

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

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 52.

### Aqueducts and Water Companies. Right of Eminent Domain.

Sections 1-10. Aqueducts and Water Companies.

Sections 11-22. Location of Property Taken for Public Uses and Assessment of Damages.

Sections 23-27. Condemnation Proceedings by Water Districts.

### Aqueducts and Water Companies.

**Sec. 1. Meetings of proprietors for incorporation.**—Any persons associated by agreement in writing as proprietors of an aqueduct for conveying fresh water into or within any town, or as proprietors of funds for establishing such aqueduct, may apply in writing to some justice of the peace for the county in which any portion thereof is situated or is proposed to be made, stating the name and style of their association and the objects of their proposed meeting, and requesting such justice to issue his warrant to some one of the persons applying, directing him to call such meeting; and such justice may thereupon issue his warrant accordingly, stating therein the time, place and object of such meeting; and the proprietor to whom the warrant is directed shall notify such meeting by posting the substance of the warrant, with his notice annexed thereto, 7 days at least before the meeting, in some public place in every town in which any portion of the aqueduct is or is proposed to be made. (R. S. c. 48, § 1.)

**Sec. 2. Proceedings.**—The proprietors assembled under such warrant and their successors and assigns shall be a corporation by the name stated in their application; and may at any legal meeting agree on the manner of calling future meetings; choose any number of directors and other officers to manage their business; and a clerk who shall be sworn and shall record all by-laws, votes and other proceedings of the corporation, in books provided and kept by him therefor, open to the inspection of any person appointed by the legislature for that purpose. (R. S. c. 48, § 2.)

**Sec. 3. Authority of directors; enforcement of assessments.** — The directors shall choose one of their number president; and may make such assessments on the proprietors of the shares in such aqueduct or funds as they find necessary; and if a proprietor fails to pay such assessment for 30 days after notice, they may maintain an action on the case in their corporate name to recover the amount thereof or may sell, at auction, so many of his shares as are sufficient to pay the same, with necessary charges; notice of the sale of such shares shall be given by advertising in some newspaper printed in the county 3 weeks successively, or by posting notifications thereof, 20 days at least before the sale, in at least 2 public places in each town wherein such aqueduct is, or is proposed to be made; and the surplus money, if any, arising from such sale shall be paid to the owner of the share so sold. (R. S. c. 48, § 3.)

**Sec. 4. Registry of shares and transfers.**—At or immediately after the 1st meeting, the clerk shall enter in such books the names of the several proprietors and the shares owned by each; and the subsequent transfer of shares shall also be entered by him within 3 months after it is made in such form and for such fees as the directors order; and no person shall be deemed a proprietor whose share or interest is not so entered. (R. S. c. 48, § 4.)

**Sec. 5. Powers of proprietors; manner of voting.** — The proprietors have 1 vote for each share and may vote by proxy; for the breach of their by-laws they may impose penalties not exceeding \$30 for each offense; may purchase and hold real estate necessary for their purpose not exceeding \$30,000 in value;

and with the written consent of the municipal officers they, or any person, may dig up or open any road for the purpose of laying their pipes or repairing or extending their aqueduct; but not so as to prevent the convenient passage of teams and carriages. (R. S. c. 48, § 5.)

**Sec. 6. Shares sold for debts of holders; franchise, pipes, fountains, etc., sold for corporate debts; redemption; execution, when revived by scire facias.**—Shares in such corporations are personal estate and may be attached on a writ and sold on execution for the debts of the holders, like shares in other corporations; and the franchises, fixtures, pipes, fountains and interests in lands of such corporations are liable to attachment and sale on execution, as personal property, for their corporate debts; but the purchaser thereof at such sale shall not interfere with the possession of the corporation for 2 months after the sale; and within that time, it may redeem such franchise and property by paying the sum for which they were sold with interest; but if not so redeemed, the purchaser shall have the same rights under the franchise and to such property as the corporation had. Any creditor of such corporation, whose execution has been satisfied by an ineffectual sale of such franchise or property, may revive the judgment by scire facias. (R. S. c. 48, § 6.)

