NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

1954

FIRST ANNOTATED REVISION

IN FIVE VOLUMES

VOLUME 3

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA

Chapter 89.

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Election and Tenure of Office. Salaries.

Sec. 1. Constitution of board; chairman.—There shall be a board of commissioners for each county consisting of a chairman and 2 other citizens, all resident in the county, who shall be elected, or in case of a vacancy, appointed by the governor with the advice and consent of the council. The chairman shall be designated by them at their 1st meeting on or after the 1st day of January annually, to act for 1 year, except that in Androscoggin county the elected member whose term soonest expires shall be chairman. Provided, however, that if said elected member in Androscoggin county shall in writing decline the election

as chairman, the board may, by ballot, elect either of the other members to be chairman. (R. S. c. 79, § 1.)

Cross references.—See § 5, re election; § 8, re clerk; § 10, re incompatible offices.

Certiorari not warranted by failure to designate chairman.—The neglect of the commisioners to designate one of their number for their chairman, on or after the first day of January, may be an inaccuracy, but, without proof of injury thereby to the petitioners, does not call for interference by certiorari. Howland v. Penobscot County Com'rs, 49 Me. 143.

Stated in part in State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

Sec. 2. Vacancies at expiration of term. — Vacancies to occur by expiration of the term of office at the end of any year in which a biennial election is held shall be filled by election on the 2nd Monday of September in such year. The terms of office for a county commissioner shall be 6 years, except when one is elected to fill out an unexpired term when it shall be for the remainder of the unexpired term. Where but one county commissioner is so to be elected, the nomination papers and official ballot shall specify simply the office of county commissioner. When, however, two or more county commissioners are so to be elected, the nomination papers and ballots shall by apt words designate the respective terms for which they are to be nominated or elected. (R. S. c. 79, § 2.)

Sec. 3. Vacancies happening otherwise.—When no choice is effected or a vacancy happens in the office of county commissioner by death, resignation or removal from the county, the governor with the advice and consent of the council shall appoint a person to fill the vacancy, who shall hold office until the 1st day of January after another has been chosen to fill the place. (R. S. c. 79, § 3.)

Person chosen at election holds office only for unexpired term.—When one has been elected a county commissioner and resigns during the first year, it is provided by law that the governor, with the advice of the council, shall appoint a person who shall hold the office until the first of January after another has been chosen to fill the place. If, at the next election, a person is chosen, he will be entitled to hold the office only for the unexpired term of the officer who resigned, commencing on the first day of January after his election. Opinion of the Justices, 50 Me. 607.

Cited in Opinion of the Justices, 61 Me. 601.

Sec. 4. Military or naval service; substitutes. — Whenever a county commissioner during his term of office shall, in time of war, contemplated war, emergency or limited emergency, enlist, enroll, be called or ordered or be drafted into the military or naval service of the United States or any branch or unit thereof, he shall not be deemed or held to have thereby resigned from or abandoned his said office, nor shall he be removable therefrom during the period of his said military or naval service except that his term of office shall not be held to have been lengthened by reason of the provisions of this section. From the time of his induction into such service, he shall be regarded as on leave of absence without pay from his said office, and the governor with the advice and consent of the council shall appoint a competent citizen, a resident of the county so affected, to fill said office while said county commissioner is in the federal service, but not for a longer period than the remaining portion of the term of said county commissioner. During the period of said military or naval service, the county shall pay to said substitute county commissioner a salary at the same rate as the rate of pay of the county commissioner and amounts so paid shall be deducted from the salary of said county commissioner. The citizen so appointed to fill the temporary vacancy shall have the title of "substitute county commissioner" and shall possess all the rights and powers and be subject to all the duties and obligations of the county commissioner for whom he is substituting. (R. S. c. 79, § 4.)

Sec. 5. Mode of election.—County commissioners shall be elected on the 2nd Monday of September in each even-numbered year by the written votes of electors qualified to vote for representatives. The votes shall be received, sorted,

counted and declared as votes for representatives are; the names of the persons voted for, the number of votes for each and the whole number of ballots received shall be recorded by the clerk in the town records, and true copies thereof, sealed and attested as returns of votes for senators, shall be transmitted to the secretary of state within 30 days. (R. S. c. 79, § 5.)

See c. 5, §§ 42, 50, 51, re elections and ballots.

Sec. 6. Salaries.—The county commissioners in the several counties shall receive annual salaries from the treasuries of the counties in monthly payments paid on the last day of each month, as follows:

Androscoggin, $1,320, except the chairman of said commission who, in addition to his regular duties, shall superintend the county buildings, and for all his services his annual salary shall be the sum of $1,980.

Aroostook, $1,250, except that 1 member of the board, to be designated by the board, who shall devote each full working day to his duties, including superintendence of the county buildings, shall receive annually the sum of $4,000.

Cumberland, $2,250,
Franklin, $600,
Hancock, $750,
Kennebec, $1,250,
Knox, $900,
Lincoln, $600,
Oxford, $1,000,
Penobscot, $2,000,
Piscataquis, $600,
Sagadahoc, $720,
Somerset, $1,000,
Waldo, $750,
Washington, $1,300,
York, $1,750.

Said salaries shall be in full for all services, expenses and travel to and from the county seat, including the management of the jails and workshops and the sale of their products, except that when outside of the county seat on official business, including public hearings, inspection and supervising construction, snow removal and maintenance of roads in unincorporated townships in their respective counties, they shall be allowed all necessary traveling and hotel expenses connected therewith; all bills for such expenses shall be approved by the clerk of courts and the county attorney of their county and paid by the treasurer of said county; and with the further exception of such expenses as are provided for in section 33. (R. S. c. 79, § 6. 1945, c. 167, § 1; c. 186; c. 280, § 1. 1947, c. 154, § 1; c. 157, § 1; cc. 201, 295. 1949, c. 214, § 1; c. 308, § 1. 1951, c. 246; c. 311, § 1; c. 312, § 1; c. 313, § 1; c. 326, § 1. 1953, c. 102, §§ 1, 2; c. 135, § 1; c. 142, § 1; c. 179, § 1; c. 216, § 1; c. 269, § 1; c. 276, § 1; c. 278, § 1.)

Regular Sessions and Clerk.

Sec. 7. Regular sessions, times and places.—The county commissioners shall hold annual sessions in the shire town of each county at the times following:

In the county of Androscoggin, on the 1st Tuesdays of April and October;

Aroostook, on the 1st Tuesdays of January, March, May, July, September and November;

Cumberland, terms of record on the 1st Tuesdays of January and June, and regular sessions on the 1st Tuesday of each month;

Franklin, on the last Tuesdays of April and December;

Hancock, on the 2nd Tuesdays of April, September and December;

Kennebec, on the 3rd Tuesdays of April, August and December;

Knox, on the 1st Tuesdays of April and December and the 3rd Tuesday of August;

Lincoln, on the 1st Tuesdays of May and September and the last Monday of December;

Oxford, on the 3rd Tuesdays of May, September and December, at Paris;

Penobscot, on the 1st Tuesdays of January, April, July and October;

Piscataquis, on the 1st Tuesdays of April, August and December;

Sagadahoc, on the 1st Tuesdays of March, July and November;

Somerset, on the 1st Tuesdays of March and August and the 2nd Tuesday of December;

Waldo, on the 2nd Tuesday of April, and the 3rd Tuesdays of August and December;

Washington, at Machias, on the 2nd Tuesdays of February and October, and at Calais on the 2nd Tuesday of June;

York, terms of record on the 1st Tuesdays of April and October at Alfred, and regular sessions on the 1st Tuesday of each month at Alfred. (R. S. c. 79, § 7.)

"Terms of record" synonomous with "regular session."—The words "terms of record," in this section have the same significance and are synonomous with the words "regular session" used in § 39. State v. Cumberland County Com'rs, 78 Me. 100, 2 A. 880.

The monthly meetings provided for the Cumberland County Commissioners are but sessions of the term in which they fall, and the business transacted at any session is at and during the term of record within which it is held, precisely, in legal effect, as though it had been done at an adjourned session of the half yearly term. The monthly sessions, after the beginning of a term of record, are, in effect, statute adjournments of that term. State v. Cumberland County Com'rs, 78 Me. 100, 2 A. 880.

Cited in Orono v. Penobscot County Com'rs, 30 Me. 302; Boston & Maine R. R. v York County Com'rs, 78 Me. 169, 3 A. 273; State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

Sec. 8. Clerk of courts to be clerk of commissioners.—The clerk of the judicial courts in each county shall be the clerk of the county commissioners; and in counties having a deputy clerk or deputy clerks, such deputies shall each be a deputy clerk of the commissioners and in the absence of the clerk shall have the same powers and duties as those of such clerk. The clerk of the county commissioners shall be known as the county clerk and each deputy clerk of the county commissioners shall be known as a deputy county clerk. When a clerk and his deputies are in attendance at any other court, the clerk may appoint a clerk pro tempore to the commissioners for whose doings he is responsible. Such clerks shall be sworn and shall make a daily record of the doings of the county commissioners; and said commissioners shall examine such records and, when correct, shall certify them; and they shall be copied into the records of the county commissioners by the stated clerk. (R. S. c. 79, § 8.)

Cross references.—See note to § 95, re person receiving highest number of votes as "county clerk" notified of election as "clerk of judicial courts"; note to c. 5, § 5, re use of term "county clerk", rather than "clerk of judicial courts", on ballots not misleading.

History of section.—See Opinion of the Justices, 107 Me. 514, 78 A. 656.

Duties as clerk of commissioners part of office.—This section provides that "the clerk of the judicial courts in each county shall be the clerk of the county commissioners." The clerk is therefore entitled to perform the duties and to receive pay as clerk of the commissioners, because he is clerk of the judicial courts. By virtue of this section, those duties became part of the regular and established duties of the office, and are quite distinguishable from the duties of another office. White v. Fox, 22 Me. 341.

But separate from duties as clerk of courts.—The clerk of the courts is ex-officio county clerk under this section and the same office suffices for him in both capacities. However, the duties of the clerk in the two capacities are entirely distinct, and

his records separate and independent. Rumford & Mexico Bridge District v. Mexico Bridge Co., 115 Me. 154, 98 A. 625.

Cited in Levant v. Penobscot County Com'rs, 67 Me. 429.

General Powers and Duties.

The county commissioners are public agents, whose duties are clearly set forth and defined by the following sections. Selectmen of Ripley, Appellants, 39 Me. 350.

The commissioners derive their powers and duties entirely from the statutes. State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

And such powers cannot be exceeded.— The powers and duties of county commissioners are defined and limited by statute. These powers may not be exceeded nor has the court discretionary power to enlarge them. Phippsburg v. Sagadahoc County Com'rs, 127 Me. 42, 141 A. 95.

Sec. 9. Quorum. — Two commissioners constitute a quorum; when only one attends, he may adjourn to a convenient time and place; when no commissioner attends, the clerk may adjourn as provided in section 13 of chapter 106. (R. S. c. 79, § 9.)

The county commissioners must act as a board and no individual member has a right to make decisions respecting matters under the jurisdiction of the board. Separate, unauthorized or unconfirmed action of one is without legal effect. State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

Stated in Brown v. Mosher, 83 Me. 111, 21 A. 835; State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

Sec. 10. Incompatible offices. — No person holding the office of county commissioner shall at the same time hold either the office of mayor or assessor of a city or of selectman or assessor of a town. (R. S. c. 79, § 10.)

Sec. 11. Officers to execute precepts.—Sheriffs and their deputies and constables shall execute all legal processes directed to them by the commissioners. (R. S. c. 79, § 11.)

Sec. 12. Duties.—The county commissioners shall make the county estimates and cause the taxes to be assessed. All assessments under the provisions of this chapter made by the county commissioners which include sums assessed for an illegal object shall not be void, nor shall any error, mistake, omission or inclusion of illegal sums in the assessment by the county commissioners void so much of the assessment as is assessed for legal purposes; and any person paying such tax may bring an action of debt against the county in the superior court for the same county and shall recover so much of the sum paid as was assessed for an illegal object, with 25% interest and costs and any damages which he has sustained by reason of the mistakes, errors or omissions of such commissioners. They shall also examine, allow and settle accounts of the receipts and expenditures of the moneys of the county; represent it; have the care of its property and management of its business; by an order recorded, appoint an agent to convey its real estate; lay out, alter or discontinue ways; keep their books and accounts on such forms and in such manner as shall be approved by the state department of audit; and perform all other duties required by law. (R. S. c. 79, § 12. 1945, c. 41, § 31.)

Cross references.—See c. 1, § 15, re compensation to owners for use of land by U. S. Coast Survey; c. 24, §§ 11, 12, re airports; c. 27, § 2, re department of institutional service; c. 83, § 19, re services of professional engineer required on certain public works; c. 92, § 35, re tax illegal unless raised at legal meeting; c. 96, §§ 29-125, re ways; c. 101, § 1, re census of unincorporated townships; c. 119, §§ 11, 12, re public accounts.

Except as otherwise provided by law, the county commissioners ordinarily exercise the corporate powers of the county. They are in an enlarged sense the representatives and guardians of the county, having the management and control of its property and financial interests, and having original

and exclusive jurisdiction over all matters pertaining to county affairs. Watts Detective Agency v. Sagadahoc County, 137 Me. 233, 18 A. (2d) 308.

Commissioners are general financial agents of county.—Counties are quasi corporations possessing but few powers and requiring a small number of officers. The general financial agents of a county are its county commissioners, whose powers and duties are prescribed by the statute. They have the care of its property and the management of its business; cause its taxes to be assessed; obtain loans for its use; order its money to be paid in defraying its expenses, and examine, allow and settle accounts of the receipts and expenditure of its moneys. Cumberland County v. Pennell, 69 Me. 357.

And must determine financial requirements in advance.—The county commissioners are under a duty to determine in advance, so far as practicable, the financial requirements, to provide the necessary funds and to control expenditures. Watts Detective Agency v. Sagadahoc County, 137 Me. 233, 18 A. (2d) 308.

But commissioners do not control county's money.—The commissioners have limited powers. They have no control of the money of the county, though they examine, allow and settle accounts of the receipts and disbursements of it, and have the care of its property and the management of its business. Cumberland County v. Pennell, 69 Me. 357.

Allowance of claim against county does not have force of judgment.—By this section, the county commissioners are authorized to examine and allow claims against the county, and draw orders upon the treasurer for their payment. But these acts do not constitute judgments, any more than the auditing, by the proper officers, of claims against towns, or other corporations. Such an allowance, if not paid, may be sufficient to sustain an action, like orders given by selectmen of towns. But it could not be enforced, if payment should be refused, without an action. It is not recorded as such; and it is not analogous to a judgment of any court, either in its nature or its effect. State v. McIntyre, 53 Me. 214.

Commissioners represent county.—Under this section the county commissioners are to "represent" the county. They are "to have the care of its property and management of the business." They are responsible directly to the people who elect them for the manner in which they discharge their duties. Walton v. Greenwood, 60 Me. 356.

And county attorney cannot institute proceedings for county.—When the county attorney, in a petition for a writ of prohibition to prohibit the removal of county officers by the commissioners, assumes to speak "for and in behalf of the county" in his official capacity, the petition should be denied. Under this section, the commissioners alone legally "represent" the county, and "have the care of its property, and management of its business," and the county attorney has no right, in the name of the county or in his official capacity, to institute a process of this nature. Walton v. Greenwood, 60 Me. 356.

Presumption as to performance of duties.—The office of county commissioner is a public trust and the presumption is that the incumbents will honestly perform their duties. Millett v. Franklin County Com'rs, 80 Me. 427, 15 A. 24.

Commissioners have no power or duty to appoint physician to treat county prisoners.—See note to § 174.

Quoted in part in Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Cited in Lowell v. Washington County R. R., 90 Me. 80, 37 A. 869.

Sec. 13. Annual estimates for county taxes; Androscoggin county.—In order to assess a county tax, county commissioners, at their regular session next before the 1st day of each January in which the legislature meets, shall prepare estimates of the sums necessary to defray the expenses which have accrued or may probably accrue for 1 year from said day, including the building and repairing of jails, courthouses and appurtenances, with the debts owed by their counties and like estimates for the succeeding year, and after newspaper notice hold a public hearing thereon in the county, and the county tax for both said years shall be granted by the legislature separately at the same session.

Such estimates shall be drawn so as to authorize the appropriation to be made to each department or agency of the county government for each year of the biennium. Such estimates shall provide specific amounts for personal services, contractual services, commodities and capital expenditures. Whenever any specific appropriation of a department or agency of the county government shall prove

insufficient to pay the expenditures required for the statutory purposes for which such appropriation was made, the county commissioners, at the request of such department or agency, may transfer from any other specific appropriation of such department or agency such amount as may be deemed necessary to meet such expenditure. The provisions of this paragraph shall apply to Androscoggin county only. (R. S. c. 79, § 13. 1951, c. 80. 1953, c. 379.)

See c. 32, § 309, re appropriation for county extension associations.

Sec. 14. Estimates recorded and transmitted to secretary of state. —Said estimates shall be recorded by their clerk in a book; and a copy thereof shall be signed by the chairman of the county commissioners and attested by their clerk, who shall transmit it to the office of the secretary of state on or before the 15th day of each February in which the legislature meets, together with the county reports for the 2 preceding years, to be by him laid before the legislature. (R. S. c. 79, § 14.)

See c. 19, § 3, sub-§ II, re duty of state department of audit.

Sec. 15. County tax apportioned; warrants.—When a county tax is authorized, the county commissioners shall, in March in the year for which such tax is granted, apportion it upon the towns and other places according to the last state valuation and fix the time for the payment of the same, which shall not be earlier than the 1st day of the following September. They may add such sum above the sum so authorized, not exceeding 2% of said sum, as a fractional division renders convenient and certify that fact in the record of said apportionment, and issue their warrant to the assessors requiring them forthwith to assess the sum apportioned to their town or place, and to commit their assessment to the constable or collector for collection. (R. S. c. 79, § 15.)

