

MAINE STATE LEGISLATURE

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NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

1954

FIRST ANNOTATED REVISION

IN FIVE VOLUMES

VOLUME 2



THE MICHIE COMPANY, Inc.
CHARLOTTESVILLE, VIRGINIA

Chapter 47.

Street Railroads.

Sec. 1. General powers.—All street railroad corporations shall, in addition to their chartered rights, have all the rights and powers conferred from time to time by general laws upon street railroad corporations and be subject to the conditions, restrictions and limitations thereby imposed. (R. S. c. 43, § 1.)

Purpose of section.—It is the purpose of this section to give to all street railroad corporations, both those specially chartered and those organized under the general laws, the same rights and powers, to place them all on the same basis, whatever the limit of chartered powers may have been. Percy v. Lewiston, Augusta & Waterville

Street Ry., 113 Me. 106, 93 A. 43.

Street railroad corporations may do freight business.—All street railroad corporations, both those specially chartered and those organized under the general laws, have authority to do a freight business. Percy v. Lewiston, Augusta & Waterville Street Ry., 113 Me. 106, 93 A. 43.

Sec. 2. Organization.—Any number of persons not less than 5, a majority of whom shall be citizens of this state, may form a company for the purpose of constructing, maintaining and operating by electricity, compressed air or animal power a street railroad for public use, for street traffic for the conveyance of persons and property and for that purpose may make and sign articles of association in which shall be stated the name of the company, the gauge of the road, the places, cities and towns from which, in which and to which the road is to be constructed, maintained and operated, the length of such road as nearly as may be, the amount of capital stock which shall not be less than \$4,000 for every mile of road proposed to be constructed, the number of shares of which said stock shall consist and the names and places of residence of at least 3 persons, a majority of whom shall be citizens of this state, who shall act as directors of the proposed company and manage its affairs until others are chosen in their places. Each subscriber shall sign his name, residence and number of shares which he agreed to take in said company. (R. S. c. 43, § 2.)

Cross reference.—See § 29, re erection of power stations, etc.

Quoted in part in Percy v. Lewiston, Augusta & Waterville Street Ry., 113 Me. 106, 93 A. 43.

Stated in Portland R. R. Extension Co., Appellant, 94 Me. 565, 48 A. 119.

Cited in Milbridge & Cherryfield Elec. R. R., Appellant, 96 Me. 110, 51 A. 818.

Sec. 3. Stock requirements before articles filed.—Said articles of association shall not be filed and recorded in the manner provided in the following section, until the capital stock named in the preceding section has been subscribed thereto, in good faith, by responsible parties, and 5% paid thereon in cash to the directors named in said articles, nor until there is indorsed thereon or annexed thereto an affidavit made by a majority of the directors named therein, that the amount of stock required by the preceding section has been in good faith subscribed and 5% paid thereon in cash as aforesaid, and that it is intended in good faith to construct, maintain and operate the road mentioned in such articles, which affidavit shall be recorded therewith as aforesaid. (R. S. c. 43, § 3.)

Stated in Portland R. R. Extension Co., Appellant, 94 Me. 565, 48 A. 119.

Cited in Milbridge & Cherryfield Elec. R. R., Appellant, 96 Me. 110, 51 A. 818.

Sec. 4. Approval of articles of association; issue of certificate by secretary of state; certificate conclusive as to organization of corporation.—Whenever it is shown to the satisfaction of the public utilities commission that all the provisions of the 2 preceding sections have been complied with, they shall indorse upon said articles a certificate of such facts and their approval in writing. The secretary of state shall, upon payment of the fees prescribed by

section 12 of chapter 53, cause the same with the indorsement thereon to be recorded and shall issue a certificate in the following form:

“STATE OF MAINE.

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

Witness my official signature thereunto subscribed and the seal of the state of Maine hereunto affixed this day of A. D. 19..” (day, month and year inserted.)

The secretary of state shall sign the same and cause the seal of the state to be affixed, and such certificate shall be conclusive evidence of the organization and establishment of such corporation at the date thereof. The secretary of state shall also cause a record of such certificate to be made and a certified copy of such record may, with like effect as the original certificate, be given in evidence to prove the existence of such a corporation. (R. S. c. 43, § 4.)