**Seizure and sale under this section held invalid.**—See *Vermeule v. York Water Co.*, 112 Me. 437, 92 A. 513.

**Sec. 7. Town may use pipes in case of fire.**—A town where such aqueduct is located may put conductors into its pipes and draw water, free of expense, to extinguish fire in a burning building, if such conductors are so secured that water shall be drawn for that purpose only. (R. S. c. 48, § 7.)

See c. 92, § 6, sub-§ XII, re exemption from taxation.

**Sec. 8. Corporate powers continue after dissolution; enforcement of judgments.**—All contracts made by or with such corporation are in force after its dissolution; and the last shareholders shall have a corporate capacity and may prosecute and defend suits respecting such contracts, commenced within 6 years after the dissolution or after the cause of action accrued; and if no corporate property can be found to satisfy such judgments, and they are not satisfied within 6 months, the creditors may satisfy them from the private property of the shareholders as if the judgment had been against them in their private capacity. (R. S. c. 48, § 8.)

**Sec. 9. Proprietors, tenants in common of property left.** — If such corporation owns any estate at its dissolution, the proprietors shall be tenants in common thereof in proportion to the shares or interest which they hold in its stock. (R. S. c. 48, § 9.)

**Sec. 10. Injuring an aqueduct.** — Whoever maliciously injures such aqueduct or any of its appurtenances forfeits not more than \$20 to the town, to be recovered by indictment; and is liable in a civil action, brought by the corporation, to pay treble the amount of the damages sustained thereby. (R. S. c. 48, § 10.)

#### Location of Property Taken for Public Uses and Assessment of Damages.

**Cross References.**—See c. 1, §§ 22-24, re taking of property by the state; c. 14, §§ 17, 18, re state military defense commission; c. 36, § 34, sub-§ IX, re eminent domain by state park commission; c. 89, § 85, re eminent domain for ferries.

**Sec. 11. Rights of parties as to procedure.**—All locations made and all damages assessed for the taking of property by the exercise of the right of eminent domain, except for property taken by the United States, the state of

Maine, or a county or municipality thereof, or a quasi-municipal corporation, or steam railroad or street railroad corporations, and excepting property which, when taken, is being or is necessary to be used by the owner thereof in the performance of a public duty, shall be made and assessed and the rights of the parties shall be as follows, notwithstanding anything contained in the act granting such right. (R. S. c. 48, § 11.)

**Sec. 12. Proceedings before entry; location and map filed with county commissioners; description corrected.**—All property so taken shall, before it is entered upon for any purpose except to make surveys, be located by a description, signed by the party taking, which shall describe in detail the property taken, give the names of the owners thereof and shall be accompanied by a map showing said property as described. Such location and map shall be filed with the county commissioners of the county where the property is located, who shall indorse the time of filing thereon and order the location recorded. A copy of said location shall be recorded in the registry of deeds of the county or registry district where the property is located. When there is a recorded mortgage covering any portion of the land so taken, which mortgage has been recorded within 40 years of the taking and bears no record of discharge, satisfaction or release, personal notice shall be given forthwith to the owner of record of said mortgage by sending to said mortgage holder's place of abode, if known, otherwise to the abode or address as set forth in said record, by registered mail, a written or a printed notice of said taking in which shall be set forth a description of the property so taken, and the name of the owner of said property. When for any reason the taker fails to acquire the property authorized to be taken and which is described in such location, or the location recorded is defective or uncertain, the taker may, at any time, correct and perfect such location, and file a new description thereof; and in such case the taker is liable in damages, only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the taker shall not be liable for any acts which would have been justified if the original taking had been valid and legal. (R. S. c. 48, § 12.)