Cited in Burkett v. Youngs, 135 Me. 459, 199 A. 619.

Sec. 16. Advertising appropriation.—Any county may expend not exceeding the sum of $5,000 annually under the direction of the county commissioners, to be accounted for as other moneys of the county, for advertising the natural resources, advantages and attractions of such county. (1945, c. 238. 1947, c. 215. 1949, c. 349, § 113.)

Sec. 17. Certain motor vehicle excise taxes adjusted.—The county commissioners may cancel or adjust debts due from towns in their respective counties for motor vehicle excise taxes received from persons residing in unorganized territory. The provisions of this section shall apply only to debts due prior to January 1, 1950. (1951, c. 259.)

Sec. 18. Courthouses, temporary courtrooms, jails and rooms for records and papers of county officers; acquired land; files and records. —The county commissioners shall, in the shire town of their county, provide and keep in repair courthouses with a suitable room in each for the county law library; jails, with apartments for debtors separate from criminals; and fireproof buildings of brick or stone for the safekeeping of records and papers belonging to the offices of registers of deeds, and of probate and insolvency, and of the clerk of courts, with separate fireproof rooms, and suitable alcoves, cases or boxes for each office, and also any other necessary buildings. They may also in any town in which a nisi prius term of the superior court is held contribute such amount as in their judgment seems proper to the repair and upkeep of any room used for the holding of such term of court and acquire land by purchase or by condemnation proceedings for the enlargement of the grounds around county buildings; such condemnation proceedings shall be in conformity with the provisions of sections 35 to 42, inclusive. If in the judgment of the county commissioners public con-

venience so requires, they may, at the expense of the county, cause the files and records of the probate and other county courts to be rearranged, indexed and docketed, the dockets which are worn or defaced to be renewed and the indexes to be consolidated under the direction of their respective registers and clerks of said courts. (R. S. c. 79, § 16. 1945, c. 268.)

Sec. 19. Saturday closing. — County offices, except that of the clerk of courts, may in the discretion of the county commissioners of each county be closed on Saturdays in the months of June, July, August and September. (1953, c. 388.)

Sec. 20. Copies of records. — The county commissioners in any county in the state are authorized to cause to be made at the expense of their respective counties, as and when requested by and under the supervision of the register of deeds or register of probate for the county concerned, by any photostatic, photographic, microfilm or other mechanical process which produces a clear, accurate and permanent copy thereof, a copy of any one, any portion or all of the deeds, plans, documents or writings relating to real estate or personal estate and the titles thereto, recorded now or hereafter in the office of the register of deeds or register of probate in their respective counties. Such copies, when so made, shall constitute a duplicate record and shall be filed in fire-resisting safe cabinets located separate and apart from the original records, or any additional reproductions may be filed in the same manner as original records, but within the same county. (R. S. c. 79, § 17.)

See c. 113, §§ 144-146, re photostatic and photographic copies of records.

Sec. 21. Workshops, etc., for prisoners. — The county commissioners may make such additions in workshops, fences and other suitable accommodations in, adjoining or appurtenant to the jails in the several counties as may be found necessary for the safekeeping, governing and employing of offenders committed thereto by authority of the state or the United States; and, for the better employing of such offenders, they may lease or purchase necessary lands or buildings anywhere within their respective counties and may authorize the employment on such lands for the benefit of the county or of dependent families of prisoners committed for crime, as provided in section 28. Whenever the county commissioners shall determine that the use of such land and buildings is unnecessary for such use, they may sell and dispose of the same in the manner required by law. The county commissioners may raise by loan of their several counties, or otherwise, a total sum not exceeding $5,000 to make such purchases, alterations and improvements, and may expend so much thereof as is necessary. (R. S. c. 79, § 18.)

Sec. 22. Employment of prisoners. — The county commissioners shall, at the expense of their several counties unless county workshops are therein established, provide some suitable place, materials and implements for the breaking of stone into suitable condition for the building and repair of highways, and shall cause all persons sentenced under the provisions of section 33 of chapter 137 to labor at breaking stone; and they may, at the expense of their several counties, provide suitable materials and implements sufficient to keep at work all persons committed to either of such jails; and may from time to time establish needful rules for employing, reforming and governing the persons so committed, for preserving such materials and implements, and for keeping and settling all accounts of the cost of procuring the same, and of all labor performed by each of the persons so committed; and may make all necessary contracts in behalf of their several counties. (R. S. c. 79, § 19.)

See c. 27, § 41, re penalty for conveying any article to a convict; c. 27, §§ 42-46, re convicts and officers in county jails.

Sec. 23. Able-bodied male prisoners put to work on highways. — County commissioners may authorize the keepers of jails to put able-bodied male prisoners to work on the building or repairing of highways within their county. They shall make rules and regulations and appoint overseers and keepers needful for the direction and safekeeping of prisoners so employed, and such overseers and keepers shall have all authority conferred by law on masters of houses of correction and shall be responsible for the safekeeping and return to jail of all prisoners in their custody, and shall be subject to the provisions of section 195. No prisoner shall be so employed who has been exempted therefrom by the magistrate imposing sentence or if in the judgment of a physician expressed by a certificate he is unfit for such labor. The county commissioners shall supply all prisoners with all necessary and suitable clothing of such description as will not materially distinguish them from other workmen; they shall also furnish said prisoners with the required tools and implements and may employ such other labor and purchase such other material and equipment as may be necessary to properly carry out the objects of this section, and shall keep account of all expenses incident to such employment. (R. S. c. 79, § 20. 1953, c. 308, § 89.)

Sec. 24. Application for services of prisoners. — The state highway commission and municipal officers of towns may make application for the services of prisoners as aforesaid and may enter into an agreement as to the cost and compensation to be paid to the county for such services, and the sum agreed on may be paid out of moneys appropriated for highway purposes. All such labor shall be under the general direction of the board or persons charged with the work. (R. S. c. 79, § 21.)

Sec. 25. Voters may request employment of prisoners. — When a written petition signed by at least 3% of the voters in any county, as determined by the number of votes cast therein for governor at the last preceding election, is presented to the county commissioners of said county requesting the employment of prisoners, said commissioners shall act thereon and shall designate the prisoners available for work under the conditions provided in section 23. (R. S. c. 79, § 22.)

Sec. 26. Contracts subject to cancellation or suspension.—Any contract for the employment of prisoners not provided for in the 3 preceding sections, which may be made by the county commissioners of any county with any person, firm or corporation shall be made subject to the right of the said county commissioners to withdraw, cancel or suspend said contract in whole or in part. (R. S. c. 79, § 23.)

Sec. 27. Removal of site of county buildings; towns to vote. — The county commissioners shall not remove a county building in the shire town or erect a new one instead of it more than ½ a mile from the former location, without first giving notice of their intentions and of the place where they propose to locate it to the municipal officers of each town in the county. The said municipal officers shall present the same to the town at its next annual meeting for choice of state or town officers, and receive, sort and count the votes for and against the proposal; and they and the clerks shall certify and return such votes to the clerk of said commissioners, who shall examine them and act according to the decision of a majority. (R. S. c. 79, § 24.)

Proposition submitted to voters held not to cover more than one subject.—A proposition, submitted by county commissioners to be passed upon by the voters of their county, to see if such commissioners shall be authorized to construct new county buildings, on a new site therefor, at a cost not to exceed thirty thousand dollars, and be further authorized to hire money on the credit of the county for the purpose of such construction, is not objectionable as covering more than one subject matter or thing. The elements of site, construction, cost and credit are no more than parts of one and the same proposition. Hubbard v. Woodsum, 87 Me. 88, 32 A. 802.

Sec. 28. Jails examined; prisoners employed for benefit of families.—At the commencement of each session required by law, the county commissioners shall examine the prison, take necessary precaution for the security of prisoners, for the prevention of infection and sickness and for their accommodation; they may authorize the employment, for the benefit of the county or of dependent families of prisoners committed for crime, in some suitable manner not inconsistent with their security and the discipline of the prison, and may pay the proceeds of such labor, less a reasonable sum to be deducted therefrom for the cost of maintenance of said prisoners, to the families of such person or persons as may be dependent upon them for support.

The provisions of this section do not apply to sections 23, 24, 25 and 26. (R. S. c. 79, § 25. 1953, c. 308, § 90.)

See c. 25, § 5, and c. 27, § 2, re inspecting and licensing of institutions; c. 27, § 15, re transfer of prisoners; c. 138, § 4, re disposal of earnings of persons sentenced.

Sec. 29. Loans.—The county commissioners may obtain loans of money for the use of their county and cause notes or obligations, with coupons for lawful interest, to be issued for payment thereof at such times as they deem expedient; but such loans shall not exceed $10,000 without first obtaining the consent of the county, substantially as provided in section 27. (R. S. c. 79, § 26.)

Cross reference.—See § 30, re temporary loans.

Commissioners to determine time and terms of issuance of bonds.—A vote of a county, in general terms authorizing its commissioners to hire money on its bonds or notes for public purposes, leaves to the commissioners to determine upon what time and other terms the same shall be issued. Hubbard v. Woodsum, 87 Me. 88, 32 A. 802.

Sec. 30. Temporary loans.—The county commissioners of Cumberland, Washington and Kennebec counties may, without obtaining the consent of their respective counties, raise, by temporary loan to be paid within 1 year from the time when the same is contracted out of money raised during the current year by taxes, sums not exceeding $250,000, $75,000 and $50,000, respectively, in any year for use of their respective counties and cause notes or obligations of their respective counties with coupons for lawful interest to be issued for payment thereof as aforesaid. The county commissioners of each and every other county may without obtaining the consent of their county raise by temporary loans to be paid within 1 year from the time when the same is contracted out of money raised during the current year by taxes not exceeding 1/5 of 1% of the assessed valuation of their respective counties. (R. S. c. 79, § 27. 1951, c. 380.)

Sec. 31. Warrants of distress; actions of debt.—Warrants of distress, on judgments legally rendered by the county commissioners, may be originally issued within 2 years after judgment and made returnable to the clerk's office within 90 days from their date. New warrants may be issued within 2 years from the return day of the last preceding warrant for sums remaining unsatisfied. No warrant shall be originally issued against a town until 20 days after a certificate of rendition of the judgment is transmitted by their clerk to the assessors of such town. Interest on the damages shall be included and collected by such warrants as in executions. A party, for whose benefit a judgment is rendered by them, may recover the amount in an action of debt founded on such judgment. (R. S. c. 79, § 28.)

This section is mandatory upon the commissioners, and makes it their duty to issue warrants of distress to enforce their judgments. Furbish v. Kennebec County Com'rs, 93 Me. 117, 44 A. 364.

The word "may" is to be construed as "must" or "shall" where the public interests or rights are concerned, and the public or third persons have a claim de jure that the power shall be exercised. Furbish v. Kennebec County Com'rs, 93 Me. 117, 44 A. 364.

And such duty enforceable by mandamus.—Where the commissioners deny a

motion for a warrant of distress and refuse to issue the warrant, the court has authority to compel the commissioners to perform their duty in this respect by mandamus. Furbish v. Kennebec County Com'rs, 93 Me. 117, 44 A. 364.

Commissioners have general authority, under this section, to enforce, by warrants of distress, judgments legally rendered by them, and express authority to issue them against unsuccessful petitioners under § 37; and specific power, under § 51, by such process, to collect from a town the regularly allowed amount of expenditures and expenses of a duly appointed agent in opening and making passable a highway, which the town itself was bound by law to build but neglected to build. Brown v. Mosher, 83 Me. 111, 21 A. 835.

Warrant affords protection to officer serving it.—A warrant of distress in due form issued by the county commissioners, like the final process of other inferior tribunals, affords per se full protection to the officer serving it, whenever it appears on its face that the court had jurisdiction of the subject matter and no want of authority in other respects appears thereon. Brown v. Mosher, 83 Me. 111, 21 A. 835.

But it must show commissioners' jurisdiction on its face.—The cases in which a warrant of distress is issuable are few, and, if issued in cases not authorized, it is invalid. And, if the warrant on its face fails to show that the commissioners had jurisdiction of the subject matter of the judgment, it alone cannot be held to justify an officer's action. Brown v. Mosher, 83 Me. 111, 21 A. 835.

A warrant made returnable in three months instead of ninety days does not comply with this section. The periods are not identical. Waterville v. Barton, 64 Me. 321.

Time of issuance of warrant is not matter of discretion.—It is provided in this section that "no warrant shall be originally issued against a town until 20 days after a certificate of rendition of the judgment is transmitted by their clerk to the assessors of such town." This provision may not be disregarded when the original warrant is issued. The time when process to enforce a judgment shall issue is not a matter of judicial discretion, and the tribunal issuing it prematurely is liable in trespass. Waterville v. Barton, 64 Me. 321.

Interest recoverable from town neglecting to pay for work done by agent.—See note to § 51.

Sec. 32. No commissioner agent to expend money.—No commissioner shall be appointed to expend money assessed or raised for any purpose by the board of which he is a member. (R. S. c. 79, § 29.)

Sec. 33. Services in condemnation cases.—For services performed by county commissioners in the assessment of damages for land or easement sought to be taken or acquired by private corporations, they shall charge $3 a day and actual traveling expenses and certify the same in a bill of items to the county attorney, who shall collect the sums so charged of the party seeking to exercise the right of eminent domain and forthwith pay the same to the county treasurer. The county treasurer shall pay to said commissioners actual traveling expenses aforesaid when collected by the county attorney. (R. S. c. 79, § 30.)

Sec. 34. Annual financial report.—At the end of each year, the commissioners of each county shall make a statement of its financial condition, showing in detail all moneys received into and paid out of its treasury and such other facts and statistics as may be necessary to exhibit the true state of its finances; and publish in pamphlet form a reasonable number of copies for distribution among the citizens thereof. (R. S. c. 79, § 31.)

See § 134, re annual financial report of treasurers; c. 107, § 55, re county offices may be closed on legal holidays; c. 119, § 12, re county commissioners required to itemize and verify under oath, expense accounts.

Ways.

Cross Reference.—See § 18, re condemnation to enlarge grounds around county buildings.

The power which the commissioners exercise in reference to roads under this chapter is a judicial power. The records of their proceedings and judgments are, there-

fore, entitled to the same respect as the records and judgments of other tribunals, so long as they act within the legal sphere of their duty. They have the character of judgments, until impeached in some proper mode. Longfellow v. Quimby, 29 Me. 196.

And proceedings as to ways cannot be collaterally attached.—The county commissioners have general jurisdiction in relation to roads. Hence, an adjudication of theirs will be respected as operative until annulled or vacated upon certiorari. Great inconvenience would arise in permitting an inquiry as to the regularity of their proceedings to be made collaterally. Baker v. Runnels, 12 Me. 235.

Unless commenced without jurisdiction. —Unless the commissioners have jurisdiction to authorize the commencement of their proceedings, they will be void. A general jurisdiction over the subject matter is not enough; they can only have it in the particular case in which they are called upon to act, by the existence of those preliminary facts which confer it upon them. Their doings are ineffectual unless they have power to commence them, and may in such cases be avoided collaterally. But having jurisdiction, if their subsequent acts are erroneous, they are valid until vacated by certiorari. Small v. Pennell, 31 Me. 267. See Hayford v. Aroostook County Com'rs, 78 Me. 153, 3 A. 51.

Sec. 35. County roads.—County commissioners may lay out, alter or discontinue highways leading from town to town and grade hills in any such highway. Nothing in any city charter shall be so construed as to deprive them of the power to lay out, alter or discontinue county roads within the limits thereof. Responsible persons may present, at their regular session, a written petition describing a way and stating whether its location, alteration, grading or discontinuance is desired, or an alternative action, in whole or in part. The commissioners may act upon it, conforming substantially to the description, without adhering strictly to its bounds. (R. S. c. 79, § 32.)

I. General Consideration.

II. Petition.

A. In General.

B. Petition Presented at Regular Session.

C. Description.

III. Commissioners Not Strictly Bound by Petition.

Cross Reference.

See c. 36, § 33, re ways in state parks, etc.

I. GENERAL CONSIDERATION.

Highways can only be located by county commissioners under this section. Wells v. York County Com'rs, 79 Me. 522, 11 A. 417.

The manifest intention of this section was to establish a uniform rule that should apply to all city charters, whether granted before or after the act. Its phrase is: "Nothing in any city charter shall be so construed as to deprive them" of jurisdiction over "county roads within the limits of such cities." Deering v. Cumberland County Com'rs, 87 Me. 151, 32 A. 797.

The county commissioners have power to establish a public highway from one place to another place within the same town. New-Vineyard v. Somerset County, 15 Me. 21; Harkness v. Waldo County Com'rs, 26 Me. 353; Windham v. Cumberland County Com'rs, 26 Me. 406; Smith v. Cumberland County Com'rs, 42 Me. 395.

The commissioners have the authority to lay out a way which is wholly within a town and which connects two county roads with each other. Hermon v. Penobscot County Com'rs, 39 Me. 583; King v. Lewiston, 70 Me. 406.

The commissioners have authority to locate a highway over and upon a previously existing town road, when either terminus of such location connects with a county road or highway, although the whole of such location is within the limits of one and the same town. Wells v. York County Com'rs, 79 Me. 522, 11 A. 417.

Proceedings of the commissioners are not void because the road, as established, is within the limits of a town. Inhabitants of Vassalborough, Petitioners, 19 Me. 338.

The doctrine of res adjudicata does not apply to the action of county commissioners in the location of highways. The facts and situation may be such as to require them to refuse to locate on one petition when such changes may take place in

the wants and necessities of the public as to require the location a year or two thereafter. Cole v. Cumberland County Com'rs, 78 Me. 532, 7 A. 397.