Stated in Portland R. R. Extension Co., Appellant, 94 Me. 565, 48 A. 119.

Cited in Milbridge & Cherryfield Elec. R. R., Appellant, 96 Me. 110, 51 A. 818.

Sec. 5. Meeting for organization.—The 1st meeting for the purpose of organizing such corporation shall be called by a notice, signed by 3 of the subscribers to such articles of association, stating the time, place and purpose of such meeting, a copy of which notice shall, 7 days at least before the day appointed therefor, be given to each subscriber, or left at his usual place of business or residence or deposited in the post office, postpaid, addressed to him at his usual place of business or residence; and whoever gives such notice shall make affidavit of his doings, which shall be recorded in the records of the company. (R. S. c. 43, § 5.)

Sec. 6. Increase of capital stock.—If the capital stock of any company formed under the foregoing provisions is found to be insufficient for constructing and equipping its road, such company may increase the same from time to time to any amount for the purpose aforesaid. Such increase must be sanctioned by a vote, in person or by proxy, of 2/3 in amount of all the stockholders at a meeting thereof called by the directors for that purpose. (R. S. c. 43, § 6.)

Sec. 7. Approval of location; proceedings.—Every corporation organized under the foregoing provisions, before commencing the construction of its road, shall present to the public utilities commission a petition for approval of location, defining its courses, distances and boundaries, accompanied with a map of the proposed route on an appropriate scale with the written approval of the proposed route and location as to streets, roads or ways, of the municipal officers of the cities and towns in which said railroad is to be constructed in whole or in part and with a report and estimate prepared by a skillful engineer. Said commission shall upon presentation of such petition appoint a day for a hearing thereon and the petitioner shall give such notice thereof as said commission deems reasonable and proper, in order that all persons interested may have an opportunity to appear and object thereto. At such hearing any party interested may appear in person or by counsel. The public utilities commission after hearing

the petition shall, if they approve such location, subject to the provisions of section 15, then determine whether public convenience requires the construction of such road and make a certificate of such determination in writing, which certificate shall be filed with their clerk within 30 days after such hearing. Within 5 days after the filing of such certificate with him, said clerk shall notify all who have become parties of record as aforesaid, or their counsel, of such determination and decision by sending to each party or their counsel, by mail, a certified copy of such certificate so filed with him. If the public utilities commission approves such location and finds that public convenience requires the construction of said road, the corporation may proceed with the construction of said road, provided that it first files with the clerk of county commissioners for the county in which said street railroad is to be located a copy of the location and plan aforesaid and another copy of the same with the public utilities commission. Any extension of, addition to or variation from the location of any street railroad organized under the provisions hereof may be made in accordance with and subject to the foregoing provisions, provided that no railroad shall be located across tidewaters where vessels can navigate unless special permission of the legislature is obtained; no such permission shall be necessary where such railroad is desired to cross public bridges already erected, but the authority to determine whether such crossing shall be permitted shall rest with the municipal officers of the cities or towns liable for the repair of such bridges respectively, who may impose such conditions and terms upon railroads desiring to cross the same as to them may seem expedient. In case any county is liable for the repair of a bridge, the county commissioners of such county shall have authority in the premises. (R. S. c. 43, § 7.)

Finding of public convenience is essential.—It is essential that the public utilities commission should find that public convenience required the construction of the railroad, before the railroad company can do any business. It is preliminary even to complete organization. *Milbridge & Cherryfield Elec. R. R.*, Appellant, 96 Me. 110, 51 A. 818.

Municipal officers have judicial discretion and consider all relevant facts.—A route or location of a street railroad presented to the municipal officers for their approval, cannot be considered merely with reference to particular streets, one by one. It must be viewed as a whole. The munic-

ipal officers are vested with a judicial discretion. Application is made to that discretion. And it may well be that, taken as a whole, a proposed location, including a bridge, would be manifestly unsuitable, while the same location, without the bridge, would be proper. *Cherryfield & Milbridge Elec. R. R.*, Appellant, 95 Me. 361, 50 A. 27.