**Cross reference.** — See c. 89, § 228, re copies of proceedings to be recorded in registry of deeds.

**Sufficiency of description.**—The description must be such that the owner is not thereby deceived as to what land is taken. *Lancaster v. Augusta Water District*, 108 Me. 137, 79 A. 463.

**Applied** in *Moseley v. York Shore Water Co.*, 94 Me. 83, 46 A. 809; *Bowden v. York Shore Water Co.*, 114 Me. 150, 95 A. 779; *York Shore Water Co. v. Card*, 116 Me. 483, 102 A. 321.

**Cited** in *Ingraham v. Camden & Rockland Water Co.*, 82 Me. 335, 19 A. 861.

**Sec. 13. Owners of property taken entitled to damages; security.**—For all property taken by the exercise of the right of eminent domain the owners are entitled to damages to be paid by the taker and estimated by the county commissioners, on written application of either party, made within 3 years after such taking; or, if proceedings thus commenced fail for causes not affecting the merits, new ones may be commenced within 1 year thereafter, and when no estimate is made within such time, the owner may maintain an action of trespass or have any remedy herein provided. The guardian of a person incapable of giving a valid conveyance whose property is taken may settle and give a valid release for damages; and persons having any interest in such property have the rights and remedies of owners to the extent of their interest. When requested by the owner, said commissioners shall require the taker to give security for the payment of damages and costs by depositing at its risk, with the clerk, within 30 days, specie, notes or obligations of a state or public corporation, or other security satisfactory to the party requiring it. When entitled to it, so much of any specie so deposited shall be paid to him as will satisfy his judgment. Notes or obligations so deposited shall be delivered to the officer having a warrant of

distress, to be by him sold as personal property is sold on execution, to satisfy the warrant and fees, and any balance shall be paid to the taker of such property. (R. S. c. 48, § 13.)

See c. 112, § 113, re limitation of actions.

**Sec. 14. Notice to adverse party.**—In all cases, the notice to the adverse party of the time and place of hearing on any petition to the county commissioners for the assessment of damages on account of any property so taken shall be a personal notice of 14 days, or by publication of the petition and order of notice thereon in some newspaper published in said county, 2 weeks successively, the last publication being 14 days before said hearing. (R. S. c. 48, § 14.)

**Sec. 15. Commissioners in awarding damages may prescribe terms for use of property taken.** — The commissioners in awarding damages for property so taken, on the application of the taker, may prescribe such terms and conditions, in all respects for the use of the property taken, by the owner thereof and by the taker respectively, as will secure the best accommodation of the owners of the property and the convenient use of the same by the taker. In case of appeal by either party, the only question in issue shall be the amount or measure of damages on the terms and conditions imposed by the commissioners. (R. S. c. 48, § 15.)

See c. 45, § 33, re commissioners may prescribe terms and conditions.

**Sec. 16. Report of commissioners.**—The commissioners shall, at a regular session, make a report of their general estimate of damages, stating therein specifically the terms and conditions imposed by them and the rights and obligations of each party, and cause it to be recorded; their clerk shall then make out a notice to each person, stating the amount of damages awarded to him, which shall be served by an officer on those resident in the state and upon others, if any, by a publication 3 weeks successively in a newspaper printed in the county, if any; if not, in the state paper. The expense of notices shall be added to the costs of the proceedings which shall be paid by the taker. (R. S. c. 48, § 16.)

**Sec. 17. Appeal.**—Any person aggrieved by the decision or judgment of the county commissioners in relation to damages for property taken may appeal to the next term of the superior court to be held in the county where the property is situated, more than 30 days from the date when the report of the commissioners is made, excluding the day of the commencement of the session of the court, which court shall determine the same by a committee of reference if the parties so agree or by the verdict of its jury; and shall render judgment and issue execution. If the owner appeals and the damage finally recovered is not more than the award of the county commissioners, the taker shall recover costs from the time of appeal, otherwise the owner shall recover costs. If the taker appeals and the damage finally recovered is not less than the award of the county commissioners, the owner shall recover costs from the time of appeal, otherwise the taker shall recover costs. The appellant shall serve written notice of such appeal upon the opposite party 14 days at least before the session of said court, and shall at the 1st term file a complaint setting forth substantially the facts of the case. On the trial, exceptions may be taken as in other cases. (R. S. c. 48, § 17.)