Under this section, giving commissioners the power to locate highways, the only limitation upon their jurisdiction is that if their decision is against the prayer of the petition, no new petition shall be entertained for one year thereafter. Cole v. Cumberland County Com'rs, 78 Me. 532, 7 A. 397. See § 57.

Petition for discontinuance may be entertained within time allowed for opening way.—When, on appeal, the judgment of county commissioners locating a highway has been affirmed in whole and the proceedings duly closed and recorded, the commissioners can, within the time allowed for making and opening the way, entertain a petition praying for a discontinuance of the same way. Millett v. Franklin County Com'rs, 80 Me. 427, 15 A. 24.

Disqualification of commissioner because of interest rests on common law.—There is no statute in Maine prohibiting a county commissioner from taking part in a proceeding where the proposed way is to be located over his own land. His disqualification rests upon principles of the common law. Blaisdell v. York, 110 Me. 500, 87 A. 361.

And interest does not render proceedings absolutely void.—The pecuniary interest of one of the commissioners does not oust the board of jurisdiction, nor render its subsequent proceedings void. It renders them merely voidable, subject to being set aside upon proper process therefor. Blaisdell v. York, 110 Me. 500, 87 A. 361.

In Bliss v. Jenkins, 106 Me. 128, 75 A. 386, it was held that, where the proposed way passes through land in which one of the commissioners has an interest, either as sole or part owner, and is directly interested in the location of the way, such interest would disqualify the commissioner, the board of commissioners would be without jurisdiction and any action of the board in laying out such way would be void. However, it is said that the word "void" was used in that case in the same sense as "voidable". See Blaisdell v. York, 110 Me. 500, 87 A. 361.

The procedure authorized under this section and § 38 and that under § 45 are distinct. They apply to different situations and call for different action upon the part of the county commissioners. The procedure being purely statutory, the provisions of the statute must be strictly adhered to. Haile v. Sagadahoc County Com'rs, 140 Me. 16, 31 A. (2d) 925.

This section and § 38 relate to the same subject matter, viz., the laying out, altering, discontinuing and grading of highways, while § 45 relates to highways the true boundaries of which have become doubtful, uncertain or lost, and the relocating and redefining of the same. The petition drawn under this section is to be presented by "responsible persons," while the petition under § 45 is to be presented by the municipal officers of the town wherein the way lies. Haile v. Sagadahoc County Com'rs, 140 Me. 16, 31 A. (2d) 925.

No authority has been granted in this state to the county commissioners to lay out roads over creeks or arms of the sea which are navigable, or to impede their use for the purposes of navigation by the erection of bridges. State v. Anthoine, 40 Me. 435.

Commissioners may require earth taken from hill to be filled in valley.—To grade, means "to reduce to a certain degree of ascent or descent." This embraces fills and the valleys as well as cuts in the hills. The grade may be made by a cut in the hill or a fill in the valley, or, as is more usually the case, by both combined. There is no doubt as to the power of the commissioners, under this section, to require the earth taken from the cut in the hill to be filled in the valley. Acton v. York County Com'rs, 77 Me. 128.

Quoted in part in Waterford v. Oxford County Com'rs, 59 Me. 450,

Cited in State v. Bunker, 59 Me. 366; Cushing v. Webb, 102 Me. 157, 66 A. 719.

II. PETITION.

A. In General.

A petition in writing, signed by responsible persons, must first be presented to the commissioners, as the basis of their subsequent action, stating that the public convenience and necessity require the way to be laid out and established, and also its termini and route. Howland v. Penobscot County Com'rs, 49 Me. 143.

Petition should set out jurisdictional facts.—While generally no particular form of words is required in the petition, nor is strict technical accuracy expected therein, the commissioners' jurisdiction generally depends upon whether sufficient jurisdictional facts are set out, as they always should be, in the petition which forms the foundation of their action. Hayford v. Aroostook County Com'rs, 78 Me. 153, 3 A. 51.

Petition fulfilling in part requirements of this section and in part requirements of § 45 is ineffectual.—A petition which fulfills in part the requirements of this section and § 38 and, in part, the requirements of § 45, but does not completely fulfill the requirements of either procedure, is ineffectual. Haile v. Sagadahoc County Com'rs, 140 Me. 16, 31 A. (2d) 925.

Petition may describe alternative places for location of way.—That a petition describes alternative places for the location of the way is not objectionable. Packard v. Androscoggin County Com'rs, 80 Me. 43, 12 A. 788.

A petition presenting alternative places, each accurately described, for the commencement of a way, is not necessarily erroneous. Sumner v. Oxford County Com'rs, 37 Me. 112.

The jurisdiction of the commissioners does not fail because the word "road" instead of "highway" is used in the petition. Windham v. Cumberland County Com'rs, 26 Me. 406.

B. Petition Presented at Regular Session.

When petition presented at regular session.—A petition presented during a regular session, at any period of the session, is presented at a regular session. Harkness v. Waldo County Com'rs, 26 Me. 353.

Petition may be presented at adjournment of regular session.—An application to the county commissioners for the location, alteration, or discontinuance of a highway is made at a regular session, if presented at an adjournment of a regular session. Harkness v. Waldo County Com'rs, 26 Me. 353.

A session of county commissioners held by adjournment from a regular session is a "regular session" within the meaning of this section. Waterville v. Kennebec County Com'rs, 59 Me. 80.

C. Description of Way.

Without a petition describing a way, the commissioners have no jurisdiction, for they cannot conform substantially to the description. Hayford v. Aroostook County Com'rs, 78 Me. 153, 3 A. 51.

In cases involving the laying out of highways by the commissioners, this section prescribes in part, at least, the character of the petition. It must be a "petition describing a way." Whatever else it may contain, if no way is therein described, it cannot authorize any action but dismissal on the part of the commissioners. When and only when a "petition describing a way" is presented to them by persons considered responsible, the commissioners may act upon it. Hayford v. Aroostook County Com'rs, 78 Me. 153, 3 A. 51.

A petition which does not describe the way to be located in any manner gives the county commissioners no jurisdiction to act, and action upon the petition is void. Cole v. Cumberland County Com'rs, 78 Me. 532, 7 A. 397.

The "petition describing a way" under this section must describe it with reasonable definiteness in order to give the county commissioners jurisdiction. The chief reason for this requirement is to give all parties, over whose land the proposed way is to be laid, and all others whose interests may be affected thereby, such information, through the public notice on the petition, as will enable them to be present and be heard. Keeping this object in view, it is apparent that the description should not, on the one hand be vague and indefinite, nor on the other need it be expressed with extreme technical precision. It must set forth "with reasonable certainty," "with reasonable and approximate definiteness," the termini and the route. Blaisdell v. York, 110 Me. 500, 87 A. 361.

A petition should state the places where the way desired is to commence and terminate and its general course between them, that all interested may be enabled to judge how far such a way would be useful, and to what extent their interests might be affected. Sumner v. Oxford County Com'rs, 37 Me. 112; Hayford v. Aroostook County Com'rs, 78 Me. 153, 3 A. 51.

For cases wherein it was held that the description of the way was sufficient, see Raymond v. Cumberland County Com'rs, 63 Me. 112; Harvey v. Wayne, 72 Me. 430; Acton v. York County Com'rs, 77 Me. 128.

Description must be such as to appraise interested parties of proposed route.—The description in the petition must be such that any owner of land over which the way is to pass, and any other person whose interests can be affected by the location, will be fully apprised of the proposed route. Blaisdell v. York, 110 Me. 500, 87 A. 361.

Where no owner of lands could learn from a petition whether or not his lands could be taken or his interests affected by the proposed way, the description is altogether too vague and indefinite to answer the requirement of this section. Hayford

v. Aroostook County Com'rs, 78 Me. 153, 3 A. 51.

There must be a written petition before the commissioners, presented at a regular session, and containing such a description of the way and such prayer respecting it, that all interested may understand by the notice what action is contemplated. Cyr v. Dufour, 68 Me. 492.

And must make termini reasonably definite.—Where there is nothing in the description to make the termini of the proposed way reasonably definite, the petition is insufficient. Bliss v. Junkins, 106 Me. 128, 75 A. 386.

The petition must state the termini and route of the proposed way. Any description which does not contain these elements with substantial definiteness cannot be called "describing a way" within the intention of the legislature. Hayford v. Aroostook County Com'rs, 78 Me. 153, 3 A. 51.

Unless the petition describes with reasonable definiteness the places where the proposed way is to commence and terminate, the county commissioners have no jurisdiction to lay out a highway under the provisions of this section. Bliss v. Junkins, 106 Me. 128, 75 A. 386.

One of the evident objects of the provision requiring a description of the proposed way coupled with the required public notice thereon, is to afford those over whose lands it is to be laid and those whose interests may be affected thereby, such information as will enable them to be heard. Hence, it has been the practice in such cases to state at least the termini of the proposed way with reasonable and approximate definiteness. Hayford v. Aroostook County Com'rs, 78 Me. 153, 3 A. 51; Packard v. Androscoggin County Com'rs, 80 Me. 43, 12 A. 788.

But the petition for every short piece of new road need not necessarily contain a statement of its termini, in totidem verbis, for they may be so otherwise described by their connections with the roads already made, that they cannot fail to be understood by interested persons owning land and residing along their routes. Hayford v. Aroostook County Com'rs, 78 Me. 153, 3 A. 51; Packard v. Androscoggin County Com'rs, 80 Me. 43, 12 A. 788.

And this section does not require a description of that technical precision and exactness which might be requisite in conveyancing. Packard v. Androscoggin County Com'rs, 80 Me. 43, 12 A. 788.

Reasonable certainty, as well as a substantial compliance with this section, is what is required, but technical exactness and precision cannot be expected and have never been required of a petition under this section. Packard v. Androscoggin County Com'rs, 80 Me. 43, 12 A. 788.

No particular words or form of words are required by this section in the petition, and the greatest technical accuracy and precision are not to be expected. Windham v. Cumberland County Com'rs, 26 Me. 406.

Petitions for the location or change of highways must not be too critically considered where the result makes the matter clear and works no injustice. Deering v. Cumberland County Com'rs, 87 Me. 151, 32 A. 797.

And if a description is not so defective that a person would find it difficult to determine what is designed to be accomplished, it is not insufficient. Sumner v. Oxford County Com'rs, 37 Me. 112.

Where the termini of a proposed way are fixed and certain and the general route cannot be mistaken, the description is sufficient. Andover v. Oxford County Com'rs, 86 Me. 185, 29 A. 982.

Sufficiency of petition for alteration.—A petition for the alteration of a highway is not sufficient if it lacks a definite description of the way or ways to be altered, and the termini thereof, and the character of the alterations proposed. Raymond v. Cumberland County Com'rs, 63 Me. 112.

III. COMMISSIONERS NOT STRICTLY BOUND BY PETITION.

In acting on a petition for a way, the commissioners are authorized to exercise a sound discretion. A substantial observance of the route indicated in the petition is all that is required. Wayne v. Kennebec County Com'rs, 37 Me. 558.

And the commissioners are not required to follow the description in the petition in the location of ways with the same precision that would be requisite in conveyancing. They are not confined to the precise points indicated by the petitioners. To hold them to the observance of such rigid and exact rules in the location of ways would be to deprive them of all right to exercise their judgment, so as to avoid local difficulties to make improvements by partial deviations from the line indicated in the petition, and to compel them when obstacles should present themselves, either to subject the public to the inconvenience occasioned thereby, or the expense of their removal, or to abandon the route altogether. Wayne v.

Kennebec County Com'rs, 37 Me. 558. See Packard v. Androscoggin County Com'rs, 80 Me. 43, 12 A. 788.

But commissioners must conform substantially to bounds named.—The commissioners need not adhere strictly to the bounds named in the petition, but they must conform substantially to them, so as to effectuate the purpose sought. Cole v. Cumberland County Com'rs, 78 Me. 532, 7 A. 397.

Sec. 36. Notice.—Being satisfied that the petitioners are responsible and that an inquiry into the merits is expedient, the county commissioners shall cause 30 days' notice to be given of the time and place of their meeting by posting copies of the petition, with their order thereon, in 3 public places in each town in which any part of the way is, by serving one on the state highway commission and serving one on the clerks of such towns and publishing it in some newspaper, if any, in the county. The fact that notice has been so given, being proved and entered of record, shall be sufficient for all interested, and evidence thereof. (R. S. c. 79, § 33. 1949, c. 322, § 1.)

A writ of certiorari will not be granted because the record of the proceedings of the county commissioners does not show how nor by whom notice to the parties interested was given. Inhabitants of Vassalborough, Petitioners, 19 Me. 338.

Statutory notice unnecessary where actual notice given.—Where actual notice has been given to parties interested in the location of a county road, the want of the statute notice will not avail to quash the proceedings, unless some right has been lost or some injury suffered by reason of the omission. Sumner v. Oxford County Com'rs, 37 Me. 112.

Proceedings not quashed for lack of notice to subsequent purchaser. — After notice on a petition for location of a way has been complied with, the location proceedings will not be quashed simply because a subsequent purchaser of land across which the way is to be located was not served notice of the time and place of the hearing. Monson v. Piscataquis County Com'rs, 84 Me. 99, 24 A. 672.

Names of all petitioners need not be included in notice.—An interested party cannot be materially disadvantaged by the omission to copy the names of all the petitioners in the notice given. The object of the notice is to give information of the time, place and purposes of the commissioners' meeting. A notice containing a copy of the petition, but with only the name of one petitioner copied, must be as effective for this purpose as a similar notice containing all the names. The original petition is on file with the commissioners and the names of all may be ascertained at any time from an inspection of it. Lord v. Cumberland County Com'rs, 105 Me. 556, 75 A. 126.

It has been the uniform practice in this state, in proceedings for the laying out of ways, where the notice ordered to be given is to include a copy of the petition, not to copy the signatures of all the petitioners in the notice, but only the first with a statement of the number of the others. Such practice has continued so long, and been relied upon as sufficient so universally, that for reasons of public policy, if for no other, it should now be regarded as a substantial and sufficient compliance with this section. Lord v. Cumberland County Com'rs, 105 Me. 556, 75 A. 126.

Service must be made upon the clerk of the town as well as by posting up in three conspicuous places and by publication. Blaisdell v. York, 110 Me. 500, 87 A. 361.

Commissioners must be satisfied of responsibility of petitioners and expediency of inquiry.—By this section, when a petition for the location or discontinuance of a highway is presented to the county commissioners, before giving the prescribed notice of the time and place of their meeting, they must be "satisfied that the petitioners are responsible, and that an inquiry into the merits is expedient." Moore, Appellant, 68 Me. 405.

But responsibility of petitioners not jurisdictional fact.—It is not a jurisdictional fact which must appear affirmatively in express terms upon the record that the county commissioners, before ordering notice upon a petition for the location or alteration of a highway, were satisfied that the petitioners were responsible persons. Cyr v. Dufour, 68 Me. 492.

And finding of responsibility of petitioners and expediency of inquiry is presupposed. — When the commissioners order notice and give all concerned an opportunity to be heard, it must be presupposed that they were satisfied as to the responsibility of the petitioners; and it is no more necessary to set that fact out upon the record than it is the other with which it is classed in this section, that they were satisfied that "an inquiry into

the merits is expedient," which is necessarily implied from their action in the premises. In any event, the provision is directory, not essential to the acquirement of jurisdiction by the issuing of a notice; and a failure to observe it would be detrimental only to the county in case the prayer of the petition was denied, and not to the landowner, where it is granted at the call of public convenience and necessity. Cyr v. Dufour, 68 Me. 492.

No appeal from commissioners' decision as to petitioners' responsibility and expediency of inquiry.—See note to § 59.

Quoted in Howland v. Penobscot County Com'rs, 49 Me. 143.

Stated in part in Orono v. Penobscot County Com'rs, 30 Me. 302.

Cited in Ware v. Penobscot County Com'rs, 38 Me. 492; Brown v. Mosher, 83 Me. 111, 21 A. 835; Haines v. Great Northern Paper Co., 110 Me. 422, 86 A. 841.

Sec. 37. Costs.—When their decision is against the prayer of the petitioners, the county commissioners shall order them to pay to the treasurer of the county, at a time fixed, all expenses incurred on account of it; and if they are not then paid, they shall issue a warrant of distress against the petitioners therefor. (R. S. c. 79, § 34.)

The provision of this section is directory merely, and if an adjudication as to payment of costs does not appear of record, it will not render the after proceedings void. Cushing v. Gay, 23 Me. 9.

This section shows the whole aim and intent of the legislature in requiring that the petitioners should be responsible. The direction to the commissioners touching the responsibility of the petitioners (§§ 35, 36) is for the protection of the county against needless costs where the location or alteration is not found to be of common convenience and necessity. Cyr v. Dufour, 68 Me. 492.

The legislature intended to mulct the petitioner who fails by requiring a judgment by the county commissioners against him, for "all expenses incurred on account of it." Abbott v. Penobscot County, 52 Me. 584.

Cited in Brown v. Mosher, 83 Me. 111, 21 A. 835.

Sec. 38. Proceedings before county commissioners; return; durable monuments erected.—The county commissioners shall meet at the time and place appointed and view the way, and there, or at a place in the vicinity, hear the parties interested. If they judge the way to be of common convenience and necessity or that any existing way shall be altered, graded or discontinued, they shall proceed to perform the duties required; make a correct return of their doings, signed by them, accompanied by an accurate plan of the way, and state in their return when it is to be done, the names of the persons to whom damages are allowed, the amount allowed to each and when to be paid. When the way has been finally established and open to travel, they shall cause durable monuments to be erected at the angles thereof. (R. S. c. 79, § 35.)

I. General Consideration.

II. Hearing.

III. Adjudication of Common Convenience and Necessity.

IV. Return.

- A. Persons Named in Return.
- B. Description of Way.
- C. Statement as to When Work to Be Done.

