in a suit or suits to be brought by the county attorney in the superior court of the county having jurisdiction in the locality where such violation occurred. Upon duly verified information being given him of such violation, such county attorney shall bring such suits. (1951, c. 372. 1953, c. 308, § 76.)

Sec. 80. Speed limit at highway grade crossings.—The public utilities commission is authorized to fix a maximum speed limit at which trains may be run over any grade crossing of a highway or other way and, when such limit has been fixed by said commission, no engine or train shall be run over such crossings at a greater speed than that fixed by the commission and no way shall be unreasonably and negligently obstructed by engines, tenders or cars. Any rail-

road corporation forfeits not more than $100 for every violation of this section. (R. S. c. 42, § 79.)

Cross reference.—See c. 23, § 90, re warning signs.

Rights of railroad and public are reciprocal.—The rights of a railroad and the traveling public to the use of a highway at a grade crossing are reciprocal. The only superior right of the railroad is the right of passage. As an incident to this it may well be that the railroad may stop its trains across a highway and temporarily block it; but under such conditions the use which it makes of the way must be such as is reasonably necessary to enable it to perform its duties as a common carrier. Richard v. Maine Central R. R., 132 Me. 197, 168 A. 811.

Violation of section is evidence of negligence.—Violation of this section renders the corporation liable to a penalty, and is evidence of negligence though not conclusive as a matter of law. Dyer v. Maine Central R. R., 120 Me. 154, 113 A. 26.

But the running of a train faster than this section permits is not negligence per se. It is competent evidence to be considered on the question whether in fact the defendant was negligent in running its train at a dangerous rate of speed at the time and place and under all the circumstances disclosed, but it is not conclusive. Conant v. Grand Trunk Ry., 114 Me. 92, 95 A. 444. See Moore v. Maine Central R. R., 106 Me. 297, 76 A. 871.

Nor is it in itself negligence for a railroad company to allow a train to remain across a highway. Witherly v. Bangor & Aroostook R. R., 131 Me. 4, 158 A. 362.

But negligence is determined by whether obstruction is reasonable.—Negligent obstruction of a highway by a standing train is determined by whether, under all the circumstances, it is reasonable or otherwise. Witherly v. Bangor & Aroostook R. R., 131 Me. 4, 158 A. 362; Richard v. Maine Central R. R., 132 Me. 197, 168 A. 811.

This section fixes no time interval which if exceeded will represent an unreasonable and negligent obstruction. Plante v. Canadian Nat. Rys., 138 Me. 215, 23 A. (2d) 814.

And company rule setting time limit is not binding.—A rule adopted by a railroad company for the government of its employees that the highway must not be obstructed for more than five minutes at a time cannot be held to be an interpretation of this section that anything in excess of a five-minute delay would be a violation of the law. Plante v. Canadian Nat. Rys., 138 Me. 215, 23 A. (2d) 814.

Instruction as to effect of violation of section as evidence of negligence.—See Wood v. Maine Central R. R., 101 Me. 469, 64 A. 833.

By virtue of c. 145, § 18, an indictment will lie to recover the forfeiture provided for in this section for unreasonably and negligently obstructing any way by engines, tenders and cars. State v. Grand Trunk Ry., 59 Me. 189, holding it unnecessary to consider whether debt could or could not be maintained to recover the prescribed penalty.

Applied in State v. Boston & Maine R. R., 80 Me. 430, 15 A. 36; Hooper v. Boston & Maine R. R., 81 Me. 260, 17 A. 64; Romeo v. Boston & Maine R. R., 87 Maine 540, 33 A. 24.

Cited in Crosby v. Maine Central R. R., 113 Me. 270, 93 A. 744; Blanchard v. Maine Central R. R., 116 Me. 179, 100 A. 666; Ham v. Maine Central R. R., 121 Me. 171, 116 A 261.

Sec. 81. Safety switches and switch lights at every siding.—Every railroad company running express trains in this state shall place safety switches of an approved sort at every siding connecting with the main track. Switch lights shall also be maintained throughout that portion of every railroad where trains are run after dark; provided, however, that the public utilities commission shall have authority to relieve any railroad from the requirements of this section as to maintaining switch lights, upon proper petition therefor, after notice and hearing, and for good cause shown, to such extent as said commission shall deem consistent with public safety. (R. S. c. 42, § 80.)