**Applied** in *Dyer v. Belfast*, 88 Me. 140, 33 A. 790.

**Sec. 18. Deposit of awards.**—When the proceedings are closed, the taker may deposit with the clerk the amount of damages awarded with interest there-

on to time of deposit, which shall be in full satisfaction of all claims, unless a demand has been previously made and payment neglected. (R. S. c. 48, § 18.)

See c. 45, § 38, re corporation may deposit damages, interest and costs.

**Sec. 19. Damages remaining unpaid; proceedings in equity.**—When the damages remain unpaid for more than 30 days after they are due and demanded or the security hereinbefore provided for is not deposited, a bill in equity may be filed in court, in term time or vacation, by the person whose property is taken praying for an injunction against the use or occupation of his property taken. If proceedings for an estimation of damages are not commenced within 3 years, and the owner of the property files a bill praying therefor, the court may estimate the damages, decree their payment and issue an execution therefor; and the plaintiff shall be entitled to a bill for an injunction. In either case, any justice of the court, after summary notice to the taker and upon proof of the facts, may, without any bond filed, issue an injunction prohibiting such use and occupation until all damages and costs are paid. The bill shall be entered, service of it made, and continued at the next term after the injunction is issued. At the 2nd term, if payment has not been made, the injunction may be made absolute; and all rights acquired by taking the property cease, and the owner may maintain an action for its recovery and protection. (R. S. c. 48, § 19.)

See c. 112, § 113, re limitation of actions.

**Sec. 20. Service of injunction.**—Service of an injunction issued against any person, whether a party to the bill or not, may be made upon him and he shall be liable to all the penalties and consequences provided for a breach of it. The court may order persons violating such injunction, after service, or using the property, to show cause at a time fixed, why a decree should not be entered and execution issued against them individually and their goods and estate for the damages, interest, costs and for additional damages and costs for breach of the injunction. Upon service and return of such order, the court may enter such decree as is just and equitable against such persons and issue execution accordingly or may proceed against them as for breach of injunction in other chancery cases. (R. S. c. 48, § 20.)

**Sec. 21. Failure to apply for assessment not a waiver.**—No failure by the owner of the property to make application for the assessment of damages within said 3 years shall be held to be a waiver by him of compensation for property so taken. (R. S. c. 48, § 21.)

**Sec. 22. Proceedings to cure defect in taking under eminent domain.**—Whenever any taking or attempted taking under power of eminent domain shall, in any action now pending or hereafter commenced, have been adjudged defective either from formal errors in proceedings or through failure to provide, in an act expressly conferring the right of eminent domain, for any act or proceeding necessary to carry out such taking, which failure shall be deemed a substantial error by a court of last resort in this state and judgment of title in the plaintiff shall be given, judgment of ouster or writ of possession shall be stayed until the corporation vested with the power of eminent domain shall have had opportunity to retake pursuant to the act conferring the power, if the error is formal, and until remedial legislation shall have been obtained at a session of the legislature next after the rendition of judgment when the error is substantial, and a new taking had pursuant to the amended act; but the new taking shall be had within 90 days from the rendition of said judgment when the error is merely formal, and within 6 months from the adjournment of the legislature next after the rendition of judgment when the error is substantial. Nothing herein contained shall preclude or stay any action at law for damages, and the owner of the land may maintain an action for damages the same as if in possession. (R. S. c. 48, § 22.)