V. Monuments.

I. GENERAL CONSIDERATION.

Procedure under this section and § 35 distinct from procedure under § 45.—See note to § 35.

Damages need not be adjudicated in absence of claimant.—This section does not require the commissioners to ascertain and determine the legal title, description, location or boundaries of each proprietor's lot over which the highway passes, when no one appears to claim damages between the times of the notice first given, and the close of the original petition — notices sufficiently given, both by publications and a public record, and a time sufficiently long to enable any person injured to present his claim for damages and to establish his title. The com-

missioners, when none such appears, may well conclude that none such exists, and that no adjudication is necessary. For them to adjudge that this person, or that, has, or has not, suffered an injury, when neither is known as a proprietor, and when neither deems it prudent to be known as a claimant, would be ridiculous. Howland v. Penobscot County Com'rs, 49 Me. 143.

Time fixed for opening way dates from final establishment of way.—By this section, the commissioners are required in their report of a location to state when the way is to be opened, but that time must necessarily date from the final establishment of a located way. Adams v. Ulmer, 91 Me. 47, 39 A. 347.

Applied in Wells v. York County Com'rs, 79 Me. 522, 11 A. 417.

Quoted in part in Russell v. Franklin County Com'rs, 51 Me. 384; Haile v. Sagadahoc County Com'rs, 140 Me. 16, 31 A. (2d) 925.

Stated in part in Monticello v. Aroostook County Com'rs, 59 Me. 391; Boston & Maine R. R. v. York County Com'rs, 78 Me. 169, 3 A. 273.

Cited in Jones v. Oxford County, 45 Me. 419; Bethel v. Oxford County Com'rs, 60 Me. 535; Cassidy v. Bangor, 61 Me. 434; Webster v. Androscoggin County Com'rs, 63 Me. 27; Mansur v. Aroostook County Com'rs, 83 Me. 514, 22 A. 358.

II. HEARING.

No notice is required before the hearing of the parties interested after the view. It is supposed to take place immediately upon the view of the premises and before any separation of the commissioners and those interested, who may be in attendance. Orono v. Penobscot County Com'rs, 30 Me. 302.

The hearing of the parties is confined by this section to the time when the view is made, if upon the ground viewed and, if at some convenient place, it may be afterwards. But it was expected, under a fair construction of this section, to be a part of the same proceedings, and no notice, other than such as would accompany the adjournment to another place, would be of any use. All who chose to be present under the notice made previous to the view would have every opportunity given them to be heard upon the matter pending. Orono v. Penobscot County Com'rs, 30 Me. 302.

And appointment for hearing parties may be made at close of view.—The county commissioners, when giving notice of the time and place appointed for viewing the route, in relation to the locating, altering or discontinuing a highway, are not bound to fix on the time and place for hearing the parties. The appointment for that purpose may be conveniently made at the close of the view. Orono v. Penobscot County Com'rs, 30 Me. 302.

And hearing not confined to place where way proposed to be laid out.—It is proper that the examination and hearing should not be confined to the place where the way was proposed by the petition to be laid out. This might be attended with unnecessary inconvenience on account of the weather or other causes. Orono v. Penobscot County Com'rs, 30 Me. 302.

Hearings on petitions for laying out, altering or discontinuing ways are required to take place at the place of meeting fixed at the discretion of the commissioners, or at a place in the vicinity. Brown v. Mosher, 83 Me. 111, 21 A. 835.

III. ADJUDICATION OF COMMON CONVENIENCE AND NECESSITY.

Commissioners must adjudge way of common convenience and necessity.—This section requires the commissioners, before proceeding to locate a road, to adjudge that it is of common convenience and necessity, and the want of a preliminary adjudication, that the road prayed for is of common convenience or necessity, is fatal to the laying out of a highway. Cushing v. Gay, 23 Me. 9.

But adjudication need not be in technical terms.—It is not necessary that those who are authorized to judge of the necessity and convenience of ways should use technical terms in their adjudication and location, provided their intention is manifest, and they have jurisdiction of the subject. Windham v. Cumberland County Com'rs, 26 Me. 406.

And omission of word "common" is not error.—Adjudging the road to be of convenience and necessity is tantamount to adjudging it to be of common convenience and necessity, and there is no error if the word "common" is omitted from the adjudication. Cushing v. Gay, 23 Me. 9.

By adjudging the way prayed for to be of common convenience and necessity, the commissioners adjudge each portion of it to be so. Harkness v. Waldo County Com'rs, 26 Me. 353.

Immaterial to landowner when way adjudged to be of convenience and necessity.—The rights of the landowner must yield to the common convenience and necessity, proper provision for compensation

being made, and to him it makes no difference when it is decided by the lawful tribunal before whom he has had an opportunity to be heard, that common convenience and necessity do require the use of his land or whether that adjudication is had upon the petition of those who represent large taxable property or none at all. Cyr v. Dufour, 68 Me. 492.

IV. RETURN.

A. Persons Named in Return.

It is not required that the return name the persons over whose land the road passes. Cushing v. Gay, 23 Me. 9.

No requirement that the return should state the names of the owners of the land taken is found in this section. Wilson v. Simmons, 89 Me. 242, 36 A. 380.

While it might be desirable that the names of all persons over whose land the road located passes should appear in the return of the commissioners, it is not indispensably necessary. Wilson v. Simmons, 89 Me. 242, 36 A. 380.

But only those persons claiming damages.—The proceedings of the commissioners will not be quashed because all the owners of land over which the road passed were not named in the return of the county commissioners, nor said to be unknown, those only being named who claimed damages. Inhabitants of Vassalborough, Petitioners, 19 Me. 338.

B. Description of Way.

Certiorari granted where way not described.—If the adjudication of the county commissioners does not contain a description of the road, so that it may be ascertained from the record, a writ of certiorari will be granted. Portland, Saco & Portsmouth R. R. v. York County Com'rs, 65 Me. 292.

For a case in which it was held that the way was sufficiently described in the return, see Harvey v. Wayne, 72 Me. 430.

Way need not be described in same language of petition.—It is not necessary that the commissioners should describe the way located in the same language used in the petition, provided there is substantial compliance therewith. Windham v. Cumberland County Com'rs, 26 Me. 406. See § 35 and note, re commissioners not strictly bound by petition.

In their return of the laying out of a road, the commissioners are not bound to adopt the language of the petition; and where the courses and distances are given from one known terminus in the petition, though the boundary at the other may not have the description given it in the petition, still, if the record does not show any want of identity, it is sufficient. Orono v. Penobscot County Com'rs, 30 Me. 302.

Return need not include both plan and description.—The requirement of this section is complied with by the county commissioners if they return an accurate plan or description of the way located; both are not necessary. Libson v. Merrill, 12 Me. 210.

The neglect of the commissioners to return a plan of the way laid out is not material, if they have returned a sufficient description. Howland v. Penobscot County Com'rs, 49 Me. 143.

C. Statement as to When Work to Be Done.

Return must state when work to be done.—The language of this section is imperative. The commissioners "shall state in their return when it is to be done." The requirement is not simply directory, it is mandatory. Kingman v. Penobscot County Com'rs, 105 Me. 184, 73 A. 1038.

Where a highway located partly in a town and partly in a plantation was laid out by county commissioners, but there was an entire absence of any statement or provision in the return of the commissioners showing that any decision was made respecting the time within which that portion of the road in the plantation should be completed, this omission was a failure to comply with a mandatory requirement of this section, and an error which materially concerned the town. Kingman v. Penobscot County Com'rs, 105 Me. 184, 73 A. 1038.

And return failing to so state forms no basis for proceeding under § 51.—When a highway has been laid out by county commissioners but their return contains no statement when the work of building the same shall be done, such record would form no legal basis for proceedings under § 51 to cause the work to be done by an agent when it was not done by the town within the time prescribed therefor. Kingman v. Penobscot County Com'rs, 105 Me. 184, 73 A. 1038.

Purpose of requirement that return state when work to be done.—It requires no argument to show the wisdom and necessity of the provision requiring the commissioners to state in their return when the work of building the road shall be done. It may obviously be of great consequence to all who are likely to have occasion to use the projected way for travel and transportation. Important contracts for the transportation of lumber and other mer-

chandise would naturally be made with reference to the time fixed for the opening of such a road. It is also important that towns having the burden of contributing to the expense of building the road should have definite information in regard to the time of performing the work in order to make seasonable tax levies and appropriations for that purpose. Kingman v. Penobscot County Com'rs, 105 Me. 184, 73 A. 1038.

V. MONUMENTS.

Erection of monuments not part of record.—The requirement that the commissioners erect durable monuments at the angles of the way is only directory, is not necessarily any part of the record and must, from necessity, be subsequent to the location and record of the highway. Howland v. Penobscot County Com'rs, 49 Me. 143.

Monuments must be erected exactly at termini.—In laying out the road the commissioners must necessarily be more precise than the petitioners and designate monuments exactly at the termini of the road. These might be of their own erection. Cushing v. Gay, 23 Me. 9; Packard v. Androscoggin County Com'rs, 80 Me. 43, 12 A. 788.

County or town lines and natural objects may be adopted as monuments.—This section requires county commissioners, in locating a highway, to "cause durable monuments to be erected at the angles thereof." As a discharge of that duty, they may adopt, as monuments, county or town lines, or natural objects, as trees, rocks or banks of rivers. So "the top of a narrow horseback," on which a location is made, extending through many courses and distances, may be adopted as furnishing a sufficient monument at each of the angles. Detroit v. Somerset County Com'rs, 35 Me. 373.

The commissioners may adopt natural objects as monuments as well as to establish those which are entirely artificial. Detroit v. Somerset County Com'rs, 35 Me. 373.

Courses and distances corrected by monuments named in return.—Where the return of the road states that stone monuments have been set up and marked at the angles of the road, and also gives the courses and distances, and there is disagreement between them and the monuments, the courses and distances may be corrected by the monuments named in the return. Woodman v. Somerset County, 25 Me. 300.

Sec. 39. Return filed; appeal.—The return of the commissioners, made at their next regular statute session after the hearing provided for in the preceding section, shall be placed on file and remain in the custody of their clerk for inspection without record. The case shall be continued to their next regular term of record, and at any time on or before the 3rd day thereof, if no appeal from the location be taken, all persons aggrieved by their estimate of damages shall file their notice of appeal. If no such notice is then presented or pending, the proceedings shall be closed, recorded and become effectual; all claims for damages not allowed by them be forever barred; and all damages awarded under the provisions of sections 35 to 47, inclusive, paid out of the county treasury except as provided in section 45. If an appeal from the location be taken in accordance with section 59, then notice of appeal on damages may be filed with the clerk of the county commissioners within 60 days after the final decision of the appellate court in favor of such way as has been certified to him, to the superior court first held in the county where the land is situated, more than 30 days after such notice of appeal is filed, which court shall determine the same in the same manner as is provided in section 42, when no appeal on location is taken. (R. S. c. 79, § 36.)

Cross references.—See note to § 7, re "regular session" synonymous with "term of record"; note to § 42, re modification of this section when appeal on location taken.

Purpose of section.—One purpose of this section was to give a certain but limited time within which complaints on account of damages should be presented. Orono v. Penobscot County Com'rs, 30 Me. 302.

Filing and recording done at different terms.—By this section, the return of the commissioners is to be placed on file for inspection, without record. It is to be recorded at the next regular term. When recorded, it is then "entered of record." Filing and entering of record are entirely different and are to be done at different terms. Russell v. Franklin County Com'rs, 51 Me. 384.

Return must be filed at term designated.—The county commissioners cannot lawfully, and without any assignable cause, neglect or omit to hold the next regular session and file their return at a session

subsequent thereto. Parties interested cannot be required or expected to look for the presentation of the return of the commissioners at any other term than the one specially designated for that purpose by this section. Monticello v. Aroostook County Com'rs, 59 Me. 391.

And neglect to hold such term no excuse.—The neglect of the county commissioners to hold the next regular session as established by statute cannot render valid their violation of the law in making their return at a wrong time. Monticello v. Aroostook County Com'rs, 59 Me. 391.

That return placed on file for inspection may be established by evidence aliunde.—This section requires that the return of county commissioners should, pending proceedings, remain on file for the inspection of interested parties. Where the records of commissioners fail to show a compliance with this provision, the fact that it has been complied with may be established aliunde. And the omission to state such fact in the records is not a defect sufficient to authorize the issuance of a writ of certiorari. Smith v. Cumberland County Com'rs, 42 Me. 395.

Jurisdiction not lost by continuing proceeding beyond 3rd day of next term.—That the opening of a road should not be indefinitely postponed by petitions, on account of damages, such claims are barred after the 3rd day of the next term. The commissioners can hear or receive no petition for damages, or an increase thereof after that time. But it cannot be understood that their general powers are so restricted that jurisdiction is lost by a continuance of the proceedings for other causes than the reception of petitions for damages, or hearing evidence thereon. Orono v. Penobscot County Com'rs, 30 Me. 302.

Section modified by § 59.—The requirement of this section "if no notice of appeal is presented or pending" at the term of the commissioners held next after the filing of their return, "the proceedings shall be closed," etc., is modified by § 59, that when a party has appealed from the decision on location after it has been placed on file and before the next term of the superior court, "all further proceedings before the commissioners shall be stayed until a decision is made in the appellate court." Boston & Maine R. R. v. York County Com'rs, 78 Me. 169, 3 A. 273.

Former statutory provision.—For a consideration of a former statutory provision requiring the return to be made to the regular session "held next after such proceedings shall have been had and finished," see Cushing v. Gay, 23 Me. 9; Parsonfield v. Lord, 23 Me. 511.

Applied in Woodman v. Somerset County, 25 Me. 300.

Quoted in part in Detroit v. Somerset County Com'rs, 35 Me. 373; Howland v. Penobscot County Com'rs, 49 Me. 143; Webster v. Androscoggin County Com'rs, 63 Me. 27.

Cited in State v. Cumberland County Com'rs, 78 Me. 100, 2 A. 880; Mansur v. Aroostook County Com'rs, 83 Me. 514, 22 A. 358.

Sec. 40. Increase of damages.—When a notice of appeal for increase of damages is presented within the time allowed, the case shall be further continued until a final decision respecting damages is made. If the county commissioners then are of opinion that their proceedings, or any part thereof, ought not to take effect, subject to such damages as have been assessed, they shall enter a judgment that the prayer of the petitioners or any part thereof, designating what part, is not granted for that reason. Upon such judgment no damages shall be allowed for that part of the prayer of the petitioners not granted, but the costs shall be paid by the county; or if of opinion that such increase of damages should prevent a confirmation of a part or parts only of their proceedings, they shall designate such part or parts, and enter judgment accordingly; and the whole proceedings shall be recorded and become effectual; but the provisions of this section shall not apply when a location has been determined by a committee of the superior court upon appeal from the decision of the county commissioners thereon. In such case proceedings regarding the location shall become effectual as if no appeal for increase of damages had been taken. (R. S. c. 79, § 37.)

The power which is conferred upon the county commissioners by this section to deny the petition when the damages have been increased can be exercised only over such highways as were established and located by such board alone. There is nothing in the language of this section which extends it to such highways as require, in their establishment and location, the action of commissioners of more than one county. Jones v. Oxford County, 45 Me. 419.

Former provision of section.—For a case

holding that this section, as it formerly read, did not authorize a denial of only a part of the petition where the damages had been increased, see Jones v. Oxford County, 45 Me. 419.

Stated in part in Webster v. Androscoggin County Com'rs, 63 Me. 27.

Cited in Boston & Maine R. R. v. York County Com'rs, 78 Me. 169, 3 A. 273.

Sec. 41. Damages; estimated; awarded; paid.—If any person's property is damaged by laying out, altering or discontinuing a highway or town way, the county commissioners or the municipal officers of towns shall estimate the amount, and in their return state the share of each separately; damages shall be allowed to the owners of reversions and remainders and to tenants for life and for years in proportion to their interests in the estate taken; but said commissioners or officers shall not order such damages to be paid, nor shall any right thereto accrue to the claimant, until the land over which the highway or alteration is located has been entered upon and possession taken for the purpose of construction or use. (R. S. c. 79, § 38.)

The county in which proceedings for the location of a highway were commenced and closed, is alone liable for damages to the landowners, although, before the road was completed, that part of the county embracing the location had been set off and annexed to another county. Jones v. Oxford County, 45 Me. 419.

Until possession is taken, the land owner is not disturbed in the beneficial use of his property. In re Railroad Com'rs, 91 Me. 135, 39 A. 478.

Reason for provision that right to damages does not accrue until land entered. —The reason why the provision is inserted in this section that no right to damages accrues to the claimant until the land over which the highway is located has been entered upon and possession taken for the purpose of construction and use is that, under § 43, a time not exceeding two years is allowed for making and opening the way and, until it is opened, the commissioners have the power to discontinue it. In such a case the question of damages is governed by § 44. York Shore Water Co. v. Card, 116 Me. 483, 102 A. 321.

Section not applicable to condemnation proceedings by water company.—This section, providing that damages for laying out highways are not recoverable until the town has actually entered upon and taken possession of the real estate, has no application to condemnation proceedings by a water company. York Shore Water Co. v. Card, 116 Me. 483, 102 A. 321.

Cost of removal of structures and diminished value thereof considered in estimating damages.—The cost of the removal of structures from land taken, and the diminished value of the erection by reason of its removal, are to be considered in the estimation of damages. Ford v. Lincoln County Com'rs, 64 Me. 408. See note to § 43, re damages to soil and structure taken not estimated separately.

And damage to land by discharge of surface water may be considered.—In awarding damages for land taken for a highway across the side of a hill, the fact that the surface water which will naturally drain into the ditch on the upper side of the way, and which must be discharged through culverts onto the land below in streams or collected bodies may be considered as an element of damage to the landowner below. Peaks v. Piscataquis County Com'rs, 112 Me. 318, 92 A. 175.