Sec. 82. Changing switch or lights.—Whoever, without authority, shall alter, change or in any manner interfere with any safety switch or switch lights on any railroad shall be punished by a fine of not less than $100, or by imprisonment for not less than 60 days. (R. S. c. 42, § 81.)

Sec. 83. Railroad signals, injuring or tampering with.—Whoever in-

tentionally and without right injures, destroys or molests any signal of a railroad corporation, or any line, wire, post, lamp or other structure or mechanism used in connection with any signal on a railroad, or destroys or in any manner interferes with the proper working of any signal on a railroad, shall be punished by a fine of not more than $500, or by imprisonment for not more than 2 years. (R. S. c. 42, § 82.)

Sec. 84. Speed at railroad crossings; signals to warn approaching trains.—When 1 railroad crosses another on the same grade, every engineman on both, when approaching the point of intersection with an engine with or without a train, shall stop his engine within 500 feet of such point and before reaching it and shall pass it at a rate not exceeding 8 miles an hour, except when from the condition of the track or train it shall be necessary to run at greater speed; in which case, the conductor or person in charge of the train shall station some person at said crossing, with a flag by day and a lantern by night, to warn trains approaching on the other road; but when 2 or more crossings on the same road are within 400 feet of each other, 1 stop is sufficient; any such engineman, conductor or person in charge of the train violating this provision forfeits, for each offense, $100, and the corporation on whose road the offense is committed forfeits $200. (R. S. c. 42, § 83.)

Sec. 85. Signals at railroad crossings; signals for approaching trains; preference given to passenger trains at crossings. — When railroads cross each other at grade, the parties operating the railroad last located there shall build and maintain a suitable signal station at such crossing, at which a competent signal officer shall be kept at the joint expense of the parties operating the railroads. The signal shall not be set for a train to cross until the engine of such train shall have arrived within 500 feet of the intersection and stopped; and no train or engine shall cross the track of the other road until the proper signal for it to cross shall have been set in position by the signal officer. Only 1 train or engine shall be allowed to cross under 1 setting of the signal unless coming from opposite directions on the same railroad. When the signal has been set for the trains on 1 of the railroads, it shall not be changed until those trains shall have passed entirely over the crossing. When trains on both railroads approach the crossing at about the same time, preference shall be given to passenger trains and the signal shall be set for the trains on each road in alternate order. (R. S. c. 42, § 84.)

Sec. 86. Automatic signals established at railroad crossings; railroad, establishing such system, exempt from provisions of §§ 84, 85.— The public utilities commission may, on the application of any railroad corporation whose road crosses another railroad at the same level, after due notice and hearing of the parties, authorize the applicant to establish and maintain a system of interlocking or automatic signals at any crossing of said roads, at its own expense, and erect and maintain the necessary wires, rods, signal posts and signals in such manner as the commission shall prescribe. When such system is established and has been approved in writing by said commission, the corporation establishing the same and its railroad shall be excepted, as to that crossing, from the provisions of the 2 preceding sections, so long as the public utilities commission shall continue their approval. (R. S. c. 42, § 85.)

Cited in Maine Central R. R. v. Bangor & Old Town Ry., 89 Me. 555, 36 A. 1050.

Sec. 87. When both such railroads may be exempt from provisions of §§ 84, 85; payment of expense of such system; revision of award.— Whenever, after the establishment and approval of such system of signals, the party owning or operating said other railroad at such crossing shall have paid to the corporation by which said signals were established such part of the cost for

establishing the same as shall, after hearing on petition of the party owning or operating said other railroad, be awarded by the public utilities commission, both railroads shall be excepted, as to that crossing, as provided in the preceding section, from the provisions of sections 84 and 85. Until such payment said other railroad corporation shall contribute toward the expense of operating said signals, in semiannual payments, a sum equal to the cost to it of operating the signals used by it at said crossing before the establishment of the signals herein provided for. After payment of the award aforesaid, the expense of maintaining and operating the same shall be borne by the 2 railroad corporations according to the proportions fixed by the award for paying the original cost of the signals, and said award, so far as it relates to the cost of maintaining and operating said signals may, at the request of either party, be revised after an interval of 5 years from the original award or from the award next preceding such request. (R. S. c. 42, § 86.)

Sec. 88. Location of railroad near the station of another company. —No railroad company shall construct or maintain a track, or run an engine or cars on a street or highway so near any station of another railroad as to endanger the safety and convenient access to and use of such station for ordinary station purposes. (R. S. c. 42, § 87.)