Stated in *Portland R. R. Extension Co.*, Appellant, 94 Me. 565, 48 A. 119.

Cited in *Murray Bros. Co. v. Aroostook Valley R. R.*, 109 Me. 350, 84 A. 457; *Percy v. Lewiston, Augusta & Waterville Street Ry.*, 113 Me. 106, 93 A. 43; *In re Knox County Elec. Co.*, 119 Me. 179, 109 A. 898.

Sec. 8. Application to municipal officers and proceedings; appeal and proceedings.—Whenever any street railroad corporation is required to obtain the written approval of its proposed route and location, or of any extension of the same, or of any additional locations for turnouts or spurs mentioned in section 12, as to streets, roads or ways, of the municipal officers of the cities and towns in which said railroad is to be constructed in whole or in part, it shall make an application in writing and such municipal officers shall order public hearing thereon, giving such notice thereof as they deem proper but in no case less than 7 days. Such notice shall contain a copy of such written application and warn the legal voters of such city or town to be present and be heard thereon. After hearing and within 14 days after the filing of such application, such municipal officers shall file their decision thereon with the clerk of the city or town who shall make due record thereof. Any contract entered into between any such street railroad corporation and such municipal officers as to the terms, conditions and obligations under which such location is approved, so far as consistent with the powers and duties of the public utilities commission under the general laws of the state, shall be valid and binding. If the municipal officers upon such written

application therefor neglect to approve a route and location as to streets, roads or ways, or if they refuse to approve such a route and location, or if such route and location is not accepted by the corporation, in either case said corporation may within 14 days after the expiration of the time for filing such decision, or within 14 days after the filing thereof, appeal to the public utilities commission. A failure to appeal shall not bar the corporation from making a new application to municipal officers. Any person or corporation claiming to be interested may appeal to the public utilities commission within said 14 days from any decision made by the municipal officers. In all such appeals the appellant shall file his appeal in writing in the office of the public utilities commission who shall appoint a day for a hearing thereon, and the appellant shall give such notice thereof as said commission deems reasonable and proper in order that all persons interested may have an opportunity to appear and object thereto. After hearing, the said commission shall make decision thereon and cause record thereof to be made in their office in lieu of the approval of the municipal officers. This section shall not apply to any location which has been approved by the proper municipal officer before the 26th day of March, 1907. (R. S. c. 43, § 8.)

Approval by municipal officers or commission is essential.—Although it is the privilege of a street railroad company to select its proposed route and location, that selection is of no avail unless it is approved by the municipal officers; or if they fail to perform their duty, and neglect and refuse to act, still the selection of the railroad company goes for naught, unless it is approved by the public utilities commission. *Milbridge & Cherryfield Elec. R. R., Appellant, 96 Me. 110, 51 A. 818.*

Allegation on appeal that corporation is organized under this chapter is sufficient to show right to apply.—While it is necessary for the appeal to allege enough to show that the appellant had the right to

apply to the municipal officers for an approval of its route, it is not necessary to allege all the steps by which the appellant obtained that right. It would be sufficient for the appellant to allege simply that it is a "corporation organized" under this chapter. Under such an allegation, all things essential and preliminary to lawful organization would be presumed, so far as averment is concerned, and no specific allegation would be necessary. *Milbridge & Cherryfield Elec. R. R., Appellant, 96 Me. 110, 51 A. 818.*

Applied in *Portland R. R. Extension Co., Appellant, 94 Me. 565, 48 A. 119; Cherryfield & Milbridge Elec. R. R., Appellant, 95 Me. 361, 50 A. 27.*

Sec. 9. Amendment of articles of association, as to length of road.