History of section. — See Furbish v. Kennebec County Com'rs, 93 Me. 117, 44 A. 364.

Former provision of section.—For a consideration of this section when it provided that "payment of damages may be suspended until the land for which they are assessed is taken," see Kimball v. Rockland, 71 Me. 137.

Quoted in part in State v. Fuller, 105 Me. 571, 75 A. 315.

Cited in Gay v. Gardiner, 54 Me. 477; Eden v. Hancock County Com'rs, 84 Me. 52, 24 A. 461; Adams v. Ulmer, 91 Me. 47, 39 A. 347.

Sec. 42. Appeal.—Any person aggrieved by the estimate of damages by the county commissioners, on account of the laying out or discontinuing of a way, may appeal therefrom, at any time before the 3rd day of the regular term succeeding that at which the commissioners' return is made, to the term of the superior court, first held in the county where the land is situated, more than 30 days after the expiration of the time within which such appeal may be taken, excluding the 1st day of its session, which court shall determine the same by a committee of reference

if the parties so agree, or by a verdict of its jury, and shall render judgment for the damages recovered, and judgment for costs in favor of the party entitled thereto, and shall issue execution for the costs only. The appellant shall file notice of his appeal with the county commissioners within the time above limited, and at the 1st term of the court shall file a complaint setting forth substantially the facts, upon which the case shall be tried like other cases. The clerk shall certify the final judgment of the court to the county commissioners, who shall enter the same of record and order the damages therein recovered to be paid as provided in section 41. The party prevailing recovers costs to be taxed and allowed by the court, except that they shall not be recovered by the party claiming damages, but by the other party, if on such appeal by either party said claimant fails to recover a greater sum as damages than was allowed to him by the commissioners. The committee shall be allowed a reasonable compensation for their services to be fixed by the court upon the presentation of their report and paid from the county treasury upon the certificate of the clerk of courts. (R. S. c. 79, § 39.)

The provisions of this section are mandatory and are to be strictly construed. Tuttle, Appellant, 131 Me. 475, 164 A. 541.

Appellant must file complaint.—In order to perfect an appeal under this section, the appellant is required to file notice thereof with the county commissioners within the time limited and, at the first term of the superior court, file a complaint setting forth substantially the facts. Tuttle, Appellant, 131 Me. 475, 164 A. 541.

And if a complaint is not filed as required by this section, the appeal is properly dismissed. Tuttle, Appellant, 131 Me. 475, 164 A. 541.

Section applicable only when no appeal taken on location of way.—The requirements of this section, that the appeal on damages be taken at any time before the third day of the regular term succeeding that at which the commissioners' return is made, to the term of the superior court, first held more than thirty days thereafter, etc., are applicable only when no appeal on location has been taken. When such an appeal has been entered and prosecuted under §§ 59 and 60, then these provisions are modified by § 39, so that, in such case, instead of taking any action whatever in relation to damages at the time prescribed and limited in this section, the appellant on damages may file "notice of appeal" or its equivalent "within sixty days after final decision in favor of the way." Hence the phrase "within the time above limited" in this section, will refer, in case an appeal on location has been taken to the "time limited" in § 39. Boston & Maine R. R. v. York County Com'rs, 78 Me. 169, 3 A. 273.

Question of title considered on appeal in so far as it respects damages.—Under this section, the question of the title of the complainant to the land taken may be considered on appeal in so far as it respects the question of damages. Lancaster v. Richmond, 83 Me. 534, 22 A. 393; Wilson v. South Portland, 106 Me. 146, 76 A. 284.

Court cannot appoint or refuse to appoint committee on its own motion.—If the parties agree on a committee, this section must be regarded as imperative upon the court to make the appointment. It can neither do it, nor refuse to do it, upon its own motion. McLellan v. Kennebec County Com'rs, 21 Me. 390.

Appointment is work of parties and constitutes special agency.—The appointment of a committee under this section is, in substance and effect, the work of the parties, and constitutes a special and not a general agency. McLellan v. Kennebec County Com'rs, 21 Me. 390.

All committeemen must concur in result.—A committee, agreed on and appointed instead of a jury to assess the damages occasioned by the location of a county road, cannot act by a majority. Their proceedings will be void, unless they all concur in the result arrived at. McLellan v. Kennebec County Com'rs, 21 Me. 390.

But it is not error that the report of the committee appointed to estimate damages was signed by only two, the third being present and not dissenting. Inhabitants of Vassalborough, Petitioners, 19 Me. 338.

A petitioner is the prevailing party if he obtains a verdict for damages, when the commissioners allowed him none. Abbott v. Penobscot County, 52 Me. 584.

The language of this section is general and covers all legal costs, and is not restricted to costs in the appellate court. Abbott v. Penobscot County, 52 Me. 584.

What costs petitioner may recover.—In cases of petition for increase of damages, the petitioner, if the prevailing party, may recover costs as follows:

1. Before the county commissioners, for the petition, entry, travel and attendance

at the term of entry, and travel and attendance at the term when the verdict is certified from the appellate court;

2. Before the jury, for travel and actual attendance, witness' fees, and all copies and other matters which would be legally taxable in a case before the appellate court; and,

3. Before the appellate court, for the usual fees of entry, travel and attendance for one term only, unless the acceptance of the verdict is resisted, in which case, such costs may be recovered beyond the first term as the discretion of the presiding judge may dictate. Abbott v. Penobscot County, 52 Me. 584.

Former provision of section.—For a case concerning the time when the committee should report to the court under former provisions of this section, see Webb v. County Com'rs, 77 Me. 180.

Applied in In re Penley, 89 Me. 313, 36 A. 397; Peirce v. Bangor, 105 Me. 413, 74 A. 1039.

Quoted in part in Atlantic & St. Lawrence R. R. v. Cumberland County Com'rs, 51 Me. 36.

Stated in part in Adams v. Ulmer, 91 Me. 47, 39 A. 347.

Cited in Eden v. Hancock County Com'rs, 84 Me. 52, 24 A. 461; Kennebec Water District v. Waterville, 96 Me. 234, 52 A. 774.

Sec. 43. Removing growth and opening way. — The owners of land taken under the provisions of the preceding 8 sections shall be allowed not exceeding 1 year after the proceedings regarding the location are finally closed to take off timber, wood or any erection thereon. A time not exceeding 2 years shall be allowed for making and opening the way. (R. S. c. 79, § 40.)

Commissioners cannot restrict or enlarge time for removal of timber, etc.—The law allows one year to owners of land over which the road is located to take off wood, timber or erections. Nothing which the commissioners say will either enlarge or restrict the time, and it is entirely proper for them to remain silent upon the subject. Detroit v. Somerset County Com'rs, 52 Me. 210.

The time within which roads are to be made is to be prescribed by the county commissioners, and not by the towns whose duty it is to make the same. Blaisdell v. Portland, 39 Me. 113.

In the establishment of a new public highway, the allowance of a reasonable time not exceeding 2 years to make it passable, pursuant to this section, is indispensable. Ex parte Baring, 8 Me. 137.

And order allowing more than two years is void.—This section provides that, "a time not exceeding two years shall be allowed for making and opening the way." An order of the county commissioners allowing more than two years is void. Phippsburg v. Sagadahoc County Com'rs, 127 Me. 42, 141 A. 95.

If no time is prescribed by the county commissioners, the way must be opened within a reasonable time, which, under this section, cannot exceed two years. Blaisdell v. Portland, 39 Me. 113.

Way to be opened within two years notwithstanding appeal on question of damages.—It is evident from the express terms and clear implication of this section and others that it is the intention of the legislature that when a way has been duly located and established, the land taken is to be actually occupied and the road built and opened to public travel within two years from the location irrespective of the pendency of any appeals upon the question of damages. Otherwise it would be in the power of the landowner not only to delay the construction of the road, but to defeat the location of it altogether by taking an appeal upon the question of damages and delaying the final determination of it until the expiration of two years from the location of the road. State v. Fuller, 105 Me. 571, 75 A. 315.

Way may be opened before expiration of time allowed.—This section does not provide that ways shall not be opened until the expiration of two years, or the time allowed by the county commissioners within which to make them. There is no prohibition against towns opening roads as much earlier than the time allowed as they may think proper. Blaisdell v. Portland, 39 Me. 113.

Time commences from term when all proceedings should be closed.—The time allowed for making the road and to the landowners for taking off the growth is to commence from the term when all the proceedings in the original process should be closed. The commissioners cannot, by closing the proceedings sooner than is by law allowed, unlawfully shorten the times allowed. Inhabitants of Windham, Petitioners, 32 Me. 452.

Damages for soil and structure taken not separately estimated.—Damages for the soil and a structure thereon taken for a highway cannot be separately estimated under

this section, but the value, as it is when taken, is the proper subject of assessment. Ford v. Lincoln County Com'rs, 64 Me. 408.

Quoted in part in Kingman v. Penobscot County Com'rs, 105 Me. 184, 73 A. 1038.

Stated in State v. Fuller, 105 Me. 571, 75 A. 315.

Cited in Monson v. Piscataquis County Com'rs, 84 Me. 99, 24 A. 672; York Shore Water Co. v. Card, 116 Me. 483, 102 A. 321.

Sec. 44. Way discontinued before damages paid; proceedings. — When the way is discontinued before the time limited for the payment of damages, the commissioners may revoke their order of payment, and estimate the damages actually sustained and order them paid. Any person aggrieved may have them assessed by a committee or jury as herein provided. (R. S. c. 79, § 41.)

This section permits, through discontinuance proceedings, the practical abandonment of proceedings for laying out a way and provides for the assessment of such damages as may have been sustained under those conditions. York Shore Water Co. v. Card, 116 Me. 483, 102 A. 321.

Quoted in Furbish v. Kennebec County Com'rs, 93 Me. 117, 44 A. 364.

Sec. 45. Boundaries of highways or town ways fixed. — When the true boundaries of highways or town ways duly located, or of which the location is lost, or which can only be established by user, are doubtful, uncertain or lost, the county commissioners of the county wherein such highway or town way is located, upon petition of the municipal officers of the town wherein the same lies, shall, after such notice thereon as is required for the location of new ways, proceed to hear the parties, examine said highway or town way, locate and define its limits and boundaries by placing stakes on side lines at all apparent intersecting property lines and at intervals of not more than 100 feet and cause durable monuments to be erected at the angles thereof at the expense of the town wherein said highway or town way lies, make a correct return of their doings, signed by them, accompanied by an accurate plan of the way; and if any real estate is damaged by said action, they shall award damages to the owner as in laying out new highways, in the case of highways to be paid by the county and in the case of town ways to be paid by the town. Their return, made at the next regular statute session after the hearing, shall be placed on file and the case shall be continued to await a final decision respecting damages; sections 39 and 40 shall be applicable to appeals for increase of damages under this section. Said municipal officers shall maintain all highway or town way monuments and replace them forthwith when destroyed. If any appeal for increase of damages is taken and the commissioners are of opinion that their proceedings or any part thereof ought not to take effect, they shall enter a judgment that the prayer of the original petitioners or any part thereof, designating what part, is not granted for that reason. Upon such judgment no damages shall be allowed for that part of the prayer of the petitioners not granted, but the costs shall be paid by the county. (R. S. c. 79, § 42.)

Cross reference.—See note to § 35, re procedure under that section and § 38 distinct from procedure under this section and petition fulfilling, in part, requirements of this section and, in part, requirements of § 35, ineffectual.

Petition must be presented by municipal officers.—If a petition calls for relocation, as provided in this section, it must be presented by municipal officers, as provided in the section. So failing, it is faulty. Haile v. Sagadahoc County Com'rs, 140 Me. 16, 31 A. (2d) 925.

And the commissioners cannot, under this section, act on a petition by "responsible persons", as provided for in § 35. Haile v. Sagadahoc County Com'rs, 140 Me. 16, 31 A. (2d) 925,

No appeal except as to damages.—There is no statutory appeal to parties aggrieved by the decision of the county commissioners proceeding under this section, except as to damages. Haile v. Sagadahoc County Com'rs, 140 Me. 16, 31 A. (2d) 925.

Former provision of section.—For a case holding that the right of appeal for damages from proceedings under this section existed even when the section made no express provision therefor, see Conant, Appellant, 83 Me. 42, 21 A. 172.

Cited in Rounds v. Ham, 111 Me. 256, 88 A. 892.

Sec. 46. Call of meeting; notices.—When a petition is presented respecting a way in two or more counties, the commissioners receiving the petition, being satisfied as aforesaid, may call a meeting of the commissioners of all the counties, to be held at a time and place named, by causing an attested copy of such petition and of their order thereon to be served upon their chairmen; and they shall give notice of such meeting by causing a like copy to be published in the state paper and in 1 paper, if any, printed in every such county, and by posting it in 3 public places in each town interested and serving it on the clerk thereof. These notices shall be posted, served and published 30 days before the time of meeting. (R. S. c. 79, § 43.)

Section applicable to ways already located.—Two or more boards acting jointly have jurisdiction "respecting" this class of ways. "Respecting" must necessarily refer not only to such ways to be located, but also to such when already located. The language is unlimited in its meaning and so must be in its construction. State v. Oxford, 65 Me. 210.

Location of a highway to begin at the end of a town way which extends into another county does not constitute location "respecting a way in two or more counties." Millett v. Franklin County Com'rs, 81 Me. 257, 16 A. 897.

Applied in Detroit v. Somerset County Com'rs, 52 Me. 210.

Stated in In re Banks, 29 Me. 288.

Sec. 47. Proceedings.—Each county must be represented at such meeting by a majority of its commissioners. A majority of those present may decide upon the whole matter. The duty of carrying that judgment into effect shall be performed in each county by its own commissioners in the manner respecting ways wholly within it. When each county is not so represented, those present may adjourn the meeting to another time. (R. S. c. 79, § 44.)

The joint board is not a permanent court having records of its own, requiring its proceedings to be recorded in a county court. Inhabitants of Durham, Appellants, 117 Me. 131, 103 A. 9.

But the laying out of a way is a judicial act which is prima facie evidence of the doings therein recited, though attested by but one of the boards engaged in the proceedings. Inhabitants of Durham, Appellants, 117 Me. 131, 103 A. 9.

Jurisdiction of individual board and joint board not conflicting.—This chapter provides two distinct and separate tribunals for the location, alteration and discontinuance of highways; the commissioners for each county and those of two or more counties acting jointly. The jurisdiction of these two tribunals is not in any respect conflicting. The duty of the former is confined to roads in their own county, and no provision of law authorizes any jurisdiction beyond this. The duty of the latter relates to ways in two or more counties and is confined to such ways. There can be no conflict between two such tribunals. State v. Oxford, 65 Me. 210.

Road laid out under authority of one board does not satisfy section.—The existence of a road on the same route as that agreed upon by the joint board, laid out under authority of the commissioners of one county only, cannot answer the requirements of this section. Such location is merely carrying into effect the judgment of one board, which could alter the same, without the action of the joint board, and thereby defeat the object of this section. Sanger v. Kennebec County Com'rs, 25 Me. 291.

Over ways in two or more counties the joint board has exclusive jurisdiction, not only to locate, but also to alter or discontinue. State v. Oxford, 65 Me. 210.

And it does not avail to divide the roads into such parts that one of them may lie wholly within one of the counties. The tribunal which has jurisdiction of the whole must have it of each and every part of which that whole is composed. State v. Oxford, 65 Me. 210.

But each board may act separately in locating way.—Two or more boards of commissioners, after having decided to locate a way which will extend into their several counties, are not required by law to act jointly in making the location. Each board may act separately in locating so much of the way as lies within their county. Detroit v. Somerset County Com'rs, 52 Me. 210.

And damages estimated and paid by individual counties.—Several boards of county commissioners, when acting jointly, have nothing to do with the estimation of damages, except so far as they may be influenced thereby from a general view, in their adjudication upon the question of the convenience and necessity of the highway at the time of its alteration, location or dis-

continuance. Nor have they any power over verdicts or reports of committees determining the amounts which shall be allowed. This is all left to the action of the commissioners for the county in which the lands lie, and by which the damages are to be paid. Jones v. Oxford County, 45 Me. 419.

Joint board cannot revoke its former decision.—There is no statute which authorizes the joint boards of commissioners, after they have once performed their official duty in adjudicating upon the public convenience and necessity of the highway, to revoke their former decision or any part of it. Such subsequent action, whether for the reason of excessive damages or any other cause, is altogether unauthorized. It is coram non judice. The moment they complete their duty as required by this section their joint power over the subject matter ceases, and they can act no further except upon a new petition. Jones v. Oxford County, 45 Me. 419.

The boards are assembled to adjust and settle matters in which two or more counties are interested, and as soon as the joint problems are adjudicated the power of the joint body is exhausted, and it cannot change, amend or annul its own decision except on a new proceeding. Inhabitants of Durham, Appellants, 117 Me. 131, 103 A. 9.

And the judgment of the joint board cannot in any manner be annulled by one of the boards acting separately. After the adjudication of the joint board, the object sought cannot be defeated, except by the judgment of the same. The road thus adjudged to be of common convenience and necessity must be laid out accordingly. And the commissioners, who are charged by the statute with the duty of carrying such judgment into effect, can no more omit to make the location than they can discontinue such a road afterwards. Sanger v. Kennebec County Com'rs, 25 Me. 391.

Thus, when a road has been located by the joint action of two boards, one board cannot legally discontinue that part which lies within its own county. To allow such action would be to give a part of a tribunal the power to undo immediately that which it required the whole to establish. The power to create and destroy rests in the same tribunal. State v. Oxford, 65 Me. 210.