Section applies to road chartered before its passage.—See Portland, Saco & Portsmouth R. R. v. Boston & Maine R. R., 65 Me. 122.

Sec. 89. Automatic signals at railroad crossings; expense; definition.—The public utilities commission is given authority to require each steam railroad company operating within this state to install, operate and maintain an automatic signal, gates or other protective device or to require a flagman to be stationed at any highway crossing within this state where, after reasonable notice and hearing, said commission shall decide that public safety requires such signal, gates, or other protective device or flagman as a proper measure of protection. The expense of installing, operating and maintaining any such signal, gates or other protective device or of providing such flagman shall be borne by the corporation operating the railroad passing over the crossing to be protected; except that at crossings located on state and state aid highways the expense of installing such signal, gates or other protective device shall be apportioned between such corporation and the state in such proportions as said commission shall determine. Wherever the term "signal" or "automatic signal" is used in this chapter, the same shall be construed to be an appliance which gives warning of the approach of a train and which is either audible and visible by day and by night, or audible or visible as may be determined by the commission. The provisions of this section shall not apply to railroads of less than standard gauge, nor to the Knox Railroad Company, formerly called Georges Valley Railroad Company. (R. S. c. 42, §§ 88, 98. 1949, c. 408.)

History and purpose of section.—See Newport v. Maine Central R. R., 123 Me. 383, 123 A. 172.

Cited in Ham v. Maine Central R. R., 121 Me. 171, 116 A. 261; Witherly v. Bangor & Aroostook R. R., 131 Me. 4, 158 A. 362.

Sec. 90. Crossings designated. — The public utilities commission shall designate by general orders, which may be issued without formal notice or hearing, the grade crossings in this state at which, from all points on the highway or other way within 150 feet of such crossings and on either side thereof measured along said highway or way, a traveler on the way carrying such crossing can have a fair view of an approaching train, engine or car continuously from the time such train, engine or car is 300 feet from such crossing until it has passed over the same, either under existing conditions or by bushes, trees, fences, signboards or

encroachments being trimmed, cut down or removed, as hereinafter provided. (R. S. c. 42, § 89.)

History and purpose of section.—See Newport v. Maine Central R. R., 123 Me. 383, 123 A. 172.

Sec. 91. Obstructions removed; notice to interested parties. — At every crossing of a highway or other way and a steam railroad at grade and at every crossing of a highway or other way and an electric railroad at grade, the municipal officers of the town or county commissioners in the case of unorganized places in which the crossing is located are given authority and are required, when by order directed to do so by the public utilities commission, after 10 days' notice to all persons interested, to remove embankments and other obstructions within highway limits and to enter upon private property and properly trim, cut down or remove, and from time to time as may be necessary to keep trimmed, cut down and removed, bushes, trees, fences, signboards and encroachments which obstruct the view of an engine, train or car by a traveler at or near any such crossing. The authority of the commission in any order and of the municipal officers or county commissioners acting thereunder shall not extend beyond a point 150 feet on either side of any such crossing measured along the highway or other way or beyond a point 300 feet on either side of any such crossing measured along the railroad right-of-way, the purpose herein being to enable a traveler on any such way, when such traveler is 150 feet or less distant from any such crossing, to have a fair view of an approaching train, engine or car from one or more angles continuously from the time such train, engine or car is 300 feet from such crossing until it has passed over the same. (R. S. c. 42, § 90.)

See c. 23, §§ 90-93, re warning signs; c. 96, § 108, re highway commission authority.

Sec. 92. Expense of removal paid by municipality; partial reimbursement by state.—Within such time as said commission by order directs, such municipal officers shall cause such bushes, trees, fences, signboards or encroachments to be trimmed, cut down or removed and from time to time as may be ordered by said commission to keep the same trimmed, cut down or removed, and the expense thereof shall in the first instance be paid by the city, town or plantation wherein the labor is performed, but upon the filing with the public utilities commission of proper proof of such payment, ½ of any such amount shall be repaid by the state to such city, town or plantation, the same to be paid out of the appropriation for the operation of the public utilities commission. (R. S. c. 42, § 91.)