—If a street railroad corporation organized under the provisions of this chapter, in preparing its location under the provisions of section 7, finds that the length of road intended to be constructed by it exceeds the length of road as set forth in its articles of association, it may by a petition signed by all of its directors, addressed to the public utilities commission, and upon such notice as said commission may deem necessary, amend said articles of association by providing for such additional length of road and by increasing the amount of its capital stock to the amount required by section 2. Such increase in capital stock shall be subscribed for in good faith by responsible parties and 5% paid thereon in cash to the directors. An additional affidavit shall be indorsed thereon or annexed thereto, made by a majority of the directors, that said additional capital stock has been in good faith subscribed and 5% paid thereon in cash as aforesaid, and that said corporation intends in good faith to construct, maintain and operate the additional length of road provided for by said amendment. Said amendment shall be subject to approval by the public utilities commission, as provided by section 4 in reference to the original articles of association; provided, however, that no amendment shall be necessary so long as the length of approved location does not exceed the length of road as specified in the articles of association. (R. S. c. 43, § 9.)

Sec. 10. Amendment recorded by secretary of state.—After said amendment has been approved and recorded by the public utilities commission, it shall be recorded in the office of the secretary of state and a certificate of said amendment shall be issued by the secretary of state to said corporation upon pay-

ment of such additional fee, if any, as would have been required if the capital stock as provided by the articles of association had conformed to the capital stock as amended. (R. S. c. 43, § 10.)

Sec. 11. Articles of association, location or any petition amended.—Articles of association filed under the provisions of section 4 may be amended at any time upon petition therefor signed by all of the corporators after such notice thereof as the public utilities commission may deem necessary. No proceedings shall be dismissed because of the death of any person named as a director or corporator before final decree of approval of location, but the survivors may elect a new director or admit another associate, who shall sign the original articles of association and the subscription of stock then on file in the office of said commission. Any location may be amended at any time before final approval thereof, after notice and hearing thereon by the public utilities commission, by filing a consent to said amendment signed by the municipal officers of the town interested. Amendments to petitions relating to street railroad corporations filed before the public utilities commission may be made at any time before final decree, with or without notice, as the commission may decide public interest may require. (R. S. c. 43, § 11.)

Sec. 12. Additional locations for turnouts approved.—When the location of any street railroad shall have been approved as provided by law, the municipal officers may approve such additional locations for turnouts and spurs to property used or to be used by said corporation in the operation of its road as shall be necessary therefor, and such additional locations shall not be deemed to be extensions, additions or variations within the meaning of this chapter. (R. S. c. 43, § 12.)

This section does not require any formalities of petition. It does not even require a formal petition at all. Jurisdiction of municipal officers is not limited to cases alleged to be of public necessity or convenience. The question of public necessity or convenience of the general location is settled by the approval of the public utilities commission. The question of the public necessity or convenience of the location having been thus settled, the subsequent construction of turnouts is merely

incident to the general power of construction. *Percy v. Lewiston, Augusta & Waterville Street Ry.*, 113 Me. 106, 93 A. 43.

A street railroad company has no right to use the public highway as a switching yard, and is not entitled to a turnout for that purpose, nor for the purpose of affording a standing place for its cars, nor for its mere business convenience. *Percy v. Lewiston, Augusta & Waterville Street Ry.*, 113 Me. 106, 93 A. 43.

Sec. 13. Construction of road to begin within 3 years.—If any corporation formed under the provisions of the foregoing sections does not, within 3 years after its articles of association are filed and recorded in the office of the secretary of state, begin the construction of its road and expend thereon 10% of its capital, its corporate existence and power shall cease, unless the same shall be extended as provided in the following section. (R. S. c. 43, § 13.)

See c. 10, § 22, sub-§ XXIX, re business to commence within 2 years.

Sec. 14. Charter extended or revived.—The public utilities commission may extend the corporate existence and powers of such corporation for successive periods of not exceeding 3 years each or may revive such corporate existence and powers for a like period after the same shall have ceased as provided in the preceding section. Said commission, if they deem it expedient and if the same be prayed for, may include in such extension any rights or powers granted to such corporation by special law, and in such case all rights and powers of such corporation, whether existing under the provisions of this chapter or under any special law, shall continue in full force for the period not exceeding 3 years determined by the commission; provided, however, that before decreeing such extension or

revival, notice shall be given and hearing had as provided by section 7. (R. S. c. 43, § 14.)