A highway established by the joint action of several boards of county commissioners cannot legally be discontinued by the separate action of any one of them. Jones v. Oxford County, 45 Me. 419.

This section does not leave it discretionary with the commissioners of one county, after an adjudication of common convenience and necessity by the joint board, to locate the road or not. Sanger v. Kennebec County Com'rs, 25 Me. 291.

All commissioners need not sign report.—This section requires that a majority of each board must be present at the session and that a majority of those in attendance may decide the whole matter. But it does not say that all must sign the report. No disgruntled minority, even if it represented an entire county, where three counties participated, can directly or indirectly defeat or annul the judgment of the majority. Inhabitants of Durham, Appellants, 117 Me. 131, 103 A. 9.

Sec. 48. Appeals.—When proceedings have been had by the county commissioners on a petition for laying out, altering, grading or discontinuing a way in two or more counties, an appeal may be taken in the manner provided in case of a way wholly in 1 county. (R. S. c. 79, § 45.)

Applied in Inhabitants of Durham, Appellants, 117 Me. 131, 103 A. 9.

Sec. 49. Proceedings in appeals.—When an appeal is taken as provided for in the preceding section, it shall be filed with the commissioners of, and subsequent proceedings shall be had in, the county where proceedings originated, and the commissioners with whom such appeal is filed shall immediately give notice of such appeal to the commissioners of all the counties interested, and the clerk of courts shall certify the final judgment of court to the commissioners of all said counties. (R. S. c. 79, § 46.)

Proceedings recorded in originating county.—Appeals shall be filed and subsequent proceedings be had in the county where the proceedings originated, the commissioners of which county shall notify the other counties. Proceedings are properly recorded in the originating county and the rights of appeal are governed by and dependent on that record. Inhabitants of Durham, Appellants, 117 Me. 131, 103 A. 9.

Requirement of notice is directory.—The requirement of this section of notice

from commissioners to their associate commissioners need be regarded as directory merely. Cambridge v. Piscataquis County Com'rs, 86 Me. 141, 29 A. 960.

Sec. 50. Way opened within time limited.—When a town way, private way or highway is wholly or partly discontinued by the county commissioners, a time shall be fixed for it, and when laid out by them the way shall be regarded as discontinued if not opened within 6 years from the time allowed therefor. When town or private ways are finally located by municipal officers, unless the land is entered upon and possession taken for said purpose within 2 years after the laying out or alteration, the proceedings are void. (R. S. c. 79, § 47.)

The time for opening a road must run from the final action of the tribunal having jurisdiction. Coombs v. Franklin County Com'rs, 71 Me. 239.

Opening of part prevents discontinuance of that part.—The opening of a specific part of a highway, within six years from the time allowed, prevents the discontinuance of that part, when another portion of the same location has not been opened and is discontinued. State v. Madison, 59 Me. 583.

A fair construction of this section requires that such parts of a location as have been opened and traveled so as to be properly called a road or highway should not be deemed discontinued. State v. Madison, 59 Me. 538.

Road held not "opened."—It cannot be said with propriety that the road has been "opened," as a whole, when nothing at all has been done to that entire portion which constitutes three-fourths of it, and the remainder was a road open and used before, as such. State v. Cornville, 43 Me. 427.

What must be done to constitute an opening of the road within the meaning of this section is not precisely defined. But a highway located, and a large portion thereof so neglected that no work has been done thereon, and put to no use as a way, for more than six years after it should have been opened and made passable, cannot be treated as "opened." State v. Cornville, 43 Me. 427.

Road held "opened."—See Baker v. Runnels, 12 Me. 235.

No considerable amount of work need be done in building a road over the way as located. What this section requires is that the way should be taken possession of by the proper authorities within the time mentioned, "for said purpose," that is, for the purpose of a way. Hussey v. Bryant, 95 Me. 49, 49 A. 56.

Stated in part in Heald v. Moore, 79 Me. 271, 9 A. 734.

Cited in In re Railroad Com'rs, 91 Me. 135, 39 A. 478.

Sec. 51. Highways opened when towns neglect; expenses.—When a town way or highway is not opened and made passable by the town liable or a hill therein has not been graded within the time prescribed therefor by the commissioners, they may, after notice to the town, cause it to be done by an agent, not one of themselves, on petition of those interested. The agent shall make a written contract therefor and file a copy of it in the clerk's office; and the commissioners shall forthwith certify to the assessors of the town interested, the time when such contract is to be completed and the amount to be paid therefor. They may examine the doings of their agent and at pleasure remove him and appoint another. His account shall not be allowed without notice to the town. When the contract has been completed and the accounts allowed, the town shall pay the amount expended, with the expenses of the agent for superintendence, and for procuring the allowance of his account. If the town neglects to pay for 30 days, a warrant of distress shall be issued by the commissioners to collect the same. (R. S. c. 79, § 48.)

The power to cause a way to be opened by a town is not a part or a continuation of the commissioners' duty to locate, and which their board can exercise suo motu. Such action can be set in motion under this section only by a distinct process, "on a petition of those interested," and "on a notice to the town," which has neglected its duty in the premises. Millett v. Franklin County Com'rs, 80 Me. 427, 15 A. 24.

The county commissioners should give notice to the town before proceeding to the allowance of the accounts of the agent. Page, Petitioner, 37 Me. 553.

The county commissioners cannot intervene to appoint an agent to open a road

which they have discontinued. Coombs v. Franklin County Com'rs, 71 Me. 239.

Failure of commissioners' return to state when work to be done precludes proceeding under this section.—See note to § 38.

Petition under this section is subsequent stage of original location proceedings.—While the petition for the appointment of an agent to build a legally located way, which the town liable has neglected to open, is a new process and the foundation of a judgment which does not become a part of the recorded proceedings of the location, nevertheless, it is a subsequent stage of the same subject matter, being one of the modes of executing the decision of the commissioners. Brown v. Mosher, 83 Me. 111, 21 A. 835.

And hearing may be had in vicinity of locus.—When a petition for location is before the commissioners, the statute requires of them a personal view, in order that they might thereby acquire a full knowledge of the nature and situation of the premises, and a hearing on its merits in the vicinity for the obvious accommodation and convenience of all the parties and persons interested, and thereby save the unnecessary expense and trouble of traveling to and from the shire town. (See § 38 and note). And, in the absence of any statutory prohibition, the commissioners have discretionary power, on proper notice to the parties, to have the hearing on a petition under this section in the vicinity of the locus. Brown v. Mosher, 83 Me. 111, 21 A. 835.

Agents may be appointed at an adjourned term, because the section does not require that commissioners should act upon such proceedings at the times prescribed by law. Brown v. Mosher, 83 Me. 111, 21 A. 835.

And his account allowed at adjourned term.—The parties interested in the settlement of an agent's account for opening a road may be cited to appear at an adjourned term of the board of county commissioners and such account may lawfully be allowed at such adjourned term. Sumner v. Oxford County Com'rs, 37 Me. 112.

If a town, being liable to open and make the road, has neglected so to do, its liability attaches. Page, Petitioner, 37 Me. 553.

And the warrant of distress can issue only against the town originally liable and guilty of neglect. Page, Petitioner, 37 Me. 553.

Warrant of distress not part of record.—The warrant of distress issued by county commissioners under this section is no part of the record to be presented in a writ of certiorari. Sumner v. Oxford County Com'rs, 37 Me. 112.

And omission in record of amount of warrant not fatal.—If no formal judgment is found upon the county commissioners' records of the amount of a distress warrant by them issued, and the sum for which it is issued is properly ascertained, it will not impair their proceedings. Such omission may be considered as chargeable to their clerk. Sumner v. Oxford County Com'rs, 37 Me. 112.

A warrant of distress under this section is to issue for such amount as the commissioners might allow on the settlement of the agent's accounts, after notice to the town, for sums expended on the work, and "expenses of the agent for superintendence and for procuring the allowance of his account." Waterville v. Barton, 64 Me. 321.

And warrant issues for use and benefit of agent.—A warrant of distress which refers to a judgment which "we" have recovered for a certain sum of money "expended by said county," etc., and requires that sum with additional sums called "costs" to be levied and "paid unto our treasurer of our county" is irregular and void. It is the town whose delinquency makes the expenditure of money under the direction of an agent necessary and is liable for the costs of the work and the expenses and services of the agent. It is the agent's accounts which are allowed. It is for his use and benefit that the warrant of distress is to issue. Waterville v. Barton, 64 Me. 321.

And judgment should not run in favor of commissioners or county.—The commissioners have no authority to render any judgment except for the sums which they might allow, and it should run in favor of the agent and not in favor of themselves or the county which they represent. Waterville v. Barton, 64 Me. 321.

There is no force in an objection that nothing can be allowed to the agent for the construction of a way because he has in fact paid out nothing, and, by the terms of the contract with those who did the work, is not to be responsible personally to them, they assuming the risk and delay incident to collecting of the reluctant town through legal process. The expenditure has been made and under the direction of the agent lawfully appointed by the commissioners, because the town neglected its duty in the premises. And the payment of the expense thus incurred can properly

be enforced by warrant of distress for the benefit of whom it might concern in the name of the agent. The allowance of the agent's accounts by the commissioners after due notice to the town, is tantamount to a judgment against the town, the record of which may be extended if deficient. Waterville v. Barton, 64 Me. 321.

Interest recoverable on sum allowed agent.—Under § 31, interest is recoverable on such sum as the commissioners allow upon the accounts of an agent acting under this section for the amount expended in the construction of the way, and for his services in superintending the same and his expenses in procuring the allowance of the accounts. Waterville v. Barton, 64 Me. 321.

Notwithstanding warrant prematurely issued.—The fact that the original warrant was wrongfully issued before the expiration of the thirty days and without the twenty days' notice from the clerk (§ 31), can make no difference in the obligation of the town to pay interest from the time when they were in default. Waterville v. Barton, 64 Me. 321.

Liability of town does not accrue until expiration of time fixed for completion of contract.—It is not in the power of the agent appointed or the party with whom he contracts, by finishing his work and procuring the allowance of his accounts within the time fixed for the completion of the contract, to hasten the day of payment. The town is to be notified, when the contract is made, of the time fixed for its completion. The true construction of this section is that the liability of the town to pay accrues only at the expiration of the time so fixed, although the sum due under the contract and for the expenses of the agent may have been previously ascertained, and no warrant of distress can lawfully issue unless the town neglects to pay for thirty days thereafter. Waterville v. Barton, 64 Me. 321.

And judgment for costs and interest for time prior thereto not authorized.—Under this section, the commissioners have no authority to render judgment for costs or for interest for a time prior to the time fixed for the completion of the contract. Waterville v. Barton, 64 Me. 321.

Certiorari not proper remedy for issuance of warrant prematurely.—If a warrant of distress under this section has been prematurely issued and an attempt made wrongfully to enforce it, certiorari is not the proper remedy. Howland v. Penobscot County Com'rs, 49 Me. 143.

Stated in part in Waterville v. Kennebec County Com'rs, 59 Me. 80.

Cited in Woodman v. Somerset County, 25 Me. 300; Kingman v. Penobscot County Com'rs, 105 Me. 184, 73 A. 1038; Blaisdell v. York, 110 Me. 500, 87 A. 361.

Sec. 52. Record location of highway when lost or disregarded by agent; proceedings to stop work.—When a highway is laid out through a town and an agent appointed by the county commissioners to open and make it, and the record location thereof cannot be found on the face of the earth or consistently applied thereto or said agent is not making said highway according to the record location, the municipal officers or town agent may file a bill in equity in the supreme judicial or superior court setting forth the facts aforesaid and praying an injunction to stay the proceedings of said road agent; and any justice of either of said courts shall issue a summary notice to said road agent to appear before him to answer said petition and on a hearing of the parties, may issue a temporary injunction upon such terms and conditions as he deems reasonable; and subsequent proceedings on the bill shall be similar to proceedings in equity in other cases. (R. S. c. 79, § 49.)

Sec. 53. Organized plantations liable as towns and have same powers.—Organized plantations have like powers and are subject to like liabilities and penalties as towns, respecting ways. Their assessors have like powers and shall perform like duties as municipal officers of towns, respecting them. (R. S. c. 79, § 50.)

Cross reference.—See c. 101, § 10, re return of inventory of polls and estates for basis of taxation.

Applied in Barnard v. Argyle, 20 Me. 296.

Sec. 54. Damages.—A person entitled to receive payment of damages or

costs may, after 30 days from demand on the treasurer of the county or town or on the party liable therefor, recover them in an action of debt. (R. S. c. 79, § 51.)

Applied in Jones v. Oxford County, 45 Me. 419; Fernald v. Palmer, 83 Me. 244, 22 A. 467.

Stated in State v. Fuller, 105 Me. 571, 75 A. 315.

Cited in Rines v. Portland, 93 Me. 227, 44 A. 925.

Sec. 55. Highways in unorganized territory; hearing.—The county commissioners, on petition as provided in section 35, may lay out, alter or discontinue a highway on any tract of land in their county not within any town or plantation required to raise money to make and repair highways; and all expenses for making and opening the same shall be paid by the owners thereof, excluding lands reserved for public uses, in proportion to their interest in the lands over any part of which it is laid, except as provided in section 63.

If the county commissioners think that there ought to be a hearing, they shall cause notice to be given of the time and place appointed therefor, by service of an attested copy of the petition with their order thereon, upon the state highway commission and upon the owners of such lands, if known, 14 days before that time, and if unknown, by a publication thereof in any paper published in the county, or in the state paper if no paper is published in the county, for 6 successive weeks, the last, 30 days before that time. The names of the petitioners shall be printed by giving the name of the first signer and signifying how many others signed, as "John Doe and 20 others." No proceedings shall take place until it is proved that such notice has been given.

After hearing the parties at the time and place appointed, they may proceed as provided in section 38. (R. S. c. 79, § 52. 1949, c. 322, § 2.)

Cross reference.—See c. 54, § 33, re money raised for highways in unincorporated townships.

Where the notice required by this section is not given, the proceedings are defective, in limine. Ware v. Penobscot County Com'rs, 38 Me. 492.

The county commissioners have no jurisdiction to lay out a road or make an assessment under this section, if no notice is given to the owners of the land of the pendency of the petition for the laying out of the road, and of the time and place appointed for a hearing thereon. Haines v. Great Northern Paper Co., 110 Me. 422, 86 A. 841.

Commissioners must decide at whose expense way to be located.—Where it appears on inspection of the copies of the record before the court that the county commissioners did not decide at whose expense a part of the highway located across a certain township was to be made, the proceedings cannot be sustained. Ware v. Penobscot County Com'rs, 38 Me. 492.

The proceedings of the county commissioners, under this section, in laying out a road over unorganized lands, and over a number of townships, must show at whose expense such road is laid out over any one of the townships; whether at the expense of the proprietors of such township, or of the county, or partly at the expense of each; nor is it competent for the commissioners to order that one of such townships shall pay the expenses of opening and making such road through other townships. Howe v. Aroostook County Com'rs, 46 Me. 332.

Former provision of section.—For a consideration of this section when it provided for payment by landowners of their proportion of the expense in labor, see Pierce v. Franklin County Com'rs, 63 Me. 252.

Applied in Philbrook v. Kennebec County, 17 Me. 196; Smith v. Bodfish, 27 Me. 289; Longfellow v. Quimby, 29 Me. 196; Pingree v. Penobscot County Com'rs, 30 Me. 351; Mansur v. Aroostook County Com'rs, 83 Me. 514, 22 A. 358.

Cited in Burns v. Annas, 60 Me. 288; Appleton v. Piscataquis County Com'rs, 80 Me. 284, 14 A. 284.

Sec. 56. Appeal; appointment of committee; duties; report.—Any party interested in such decision under the provisions of section 55 may appeal therefrom to the superior court in said county, to be entered at the term thereof first held after such decision. All further proceedings before the commissioners shall be stayed until a decision is made in the appellate court. If no person appears at that term to prosecute the appeal, the judgment of the commissioners

shall be affirmed. If the appeal is then entered, not afterwards, the court may appoint a committee of 3 disinterested persons, who shall be sworn, and if one of them dies, declines or becomes interested, the court shall appoint another in his place and they shall cause notice to be given of the time and place of hearing before them by publication thereof in the state paper for 6 successive weeks, the last publication to be 14 days at least before the day of hearing, and personal notice to the appellant and to the chairman of the county commissioners, 30 days at least before the time set for hearing; they shall view the route, hear the parties and make their report at the next or 2nd term of the court after their appointment, whether the judgment of the commissioners should be in whole or in part affirmed or reversed, which, being accepted and judgment thereon entered, shall forthwith be certified to the clerk of the commissioners. If the judgment of the commissioners in favor of laying out, grading or altering a way as prayed for is wholly reversed on appeal, the commissioners shall proceed no further. If their judgment is affirmed in whole or in part, they shall carry into effect the judgment of the appellate court; and in all cases, they shall carry into full effect the judgment of the appellate court in the same manner as if made by themselves; and the party appealing or prosecuting shall pay the costs incurred since the appeal, if so adjudged by the appellate court, which may allow costs in such cases to the prevailing party to be paid out of the county treasury. The committee shall be allowed a reasonable compensation for their services, to be fixed by the court upon the presentation of their report and paid from the county treasury upon the certificate of the clerk of courts. The costs allowed to the prevailing party and the fees of the committee shall be collected as provided in section 37. (R. S. c. 79, § 53. 1949, c. 349, § 114.)

No time is stated in this section within which the appeal must be taken. But, as the appeal is to be entered in the superior court at the term thereof first held after the decision of the commissioners, the implication is that it may be notified to the clerk of their court on any day before the first day of the term of court to which the appeal is taken. Appleton v. Piscataquis County Com'rs, 80 Me. 284, 14 A. 284.

This section intended a committee that could act, and limited the time of their report to the second term after their appointment. Shaw v. Piscataquis County Com'rs, 91 Me. 102, 39 A. 468.