### Condemnation Proceedings by Water Districts.

**Sec. 23. Necessity of taking determined.**—The owner of property which is the subject of appropriation for public purposes by any water district may, upon hearing, have the necessity of the particular appropriation determined. (R. S. c. 48, § 23.)

**Applied** in *Roberts v. Portland Water District*, 124 Me. 63, 126 A. 162.

**Sec. 24. Proceedings.**—The owner of such property may, within 30 days after the beginning of condemnation proceedings, file in the office of the clerk of courts of the county where the property is situated, a petition to the superior court for a decision as to the necessity of the appropriation. A copy of the petition and order of notice thereon, attested by the clerk, shall be served upon the respondent. Any justice of the superior court, in term time or vacation, upon such petition, may appoint 3 disinterested commissioners, residents of the county in which the property is situated, one of whom shall be learned in sanitary matters, to determine the necessity of the particular appropriation. (R. S. c. 48, § 24.)

**Applied** in *Roberts v. Portland Water District*, 124 Me. 63, 126 A. 162.

**Sec. 25. Proceedings before commissioners.**—The commissioners shall fix a time for hearing and give written notice thereof to the owner and to the district seeking to acquire said property. At the hearing all parties in interest shall be heard either in person or by attorney, and witnesses may be summoned by either party and attendance compelled as before other judicial tribunals; the burden of proof to show the necessity of the particular taking shall rest upon the party seeking to acquire the property. The decision of a majority of the commissioners shall be final as to questions of fact. The prevailing party shall recover costs as in actions at law in the superior court and execution shall issue therefor. (R. S. c. 48, § 25.)

**Cross reference.** — See c. 113, § 123, re subpoenas for witnesses.

**Who is prevailing party.**—The prevailing party, within the meaning of this section, is the party in whose favor the judgment is entered, although, in the course of the proceedings, he made certain claims upon which he was held not entitled, and as to which, though not otherwise, the other party prevailed. *Roberts v. Portland Water District*, 124 Me. 63, 126 A. 162.

In a proceeding under this section, the water district is the prevailing party if it sustained the burden of proof imposed upon it by the section, though it was given less of the land that it had taken. *Roberts v. Portland Water District*, 124 Me. 63, 126 A. 162.

If any of the land is judicially determined as necessary the moving party in the condemnation proceedings is considered as prevailing and entitled to costs. *Roberts v. Portland Water District*, 124 Me. 63, 126 A. 162.

If any part of the land taken is necessary for public uses such part may be appropriated upon payment of damages, the costs being taxable against the petitioner, the other party being the prevailing party. *Roberts v. Portland Water District*, 124 Me. 63, 126 A. 162.

In cases under this section, if the property taken is not necessary for public good and uses the owner is entitled to judgment and costs. *Roberts v. Portland Water District*, 124 Me. 63, 126 A. 162.

**Sec. 26. Condemnation proceedings by district.**—Upon the commencement of condemnation proceedings, the district seeking to thus acquire property, unless otherwise provided by law, may file a petition asking that the necessity of such taking may be determined, whereupon proceedings shall be had as in the case of a petition by the landowner. (R. S. c. 48, § 26.)

**Cited** in *Roberts v. Portland Water District*, 124 Me. 63, 126 A. 162.

**Sec. 27. Certain proceedings valid.**—All plans and descriptions of land



and all descriptions of other property taken by any water company for its purposes and uses, filed in the office of the county commissioners of the county where the land or other property taken is situated prior to the 9th day of March, 1889, are valid and legal for all purposes of taking. (R. S. c. 48, § 27.)

**Cross references.**—See c. 30, § 50, re provisions for weekly payment of wages apply to water companies; c. 112, § 113, re limitation of proceedings to recover damages for land taken by right of eminent do-

main; c. 131, § 13, re malicious injury to property of water companies; c. 137, § 1, re pollutions of water supply.

**Cited in** Roberts v. Portland Water District, 124 Me. 63, 126 A. 162.