Sec. 15. Corporations may take land outside of streets and ways; not to exceed 4 rods in width; damages.—Such corporation may purchase or take and hold by its location aforesaid as for public uses, land outside of the limits of streets, roads or ways, and all materials in and upon it for the location, construction and convenient use of its road, whenever for any reason it appears that the public service of said corporation would be thereby better performed, but the land so taken shall not exceed 4 rods in width unless necessary for excavation, embankments or materials. No location outside of the limits of any street, road or way shall be approved by said commission unless it appears that the public service of said corporation would be thereby better performed. All damages for land and materials so taken shall be determined and paid in the manner and under proceedings as provided in case of lands taken for steam railroads. (R. S. c. 43, § 15.)

Cross reference.—See c. 45, § 32, re damages, etc., for lands taken by steam railroads.

Use of public street is not a taking of land.—It is too well settled to be questioned that the ordinary operation of a street railroad, which is a quasi public use, is a use of the street appropriate to the character of the easement or servitude which the public holds. It imposes no additional burden upon the abutter, and is no new taking of land for which he may

recover additional compensation. *Milbridge & Cherryfield Elec. R. R.*, Appellant, 96 Me. 110, 51 A. 818.

It is settled that the use of a street by a street railroad is a public servitude imposing no additional burden upon the abutter. The damages paid, when the street was built, were for all time and for all public uses fairly contemplated at the time the land was taken. *Parsons v. Waterville & Oakland Street Ry.*, 101 Me. 173, 63 A. 728.

Sec. 16. Profiles of proposed locations filed.—In all proceedings before the public utilities commission by street railroad corporations, involving the approval of locations outside of the limits of streets, roads or ways, such corporations shall file profiles of the proposed location outside of the limits of streets, roads or ways, and such profiles of the streets, roads or ways as may be material to the inquiry into the approval of the proposed location. Such profiles shall be on the relative scales of profile paper in common use. (R. S. c. 43, § 16.)

Sec. 17. Corporation may acquire land for certain uses; application; procedure.—Any street railroad corporation may purchase or take and hold, as for public uses, land for borrow and gravel pits, spur tracks thereto, side-tracks, turnouts, stations, car barns, pole lines, wires, installing and maintaining power plants, double-tracking its road, improving the alignment thereof, changing or avoiding grades or for avoiding grade crossings of any railroad; but if the owner of said land does not consent thereto, or if the parties do not agree as to the necessity therefor or the area necessary to be taken, the corporation may make written application to the public utilities commission, describing the estate and naming the persons supposed to be interested. The commission shall thereupon appoint a time for a meeting near the premises, and require notices to be given to the persons so interested as they may direct 14 days at least before said time; and shall then view the premises, hear the parties and determine how much, if any, of such real estate is necessary for the reasonable accommodation of the traffic and appropriate business of the corporation. If they find that any of it is so necessary, they shall make a certificate containing a definite description thereof and furnish the corporation with a true copy thereof attested by the clerk of the commission; and when such copy of certificate is filed with the clerk of courts in the county where the land lies, the land shall be deemed and treated as taken; provided, however, that when land is held by a tenant for life and the reversion is contingent as to the persons in whom it may vest on the termination of the life estate, such fact shall be stated in the application and the commission

shall, in addition to the notice to the tenant for life, give notice by publication to all others interested in such matter as they deem proper. (R. S. c. 43, § 17.)

Sec. 18. No entry, except for survey, before filing of certificate; damages.—The land taken under the provisions of the preceding section shall not be entered upon except to make surveys before the certificate aforesaid has been filed with the clerk of courts. All damages shall be determined and paid as provided by chapter 45, in the case of lands taken for steam railroads, and section 35 of said chapter shall be applicable thereto. No meetinghouse, dwelling house, or public or private burying grounds shall be so taken without consent of the owners. Nothing herein contained shall authorize the taking of lands already devoted to railroad uses except in cases where the public utilities commission determines that such lands may be crossed in such manner as to avoid grade crossings with railroads. (R. S. c. 43, § 18.)