Sec. 93. Damages; amount; municipality and state to share in payment.—If any person claims damages on account of any act done under the provisions of the 2 preceding sections, he may, within 2 years after the doing of any such act, petition the public utilities commission to assess his damages and the said commission, after reasonable notice to the petitioner and to the interested city, town or plantation and, after hearing, shall award such sum as seems proper as damages to be paid by the city, town or plantation wherein the property is located. Upon proper proof of any such payment, the governor and council shall cause ½ thereof to be paid by the state to such city, town or plantation. (R. S. c. 42, § 92.)

Sec. 94. Buildings not removed without consent of owner.—Nothing in the 4 preceding sections contained shall authorize the removal of any building without the consent of the owner thereof. (R. S. c. 42, § 93.)

Sec. 95. Interference in performance of duty.—Obstruction or interference with the performance of any act authorized or required hereunder is de-

clared to be a misdemeanor, and any person convicted of the same shall be punished by a fine of not more than $20, or by imprisonment for not more than 30 days. Jurisdiction over each such offense is conferred on each municipal court and trial justice in the state. (R. S. c. 42, § 94.)

Sec. 96. Orders of commission.—All orders of the commission made under the provisions of this chapter may be enforced in the manner provided in chapter 44. The superior court is given exclusive jurisdiction at law and concurrent jurisdiction in equity with the supreme judicial court in equity to enforce compliance of any order issued by the public utilities commission under the provisions of this chapter. It shall be the duty of said commission to see that the rights of the public under the provisions of this chapter are fully protected. (R. S. c. 42, § 95.)

Sec. 97. Applicable to all railroads. — Except where otherwise herein expressly specified, the provisions of sections 89 to 96, inclusive, and section 98 shall apply to all railroads operated by steam, electric, Diesel-electric, Diesel-motor, gasoline-electric or gasoline-motor power and engaged in the transportation of freight or passengers in standard railroad freight or passenger cars. (R. S. c. 42, § 96.)

Sec. 98. Railroad company may enter upon private property.—For the purpose of creating and maintaining the fair view mentioned in the preceding sections, or for the purpose of improving the view at one or more angles, any steam railroad company subject to the provisions of this chapter may enter upon private property and remove any embankment or other obstruction except a dwelling house. The owner of such property is entitled to damages, and may have the same estimated and paid in manner provided in chapter 45, and there shall be the same right of appeal as therein given. (R. S. c. 42, § 97.)

Railroad Equipment.

Sec. 99. Contract for conditional sale of railroad equipment. — In any contract for the sale of equipment or rolling stock for a railroad of any kind, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. In any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided that no such contract shall be valid as against any subsequent judgment creditor or any subsequent bona fide purchaser for value and without notice, unless:

I. The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved;

II. Such instrument shall be filed for record in the office of the secretary of state or with the interstate commerce commission pursuant to the provisions of the interstate commerce act; (1953, c. 20, § 1)

III. Each locomotive engine or car so sold, leased or hired or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor

or bailor plainly marked on each side thereof, followed by the word "owner" or "lessor" or "bailor" as the case may be. (R. S. c. 42, § 99. 1953, c. 20, § 1.)

Sec. 100. Contracts and declarations recorded by secretary of state; exception.—The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose. On payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded as aforesaid. The provisions of this section shall not apply if such contracts are filed with the interstate commerce commission pursuant to the provisions of subsection II of section 99. (R. S. c. 42, § 100. 1953, c. 20, § 2.)

Sec. 101. Provisions of c. 119, § 9 and c. 178 shall not apply to such contracts; property subject to trustee process.—The provisions of section 9 of chapter 119, shall not apply to any contract specified in section 99, nor shall any contract specified in said section be construed a mortgage or an instrument under the provisions of chapter 178, requiring foreclosure and entitling the holder of property thereunder to an equity of redemption, but any personal property held under any contract specified in section 99 shall be subject to trustee process as provided in section 50 of chapter 114. (R. S. c. 42, § 101.)

Sec. 102. Contracts made before April 29, 1893 not affected.—The provisions of the 3 preceding sections shall not be held to invalidate or affect in any way any contract of the kind referred to in section 99 made before the 29th day of April, 1893, and any such contract theretofore made may, upon compliance with the provisions hereof, be recorded as herein provided. (R. S. c. 42, § 102.)

Sec. 103. No title to lands of railroad corporations by adverse possession.—No title to any real estate or any interest therein shall be acquired against any railroad corporation by adverse possession, however exclusive or long continued. (R. S. c. 42, § 103.)