Committee acts only on judgment concerning location, etc., of way.—The committee provided for by this section is to view the route, hear the parties, and report whether the "judgment" of the county commissioners shall be in whole or in part affirmed or reversed. The "judgment" here referred to is the judgment of the county commissioners in determining whether or not the way shall be located, altered or discontinued, as prayed for in the petition to them, and not to their judgment in making the assessment necessary to open and build the road in case one is located. This section does change § 63 declaring how the tax required to build a legally located way shall be assessed and the assessment is to be made under the provisions of that section. Hodgdon v. Aroostook County Com'rs, 72 Me. 246.

And does not make assessment.—This section does not change the provisions of § 63 so as to require the committee to make the assessment necessary for opening a road in an unincorporated township, instead of the county commissioners. Hodgdon v. Aroostook County Com'rs, 72 Me. 246.

Act purporting to repeal section.—For a discussion of the effect of an act (P. L. 1874, c. 171) purporting to repeal this section, see Coe v. Aroostook County Com'rs, 64 Me. 31.

Applied in Prentiss v. Aroostook County Com'rs, 63 Me. 569.

Quoted in part in Irving v. Sagadahoc County Com'rs, 59 Me. 513.

Cited in In re Hadlock, 142 Me. 116, 48 A. (2d) 628.

Sec. 57. No new petition for 1 year.—If the final decision of the commissioners or of the committee is against the prayer of the petition provided for in section 55, no new petition for the same road shall be entertained by the commissioners for 1 year thereafter. (R. S. c. 79, § 54.)

Stated in Cole v. Cumberland County Com'rs, 78 Me. 532, 7 A. 397.

Sec. 58. Highways laid out, altered or discontinued on same petition; appeal. — County commissioners in their counties may, upon the same petition, lay out, alter or discontinue highways through a town or towns or a plantation or plantations and tracts of land not in any town or plantation; and in respect to that part of the highway situate in any town or plantation required by law to raise money to make and repair highways, the same proceedings shall be had as are now provided by law in case of a petition to lay out, alter or discontinue highways leading from town to town; and in respect to that part of the highway not situate in any town or plantation required by law to raise money to make and repair highways, the same proceedings shall be had as are now provided by law in case of a petition to lay out, alter or discontinue a highway in places not incorporated. The time and place of hearing upon such petition shall be according to the provisions of section 55; in case of an appeal to the superior court, the appeal may be made at any time after the return of the commissioners has been placed on the files and before the next term of said court in the county; and the proceedings upon the appeal shall be according to the provisions of section 56. If no appeal is made, the case shall be continued to the next regular term after the regular term to which the return is made. (R. S. c. 79, § 55.)

Applied in Haines v. Great Northern Paper Co., 110 Me. 422, 86 A. 841.

Cited in In re Hadlock, 142 Me. 116, 48 A. (2d) 628.

Sec. 59. Petition for laying out highway; appeal; stay of proceedings.—Parties interested may appear, jointly or severally, at the time of hearing before the commissioners on a petition for laying out, altering, grading or discontinuing a highway; and any such party may appeal from their decision thereon at any time after it has been placed on file and before the next term of the superior court in said county, at which term such appeal may be entered and prosecuted by him or by any other party who so appeared. All further proceedings before the commissioners shall be stayed until a decision is made in the appellate court. (R. S. c. 79, § 56.)

Cross references.—See note to § 39, re modification of that section by this section; c. 96, § 73, re damages for land taken for highway purposes.

Appeals from the decision of the county commissioners are exclusively regulated by statute. Webster v. Androscoggin County Com'rs, 64 Me. 434.

And no such appeals are allowable unless they are authorized by the statute. Webster v. Androscoggin County Com'rs, 64 Me. 436.

Section strictly construed.—Statutes such as this section, allowing an appeal from the commissioners, should be strictly construed. Webster v. Androscoggin County Com'rs, 64 Me. 436.

This section is mandatory, and strict compliance with its terms is necessary. Tuttle, Appellant, 131 Me. 475, 164 A. 541.

And noncompliance renders commissioners' location final.—If the appellant fails to take or enter his appeal in accordance with the provisions of this section, the location of the way by the county commissioners is final. Tuttle, Appellant, 131 Me. 475, 164 A. 541.

An appeal on location must be taken after the return is placed on file, and before the next term of the superior court. Boston & Maine R. R. v. York County Com'rs, 78 Me. 169, 3 A. 273.

The appeal is to the superior court and may be made at any time after the filing of the decision of the county commissioners before the next ensuing term of the superior court in the county, at which term the appeal shall be entered and prosecuted. Haile v. Sagadahoc County Com'rs, 140 Me. 16, 31 A. (2d) 925. See Tuttle, Appellant, 131 Me. 475, 164 A. 541.

This section authorizes an appeal "before the next term of the superior court." It cannot be construed to sanction an appeal after or during such term. Webster v. Androscoggin County Com'rs, 64 Me. 436.

By this section, all parties interested who appear at the time of hearing before the county commissioners may appeal. Hanson, Appellant, 51 Me. 193.

And it is only because parties are interested that they have the right to appeal under this section. Clifford, Appellant, 59 Me. 262.

And the county commissioners are not

parties in an appeal from their decision. Selectmen of Ripley, Appellants, 39 Me. 350.

Hearing referred to is that fixed in notice under § 36.—By the provisions of this section, any party appearing "at the time of hearing before the commissioners . . may appeal from their decision thereon at any time after it has been placed on file," etc. This "hearing" can be no other than that fixed in the notice referred to in § 36, for no other is provided. Moore, Appellant, 68 Me. 405.

Appeal allowable only from final decision of commissioners. — The only decision which is to be returned and placed on file is that which results from the hearing after notice given, and refers to the granting or refusal of the petition upon its merits after the view as well as the hearing. Hence, an appeal is allowable only from the final decision of the commissioners, which they thus return and place on file, and not from a preliminary adjudication, which may perhaps properly be a matter of record, but can for no purpose be made a matter of return to be placed on file to await ulterior proceedings. Moore, Appellant, 68 Me. 405.

And not from decision as to responsibility of petitioners and expediency of inquiry.—If the commissioners are not satisfied of the responsibility of the petitioners, or of the expediency of an inquiry into the merits, no further proceedings can be had. This section does not authorize an appeal on these preliminary questions. Moore, Appellant, 68 Me. 405.

This section suspends, during the pendency of the appeal, all proceedings of the county commissioners, at the point reached by them when the appeal is taken. Smith v. Cumberland County Com'rs, 42 Me. 395.

And application for damages not received during pendency of appeal.—This section requires all proceedings before the commissioners to be stayed until a decision is made in the appellate court. During that stay no applications for the allowance of damages can be received. Such applications are necessarily to be withheld until the doings of the appellate court have been certified to the commissioners. Inhabitants of Windham, Petitioners, 32 Me. 452.

History of section.—See Inhabitants of Brunswick, Appellants, 37 Me. 446; Gray v. Cumberland County Com'rs, 83 Me. 429, 22 A. 376.

Former provision of section.—For a consideration of a former provision of this section providing for appeal after the decision of the commissioners was "entered of record," see Russell v. Franklin County Com'rs, 51 Me. 384.

For cases concerning the effect of the amendment which changed the time for appealing from any time after the return of the commissioners has been entered of record to any time after it has been filed on cases then pending, see Webster v. Androscoggin County Com'rs, 63 Me. 27; Webster v. Androscoggin County Com'rs, 64 Me. 434.

Applied in Millett v. Franklin County Com'rs, 81 Me. 257, 16 A. 897.

Cited in Prentiss v. Aroostook County Com'rs, 63 Me. 569; French v. Oxford County Com'rs, 64 Me. 583; Millett v. Franklin County Com'rs, 81 Me. 257, 16 A. 897; Adams v. Ulmer, 91 Me. 47, 39 A. 347.

Sec. 60. Proceedings on appeal.—If no person appears at that term to prosecute the appeal provided for in section 59, the judgment of the commissioners may be affirmed. If the appeal is then entered, not afterwards, the court may appoint a committee of 3 disinterested persons, who shall be sworn, and if one of them dies, declines or becomes interested, the court may appoint some suitable person in his place; and they shall give such notice as the court has ordered, view the route, hear the parties and make their report at the next or 2nd term of the court after their appointment, whether the judgment of the commissioners should be in whole or in part affirmed or reversed; which, being accepted and judgment thereon entered, shall forthwith be certified to the clerk of the commissioners. (R. S. c. 79, § 57.)

I. General Consideration.

II. Committee.

- A. In General.
- B. When Appointed.
- C. Vacancies.
- D. Must Be Disinterested.
- E. Report.

Cross Reference.

See c. 96, § 73, re damages for land taken for highway purposes.

I. GENERAL CONSIDERATION.

The "appeal" named in this section is the appeal authorized by § 59. It can reasonably refer to no other appeal. Gray v. Cumberland County Com'rs, 83 Me. 429, 22 A. 376.

An appeal from the county commissioners to the court opens the whole proceedings upon the petition for revision, and not merely such part of them as was embodied in a formal judgment of the county commissioners. Winslow v. County Com'rs, 31 Me. 444.

And committee acts on judgment which operates on entire route.—When the committee is required to report whether, in their opinion, the judgment of the county commissioners should be in whole or in part affirmed, such judgment must be intended as would operate upon the whole route. Winslow v. County Com'rs, 31 Me. 444; Irving v. Sagadahoc County Com'rs, 59 Me. 513.

This section does not authorize the court, on an appeal, to do otherwise than to appoint the committee, act upon their report and, upon its acceptance, to enter judgment and forthwith certify the same to the commissioners, who, in their subsequent proceedings, are to be controlled by such judgment. Inhabitants of Brunswick, Appellants, 37 Me. 446.

And court must enforce committee's adjudication as its own.—When the report of the committee is accepted and judgment entered thereon, and is certified to the commissioners, the case will stand precisely the same as if the commissioners had, themselves, made the same adjudication; and it will become their duty to carry the judgment of the appellate court into full effect, as if made by themselves. Cole v. Cumberland County Com'rs, 78 Me. 532, 7 A. 397.

Applied in Peaks v. Piscataquis County Com'rs, 112 Me. 318, 92 A. 175.

Quoted in part in Boston & Maine R. R. v. York County Com'rs, 78 Me. 169, 3 A. 273.

II. COMMITTEE.

A. In General.

Committee exercises same function as commissioners. — Committees on appeal exercise the same function, whether considered judicial or administrative, that county commissioners exercise in the first instance, and the same test of qualification applies to both. Andover v. Oxford County Com'rs, 86 Me. 185, 29 A. 982.

Committee may act by majority.—While the statute provides that the county commissioners may act by majority (see § 9), it is silent as to the committee, which, on appeal, is appointed to revise their proceedings. But c. 10, § 22, sub-§ III, provides that words, giving authority to three or more persons authorize a majority to act, when the enactment does not otherwise determine. Hence, where all of the committee acts, it is competent for two of the committee to decide questions before it, the third not agreeing with them. Acton v. York County Com'rs, 77 Me. 128.

Objection that committee not sworn must be made before report made.—A committee appointed under this section should be sworn before fixing upon a time and place for hearing the parties. But if the oath is not taken until the time for the hearing arrives, this objection must be then made, or it will be considered as waived. It comes too late, after they make their report. Raymond v. Cumberland County Com'rs, 63 Me. 110.

This section nowhere authorizes the committee to decide abstruse questions of law, such as the constitutional existence of the board of county commissioners, but "to view the route." Inhabitants of Brunswick, Appellants, 37 Me. 446.

Nor to lay out way and assess damages.—The doings of the committee are limited by this section to viewing the route, hearing the parties and reporting seasonably whether the judgment of the commissioners shall be in whole or in part affirmed or reversed. It does not appear to be any part of their duty to lay out the road or to assess damages to be paid to those who may be injured by the location of the road over their land. Irving v. Sagadahoc County Com'rs, 59 Me. 513.

Committee may proceed to view the route, etc., notwithstanding exceptions pending.—The provisions of this section are mandatory. As the law requires the committee to make their report at the next or second term of the court after their appointment, the committee may proceed to view the route and give the parties a hearing, notwithstanding exceptions touching questions of law raised in the case, are pending in the court. Millett v. Franklin County Com'rs, 81 Me. 257, 16 A. 897.

B. When Appointed.

The committee must be appointed at the term when the appeal is entered. Belfast v. Waldo County Com'rs, 67 Me. 530.

Upon appeals from the county commissioners, the committee contemplated in this section must be appointed during the term in which such appeal is entered. The only contingencies in which a subsequent appointment can be made are those provided for in the statute, viz: where one of the committee dies, refuses to act or becomes interested. These do not embrace a case where, for any cause, the presiding judge fails to make an appointment at the first term. French v. Oxford County Com'rs, 64 Me. 583.

And it is for the appellant, to see to it that a competent committee is designated at the term when his appeal is entered. Friend v. Abbott, 56 Me. 262; French v. Oxford County Com'rs, 64 Me. 583.

If no committee is appointed at the first term, the appeal is liable to be dismissed on motion of the respondent at any subsequent term. French v. Oxford County Com'rs, 64 Me. 583.

C. Vacancies.

Provision as to substitute committeeman not designed to protect against mistakes.—The design of the provision concerning the appointment of a substitute committeeman is to prevent the failure of the appeal by reason of casualties that could not be foreseen or prevented, not to protect the party against the consequences of mistakes which reasonable vigilance might have avoided. Friend v. Abbott, 56 Me. 262.

Causes listed for which new committeeman appointed are exclusive.—The legislature having specified the causes for which a new committee may be appointed, it passes the proper limits of construction for the court to add to them another not named in the act. Friend v. Abbott, 56 Me. 262.

Vacancy on committee filled at term when it occurs.—The same degree of diligence is required in filling vacancies on the committee as in the original appointment of the committee. The vacancy should be filled at the term when it occurs. Belfast v. Waldo County Com'rs, 67 Me. 530.

D. Must Be Disinterested.

It is for the appellants to see that no one should be appointed on the committee, to whom there can be any legal objection, particularly when no other parties are present at the appointment. Clifford, Appellant, 59 Me. 262.

Any interest renders person incompetent to serve on committee.—This section provides for the appointment of "a committee of three disinterested persons" to pass upon such cases, and it is well settled that any interest, however small, is sufficient to render one who is required to act in a judicial capacity incompetent. Friend, Appellant, 53 Me. 387.

And stockholder in company owning land over which way passes is incompetent.—Where the land over which a road is laid by the county commissioners is owned by a railroad company, a stockholder in said company is not disinterested, and cannot be appointed on the committee. Friend, Appellant, 53 Me. 387.

As is person related to interested party.—This section requires a disinterested committee. In such case a relationship to the party interested by consanguinity or affinity within the sixth degree, according to the rules of the civil law, or within the degree of second cousins inclusive, except by the written consent of the parties, will disqualify. Clifford, Appellant, 59 Me. 262. See c. 10, § 22, sub-§ XXV.

But liability for taxation is not disqualification.—Liability for taxation in the town or county where the road is laid does not disqualify a person from serving on the committee under this section. Andover v. Oxford County Com'rs, 86 Me. 185, 29 A. 982.

The ownership of land liable to taxation in a town through which a highway has been laid by the committee appointed on appeal from the county commissioners will not disqualify a member of such committee from acting, no part of such land having been taken for the way. Andover v. Oxford County Com'rs, 86 Me. 185, 29 A. 982.

Record not quashed for failure to state committee disinterested.—Where the record omits to state that a committee, appointed by the appellate court to report upon the doings of county commissioners, were disinterested men, this technical defect may be corrected by amendment. It would not authorize the court to quash the record. Smith v. Cumberland County Com'rs, 42 Me. 395.

E. Report.

Report of committee must be made at term specified.—The language of this section is emphatic and admits of no construction. It is, that the committee shall report at the next or second term after their appointment. If this provision, which was made for the purpose of avoiding delay, is not complied with all subsequent proceedings in the appellate court are irregular and void. Inhabitants of

Windham, Petitioners, 32 Me. 452; Belfast, Appellant, 53 Me. 431.

If the report of the committee is not made at the term named in the section, the court has no jurisdiction, and even the acceptance of the report by the court is of no avail. Belfast, Appellant, 53 Me. 431.

Notwithstanding agreement of parties to contrary.—That the parties interested agreed in writing that the committee might, in a certain contingency, withhold their report beyond the second term does not give the court jurisdiction to accept the report beyond the second term. Consent of parties cannot confer a jurisdiction which is excluded by law. Belfast, Appellant, 53 Me. 431.

Or mistake or error.—This section does not give authority to the court to allow an entry, or to receive a report from the committee after the time prescribed, in cases of mistake or error. Belfast, Appellant, 53 Me. 431.

Committee's report not impeached except for error, fraud, etc.—To the committee appointed under this section are delegated certain powers, and over their acts the court has no other control than that of the acceptance or rejection of their report, which, like the report of referees appointed by the court, cannot be impeached except for error, fraud or gross partiality. Inhabitants of Brunswick, Appellants, 37 Me. 446.

Sec. 61. Judgment on appeal.—If the judgment of the commissioners in favor of laying out, grading or altering a way, as prayed for, is wholly reversed on appeal, they shall proceed no further; and in all cases when the judgment of the commissioners is reversed on appeal, no petition praying, substantially, for the same thing shall be entertained by them for 2 years thereafter. If their judgment is affirmed in whole or in part, they shall carry into effect the judgment of the appellate court; and in all cases they shall carry into full effect the judgment of the appellate court in the same manner as if made by themselves; and the party appealing or prosecuting shall pay the costs incurred since the appeal, if so adjudged by the appellate court, which may allow costs in such cases to the prevailing party, to be paid out of the county treasury. The committee provided for in section 60 shall be allowed a reasonable compensation for their services, to be fixed by the court upon the presentation of their report and paid from the county treasury upon the certificate of the clerk of courts. The costs allowed the prevailing party and the fees of the committee shall be collected as provided in section 37; provided, however, that this section shall not apply to any case where the judgment has been reversed on account of informality in the proceedings. (R. S. c. 79, § 58.)