Sec. 19. Location canceled by municipal officers upon petition of directors.—Whenever a location for a street railroad upon any street, road or way has been approved under the general law or any special act, with no actual occupation thereof by the rails of such company, such location in whole or in part may be canceled at any time by the municipal officers of the town where so located upon the petition of the directors of the corporation entitled to the same. (R. S. c. 43, § 19.)

Sec. 20. Location changed.—Any street railroad corporation, under the direction of the public utilities commission, may make any changes in the location of its road which it deems necessary or expedient and such changes shall be recorded where the original location was required by law to be recorded. (R. S. c. 43, § 20.)

Determination by commission is final.—The determination of the commission in regard to the change of location of a street railroad is final. The omission of the clerk of the commission, within five days after the filing of the certificate of its decision, to give notice of such determina-

tion to all parties of record, does not deprive the railroad corporation of its right to construct and operate its road, or make that a public nuisance which would otherwise be a lawful use of the street. *Parsons v. Waterville & Oakland Street Ry.*, 101 Me. 173, 63 A. 728.

Sec. 21. Location of tracks in street changed by municipal officers upon petition.—Upon a petition of 10 or more citizens and taxpayers of any city or town, setting forth that the tracks of any street railroad company operated in said city or town are located inconveniently for the public, the municipal officers may, after giving reasonable notice to all parties interested, hold a public hearing on said petition and may, if in their judgment public convenience or street improvement requires it, change said location within the limits of any street, but not to another street, and order the company operating the railroad to make the alterations, and may make such decree as to the expense of the same, as between the company and the municipality, as they may deem equitable, subject to appeal as hereinafter provided; and said alterations shall be made in accordance with the directions of the municipal officers. (R. S. c. 43, § 21.)

Sec. 22. Appeals.—The petitioners, or any street railroad company affected by the decision of the municipal officers, may appeal to the public utilities commission, who shall upon notice hear the parties and finally determine the questions raised by said appeal. (R. S. c. 43, § 22.)

Sec. 23. Street railroads extend lines.—Any street railroad corporation in this state may be authorized to extend, construct, maintain and operate its road to, into and through cities and towns other than and in addition to those named in its charter or articles of association, and to other points or places within the cities or towns where built or located, on application to the public utilities

commission and by compliance with and subject to the provisions of section 7; the right of any connecting street railroad company specially conferred upon it by its charter shall be preserved unimpaired. (R. S. c. 43, § 23.)

Sec. 24. Certain provisions relating to steam railroads made applicable to street railroads.—So far as applicable, the provisions of section 4 of chapter 44, sections 30 to 49, inclusive, sections 52 to 54, inclusive, of chapter 45, and sections 8, 9, 10, 22 to 25, inclusive, 28, 29, 54, 64 and 65 of chapter 46 and sections 18 and 19 of chapter 49 shall apply to street railroads. (R. S. c. 43, § 24.)

Cited in *Chalmers v. Littlefield*, 103 Me. 271, 69 A. 100.

Sec. 25. Constructed in manner prescribed by municipal officers.—Said railroads shall be constructed and maintained in such form and manner, and with such rails and upon such grade as the municipal officers of the cities and towns where the same are located may direct, and whenever in the judgment of such corporation it shall be necessary to alter the grade of any city, town or county road, said alterations shall be made at the sole expense of said corporation with the assent and in accordance with the directions of said municipal officers. The said corporation may at any time appeal from the decision of such municipal officers determining the form and manner of the construction and maintenance of its railroad and the kind of rail to be used to the public utilities commission, who shall upon notice hear the parties and finally determine the questions raised by said appeal. (R. S. c. 43, § 25.)

Sec. 26. Certain provisions relating to crossings of streets and ways made applicable to corporations organized under this chapter.—Sections 48 to 50, inclusive, of chapter 96 shall apply to the location of highways and town ways across, over or under the private right-of-way or land used for station purposes, of corporations organized under the provisions of this chapter; and sections 63 to 74, inclusive, of chapter 45 shall apply to crossings of streets and ways occasioned by the construction of the railroads of such corporations outside the limits of streets, roads and ways. (R. S. c. 43, § 26.)

Sec. 27. Railroad not operated until commission grants certificate of safety.—No street railroad shall be operated for street traffic until the public utilities commission has made an inspection of such railroad and granted a certificate of its safety for public travel. Any person or corporation violating the provisions of this section forfeits to the state \$100 for each offense, to be recovered in an action on the case or by complaint and indictment, and the attorney general shall institute proceedings to recover the same. (R. S. c. 43, § 27.)

Cars may be run for other than street traffic without a certificate. — It is the operation of a railroad for street traffic, without a certificate of its safety for public travel, that is prohibited. The running of

cars may be for construction or other purposes entirely distinct from street traffic and public travel. *Parsons v. Waterville & Oakland Street Ry.*, 101 Me. 173, 63 A. 728.

Sec. 28. Only 1 railroad shall occupy streets at same time; limitation.—No corporation or person shall be permitted to construct or maintain any railroad for similar purposes over the streets, roads or ways that may be lawfully occupied by a street railroad in any city or town, but any person or corporation lawfully operating any street railroad to any point to which the tracks of any other street railroad extend may enter upon, connect with and use the same, on such terms and in such manner as may be agreed upon between the parties, or if they shall not agree, to be determined by the public utilities commission upon application, notice and hearing therefor. (R. S. c. 43, § 28.)

Sec. 29. Corporation may erect all necessary power stations, etc.—Any corporation organized under the provisions of section 2 may erect and

maintain all necessary or convenient power stations, car houses and lines of poles, wires, appliances and appurtenances, subject to the general laws of the state regulating the erection of posts and lines for the purposes of electricity. (R. S. c. 43, § 29.)

See c. 50, §§ 36-47, re regulation of posts and wires of certain public utilities.

Sec. 30. Any street railroad company may maintain hotels and places of amusement, and may hold shares of corporations.—Any street railroad corporation of this state may erect and maintain hotels, cottages, places of amusement and pleasure grounds along its route, and for that purpose may purchase and hold real estate and personal property necessary or convenient therefor, provided that the right of taking lands or other property shall not extend to property to be used for such purposes, and such street railroad corporations may purchase and hold shares of the capital stock of any other corporation engaged in the business of owning, leasing, maintaining or operating such hotels, cottages, places of amusement and pleasure grounds. (R. S. c. 43, § 30.)

Sec. 31. Municipal officers may make regulations as to use of streets; appeal.—The municipal officers of any city or town may make at all times such regulations and requirements as to the mode of use of tracks of any street railroad, the paving, resurfacing and reconstruction of the streets or roads upon which said tracks may be located, the sprinkling and watering in cities by any street railroad of the space between and 1 foot beyond the outer rails of said tracks for the purpose of laying the dust, the rate of speed and the removal and disposal of snow and ice from the streets, roads and ways by any street railroad corporation, as the public safety and convenience may require. Any street railroad corporation may appeal from the decision of such municipal officers making any regulation or requirement under the provisions of this section to the public utilities commission, who shall upon notice hear the parties and finally determine the questions raised by said appeal and apportion the expenses thereof between said parties as they may deem just and equitable. (R. S. c. 43, § 31.)

Sec. 32. Corporations shall keep streets in repair.—Street railroad corporations shall keep and maintain in repair such portions of the streets, roads or ways as shall be by them occupied, and shall make all other repairs therein rendered necessary by such occupation. If not repaired upon reasonable notice, such repairs may be made by said towns at the expense of said corporation. (R. S. c. 43, § 32.)

Company liable for injuries resulting from dangerous conditions existing in street.—A street railway corporation having the duty to keep in repair that portion of the street occupied by its tracks, is responsible for dangerous conditions of its own making existing there; and where

it stopped its car at such a place, it was liable for injuries received by a passenger by reason of such dangerous condition after alighting from the car. *White v. Lewiston, Augusta & Waterville Street Ry.*, 107 Me. 412, 78 A. 473.

Sec. 33. Liable for all damages.—All street railroad corporations shall be liable for any loss or damage which any person may sustain by reason of any negligence or misconduct of any such corporation, its agents or servants, or by reason of any obstructions or defects in any street or road of any city or town caused by the negligence of such corporation, its agents or servants, and shall hold such city or town harmless from any suits for such loss or damages; provided such company shall have notice of any such suit and shall be allowed to defend the same. (R. S. c. 43, § 33.)

Cross reference.—See c. 96, § 89, re liability of town for defective ways.

Joint liability of company and town under former law.—See *Cleveland v. Bangor*,

87 Me. 259, 32 A. 892.

Quoted in part in *Milton v. Bangor Ry. & Elec. Co.*, 103 Me. 218, 68 A. 826.

Sec. 34. Obstructing street railroad corporations.—Whoever willfully and maliciously obstructs any street railroad corporation in the use of its roads, tracks or property, or the passing of cars of said corporation thereon, and whoever aids or abets therein shall be punished by a fine of not more than \$200 or by imprisonment for not more than 60 days. (R. S. c. 43, § 34.)

Stated in *Foster v. Cumberland County Power & Light Co.*, 116 Me. 184, 100 A. 833.

Sec. 35. Municipal officers may authorize discontinuance of cars in winter; appeal.—Upon a written application by any street railroad corporation to the municipal officers of any city or town, and hearing thereon, the municipal officers may authorize said corporation to discontinue the running of its cars during such portion of the winter months and upon such terms and conditions as they may determine; said corporation may appeal from such decision to the public utilities commission, who shall after reasonable notice and hearing make such a determination thereon as shall be reasonable and proper, and their decision shall be final. (R. S. c. 43, § 35.)

Sec. 36. Platforms enclosed.—All streetcars in regular use for the transportation of passengers in December, January, February and March in each year, except as hereinafter provided, shall have their platforms enclosed in such manner as to protect the motormen, conductors or other employees who operate such cars from exposure to wind and weather, and as the public utilities commission may approve. The provisions of this section shall apply to and include all regular streetcars which are operated by steam, electricity or other motive power which, while in motion, require the constant care or service of an employee upon the platforms of the car or upon one of them; but shall not apply to special cars or cars used for temporary service in an emergency. (R. S. c. 43, § 36.)

Sec. 37. Violation of § 36.—A street railroad company which fails or neglects to comply with the provisions of the preceding section shall be punished by a fine of not more than \$100 for each day during which such neglect continues, and a superintendent or manager of such street railroad who causes or permits such violation shall be jointly and severally liable with said company to said fine. (R. S. c. 43, § 37.)

Sec. 38. Streetcars shall have fenders; "fender" defined.—No person, company, corporation or association, owning or operating any railroad operated or controlled by electricity and doing business in the state, shall run any railroad or streetcar over, upon or along any street or highway within the state, unless such car shall be equipped with a safety device commonly known and called a fender. The term "fender" as hereinbefore used shall be deemed to mean an attachment devised to prevent accidents, and shall be of such form and be attached to the car or cars in a manner approved by the public utilities commission. (R. S. c. 43, § 38.)

Sec. 39. Penalty.—Any person, company, corporation or association failing to equip cars operated as aforesaid shall be punished by a fine of not more than \$10 a day for each and every car in service without said equipment. (R. S. c. 43, § 39.)

See c. 30, § 50, re provisions for weekly payment of wages apply to street railroads; c. 45, §§ 75, 76, re crossing of other railroads regulated; c. 45, §§ 78, 79, re construction and maintenance of bridges over which railroad passes; c. 46, § 8, re evasion of fare; c. 46, § 64, re intoxication of conductor or motorman, penalty; c. 46, §§ 70,

71, re disorderly conduct or intoxication on street car; c. 46, §§ 99, 102, re conditional sale of railroad equipment; c. 131, §§ 15, 16, re injuries to fixtures of electric power line; c. 133, § 25, re fraudulent issue and use of transfers prohibited; c. 137, § 17, re penalty for spitting on floor of any public conveyance.