Cross reference.—See c. 96, § 73, re damages for land taken for highway purposes.

The "appeal" named in this section is the appeal authorized by § 59. It can reasonably refer to no other appeal. Gray v. Cumberland County Com'rs, 83 Me. 429, 22 A. 376.

Commissioners must carry out judgment of court.—Where the committee is appointed by the court and makes a report affirming the doings of the commissioners establishing the way, and the report is accepted by the court and the judgment thereon certified to the county commissioners, the duty of that board then becomes imperative. They must proceed to lay out the way according to the judgment of the court. Wayne v. Kennebec County Com'rs, 37 Me. 558.

If the decision of the appellate court is wholly against the location, alteration or discontinuance, no further proceedings can be had by the county commissioners in the premises. But if, on the other hand, the proceedings of the commissioners are affirmed, in whole or in part, then it becomes their duty to proceed in conformity with such decision, and lay out, alter or discontinue such highway, in whole or in part, as such judgment may be. That is to say, the commissioners are to proceed from the point which they had reached, when their proceedings were suspended by the interposition of the appeal, and complete the laying out, alteration or discontinuance of such highway, in accordance with the decision of the appellate court. Smith v. Cumberland County Com'rs, 42 Me. 395.

Upon a decision by the appellate court approving the location of the way, the commissioners are required to carry it into effect as if made by themselves. Adams v. Ulmer, 91 Me. 47, 39 A. 347.

And mandamus will issue upon refusal.—When county commissioners refuse to carry into effect a judgment of the appel-

late court, rendered upon the report of a committee appointed in case of appeal from their decision, refusing to lay out and establish a highway, the court may issue a writ of mandamus, requiring them to carry into effect the judgment of the court. Irving v. Sagadahoc County Com'rs, 59 Me. 513.

When the judgment of the appellate court is received by the commissioners, spread upon their record and the judgment made up accordingly and recorded, they have then carried it into full effect "in the same manner as if made by themselves." Millett v. Franklin County Com'rs, 80 Me. 427, 15 A. 24.

Report sufficiently definite to guide commissioners.—The committee's report that the "proceedings of the commissioners" in discontinuing a way be reversed in part (describing the part), "and the residue of the proceedings of the commissioners be affirmed," is tantamount to declaring that the "judgment" of the commissioners be reversed as to the part described, and affirmed as to the remainder, and is sufficiently definite as a guide to the commissioners in the subsequent proceedings required by law. Coombs, Appellant, 68 Me. 484.

Limitation as to subsequent petition not applicable when judgment affirmed.—The provision of this section that "no petition praying, substantially, for the same thing shall be entertained by them for 2 years thereafter," does not apply when the judgment is affirmed. Millett v. Franklin County Com'rs, 80 Me. 427, 15 A. 24.

A town way is not "substantially the same thing," within the meaning of this section, as a county road, and a judgment denying the former cannot be a bar to one establishing the latter. Waterford v. Oxford County Com'rs, 59 Me. 450.

The reversal on appeal of a judgment of county commissioners in laying out a town-way cannot bar them from entertaining, within two years after such reversal, a petition praying for the laying out of a county road over the identical place. Waterford v. Oxford County Com'rs, 59 Me. 450.

Costs not adjudged against petitioners if judgment reversed.—This section provides that, if the judgment of the county commissioners is affirmed, the appellants may be adjudged to pay costs arising after the appeal. But, if the judgment of the county commissioners is reversed, the court has no authority to adjudge costs against the petitioners. Jordan, Petitioner, 32 Me. 472.

Applied in Harriman v. Waldo County Com'rs, 53 Me. 83.

Quoted in part in Inhabitants of Brunswick, Appellants, 37 Me. 446.

Cited in Winslow v. County Com'rs, 31 Me. 444.

Sec. 62. Committee sworn.—All such committees provided for in section 60, whether agreed on or appointed on appeal from the county commissioners, may be sworn at any time before viewing the route and hearing the parties. (R. S. c. 79, § 59.)

Cross reference.—See c. 96, § 73, re damages for land taken for highway purposes.

The "appeal" named in this section is the appeal authorized by § 59. It can reasonably refer to no other appeal. Gray v. Cumberland County Com'rs, 83 Me. 429, 22 A. 376.

Sec. 63. Assessment on lands for opening roads in unorganized territory; lien; part of expense on county; appeal; agent to superintend building of road.—When a road is laid over lands under the provisions of section 55, the county commissioners shall at their first regular session thereafter assess thereon and on adjoining townships benefited thereby, such an amount as they judge necessary for making, opening and paying expenses attending it; and such assessment shall create a lien thereon for the payment thereof; and they may make as many divisions as are equitable, conforming as nearly as is convenient to known divisions and separate ownerships, and may assess upon each a sum proportional to the value thereof and the benefits likely to result to the same by the establishment of the road; when such assessment would be unreasonably burdensome to such owners, they shall assess an equitable sum on the county and the balance only on such land. Any person aggrieved by an assessment may appeal to the superior court at the term thereof first held after such assessment; and the presiding judge at that term shall, on hearing the case, determine what part of said assessment shall be paid by the owners of the tract or township, and

what part, if any, by the county, and there shall be no appeal from such decision. They shall, at the same time, fix the time for making and opening such road, not exceeding 2 years from the date of the assessment, and appoint an agent or agents, not members of their board, to superintend the same, who shall give bond to the treasurer of the county, with sureties approved by them, to expend the money faithfully and to render account thereof on demand; and they shall publish a list of the townships and tracts of land so assessed, with the sum assessed on each, and the time in which the road is to be made and opened, in the state paper, and in some paper, if any, printed in the county where the lands lie, 3 weeks successively, the last publication to be within 3 months from the date of the assessment. (R. S. c. 79, § 60.)

Committee appointed on appeal does not make assessment.—See note to § 56.

Expense borne proportionately to benefit received.—It is apparent that it was the intention to require necessary ways to be made through the lands in unincorporated places at the expense of the proprietors, wholly or in part, if the county commissioners should so determine, although the lands should not be particularly benefited by the way, and to compel those whose lands were particularly benefited to pay more than others, according to the value of the land, and the benefits likely to result from the establishment of the way. Pingree v. Penobscot County Com'rs, 30 Me. 351.

And the commissioners must decide whether, in their opinion, a township over which such road is laid would be enhanced in value thereby, and they must assess upon each tract, which they consider to be enhanced in value, such sum as in their opinion would be proportionate to the value and benefits likely to result from the establishment of the road. Howe v. Aroostook County Com'rs, 46 Me. 332.

All proprietors in unincorporated places, as well as the county in which they are located, would be interested that the County commissioners should decide at whose expense the way should be made and whether, in their opinion, any portion of the tract would be enhanced in value, as such decision would determine the extent of the respective liabilities for constructing the way, and might materially affect the price and value of the divisions or separate ownerships. Hence, this section requires that they shall make such decision whenever they shall lay a way. Pingree v. Penobscot County Com'rs, 30 Me. 351.

Assessment void if road not laid out according to law.—An assessment under this section upon unincorporated land, for the purpose of making and opening a road over the same, where no road has been laid out according to law, is illegal and void. Philbrook v. Kennebec County, 17 Me. 196.

And county not liable for expenses in making road not legally established.—If the agent appointed by the commissioners contracts for making a road over unincorporated land, where no legal road exists, and accepts the same when made, and no money has been received by the county wherein the land lies on that account, the county is not liable to pay the expenses of making the road. Philbrook v. Kennebec County, 17 Me. 196.

Section prevents making assessments at adjourned session.—The assessments are to be made at the same regular session at which the location of the road is filed, the object of the section being to prevent their being made at an adjourned term of such regular session. Such regular session will be the first occurring after the road is laid over the lands. Mansur v. Aroostook County Com'rs, 83 Me. 514, 22 A. 358.

Assessment cannot be made prior to final action on appeal.—The assessments under this section are to be made after the road has been laid out. And the road cannot be considered as laid out, when an appeal has been taken, until final action on the question by the appellate court. The ordinary formalities may have been taken by the commissioners for the purpose of laying out the road, but, by force of an appeal, their work is, for a time at least, deprived of its intended effect. If the court confirms their proceedings, then the road becomes legally established. Then, and not until then, is the road laid out. Appleton v. Piscataquis County Com'rs, 80 Me. 284, 14 A. 284.

The commissioners may assess benefits at their first term after their action in laying out the road, and if no appeal afterwards appears, the assessments then made will be valid and regular. But if an appeal is taken to the laying out of the road after the assessments have been made, and within the time allowed for an appeal, then such assessments become nugatory and of no avail whatever. In such case, however, the commissioners will have the benefit of the examinations previously made, and of the consideration bestowed upon the ques-

tions involved, when they make the assessments again. Appleton v. Cumberland County Com'rs, 80 Me. 284, 14 A. 284.

History of section. — See Mansur v. Aroostook County Com'rs, 83 Me. 514, 22 A. 358.

Applied in Longfellow v. Quimby, 29 Me. 196.

Quoted in part in Haines v. Great Northern Paper Co., 110 Me. 422, 86 A. 841.

Cited in Hogdon v. Aroostook County Com'rs, 72 Me. 246.

Sec. 64. Owners may discharge their assessments by building roads.—If the owners make and open such road to the acceptance of the county commissioners, after an actual examination by one or more of their board, within said time, the assessment shall thereby be discharged; otherwise it shall be enforced as hereinafter provided and the agents shall proceed immediately to make and open the road. (R. S. c. 79, § 61.)

Sec. 65. Roads in unorganized territory inspected; assessments for repairs; agent to superintend repairs.—Such county commissioners in September or October annually, by one or more of their board, shall make an inspection of all county roads, state and state aid highways and other roads originally located as town roads in the unincorporated townships and tracts of land in their counties and shall thereupon make an estimate of the amount needed for repairs, cutting bushes, maintenance, snow removal and improvements, so as to comply with the provisions of the state highway laws, and to otherwise make them safe and convenient for public travel for the following year and assess thereon not exceeding 2% of the valuation thereof, and shall assess on the county the balance of such amount if such amount of 2% is not sufficient to properly comply with the above requirements; and such assessments shall be made upon the total valuation of each unorganized township and lot or parcel of land not included in any township, according to the last state valuation, and shall not exceed 2% of the value thereof on the landowners; and cause so much thereof, as they deem necessary for the purpose aforesaid, to be expended on said roads within 5 years from the date of assessment, which assessment shall create a lien thereon for the payment thereof. They shall make such assessment not later than April 1st of the following year and lists containing the road repair tax millage rate and the total amount of such tax assessed upon each unorganized township and lot or parcel of land not included in any township, according to the last state valuation, shall immediately be certified and transmitted by the county treasurer to the state tax assessor. The state tax assessor shall determine the amount of tax due, in accordance with the provisions of section 79 of chapter 16, and shall include such amounts in the statements referred to in section 82 of chapter 16. Collection of such road repair taxes shall be enforced in the same manner as provided for the enforcement of collection of county taxes. The county commissioners at the time the taxes provided for by this section are assessed may appoint an agent or agents, skilled in road building, not members of their board, to superintend the expenditure thereof, who shall give bonds as provided in section 63. Provided, however, that in deorganized towns, an assessment may be made of over 2% of the valuation thereof, in which case, the amount over the 2% may be paid by the state out of the general highway fund by agreement between the county commissioners and state highway commission before the assessment is made. (R. S. c. 79, § 62. 1945, c. 41, § 32; c. 111; c. 378, § 64. 1951, c. 144. 1953, c. 156, § 7.)

Cross references.—See c. 22, § 58, re proceeds from excise tax on motor vehicles; c. 102, § 13, re deorganized towns.

County commissioners have no power to assess a tax in one township for the repair of roads in another. Adams v. Piscataquis County, 87 Me. 503, 33 A. 12.

"Tracts of land" does not refer to land located in township.—The words "tracts of land" are used to designate islands, gores or other fragments not included in a township. They were not intended to apply to any portion of the land within a regularly located township. King v. Aroostook County, 63 Me. 567.

Whole township liable to be taxed for repair of road existing within its limits.—The true construction of this section is

that, when a county road exists within the limits of an unincorporated township, the whole township is liable to be taxed to put it in repair. For the purposes of such taxation the township is a unit, and cannot be regarded as composed of two distinct tracts of land simply because there are two separate and distinct sets of owners. King v. Aroostook County, 63 Me. 567.

Assessment of taxes in territory of former town.—The assessment of taxes by the county commissioners in the whole territory of a former town whose act of incorporation has been repealed, for the repair of the roads in that unincorporated township, is proper. Adams v. Piscataquis County, 87 Me. 503, 33 A. 12.

Sec. 66. When owner fails to pay his assessments. — If any owner fails to pay the sum so assessed on his land for the expenses of making and opening such new roads within 2 months from the time fixed therefor as provided in section 64, the county treasurer shall proceed to sell the lands so assessed by advertising the lists of unpaid taxes, with the date of assessment and the time and place of sale in the state paper and in some paper, if any, printed in the county where the lands lie, 3 weeks successively, the last publication to be at least 30 days before the time of sale. No bid shall be received at such sale for less than the amount due for the tax, costs and interest at 6% a year from the time prescribed for the payment of said tax; and the treasurer shall sell so much of said land as is necessary to pay the unpaid tax, costs and interest and give a deed thereof to the purchaser, if any; and if no one becomes a purchaser at such sale, it shall be forfeited to the county; and such owner or part owner or tenant in common may redeem his interest therein at any time within 2 years from the sale or forfeiture by paying to the purchaser or the county the sum for which it was sold or forfeited, with interest at 6% a year and any sums subsequently paid for state and county taxes thereon. Any owner of lands so sold shall receive his share in any overplus of the proceeds of such sale, on exhibiting to the treasurer satisfactory evidence of his title. In addition to the foregoing method for the collection of highway taxes, the county commissioners of any county may, in writing, at any time subsequent to that when the lands so assessed might be sold for nonpayment of the taxes assessed thereon, direct the treasurer of such county to commence an action of debt in the name of the inhabitants of said county against the party liable to pay such taxes; but no such defendant shall be liable for any costs of suit in such action, unless it appears by the declaration and proof that payment of said tax had been duly demanded by said treasurer before the suit was commenced. (R. S. c. 79, § 63. 1945, c. 41, § 33; c. 378, § 65.)

The county treasurer, in advertising and selling land under this section, must comply with the requirements of the section. McAllister v. Shaw, 69 Me. 348.

And the recitals in the deed are not competent evidence of a compliance, by the county treasurer, with the requirements of law in advertising and making the sale. McAllister v. Shaw, 69 Me. 348.

This section does not require that the sale should take place during the hour appointed. Longfellow v. Quimby, 33 Me. 457.

This section contains no provision that the lands cannot be sold, unless the whole amount collected upon them can thereby be collected. Longfellow v. Quimby, 33 Me. 457.

The treasurer cannot be excused from a performance of his duty to collect the taxes or as much of them as he can, because the lands will not sell for an amount sufficient to pay the whole of the taxes. Longfellow v. Quimby, 33 Me. 457.

Acceptance of note for part of purchase price does not invalidate sale.—In a sale of lands by a county treasurer for unpaid taxes, where there is no stipulation before the sale that a credit is to be given, and after the sale the treasurer receives a note for part of the purchase money, this does not invalidate the sale. Longfellow v. Quimby, 29 Me. 196.

What portion exempted from sale.—The county treasurer, in making sale of a township of unincorporated land to pay the taxes assessed thereon by the county commissioners for the purpose of making a road through the same, cannot exempt any portion of the township, except the reserved public lots, from its liability for the tax, unless owned by individuals who have paid their proportions of the tax; and it should appear, in order to authorize a sale

of the residue, by the recitals in the deed, who had so paid previously to the sale, and the amount paid by each, and the quantity of land on which each payment had been made. Smith v. Bodfish, 27 Me. 289.

Effort must be made to obtain tax from sale of fractional part of land.—In a sale under this section, it should appear that an effort was made to obtain the amount of the tax and charges by the sale of some fractional part of the land less than the whole. The section requires that so much of the land should be sold as will raise the sum that will cover taxes, charges and interest. Where this does not appear, the error is fatal, and renders the deed void. Straw v. Poor, 74 Me. 53.

Cited in Stowell v. Blanchard, 122 Me. 368, 119 A. 866.

Sec. 67. Prima facie proof of title by purchase at such sale.—In any trial at law or in equity involving the validity of any sale or forfeiture of such lands, as provided in the preceding section, it shall be prima facie proof of title for the party claiming under it to produce in evidence the county treasurer's deed, duly executed and recorded, the assessments signed by the county commissioners and certified by them or their clerk to the county treasurer, and to prove that the county treasurer complied with the requirements of law in advertising and selling. (R. S. c. 79, § 64.)

Cross reference.—See c. 92, § 170, re collector's or treasurer's deed as evidence.

Treasurer's record admissible in evidence.—As to the treasurer's record, the statute does not in terms require the county treasurer to make and keep a record of his doings in advertising and selling lands for the nonpayment of assessments, but that circumstance does not exclude the record as evidence. The duties of the county treasurer could not be adequately performed without his keeping a permanent record of these transactions (advertising and selling lands for nonpayment of taxes) and such record, therefore, if kept, must be considered as an official book and must be receivable as evidence on that basis. Greene v. Martin, 101 Me. 232, 63 A. 814.

Irregularities in assessment and certification must be proved by person alleging them.—By reason of this legislative fiat, any alleged irregularities relating to the assessment of the tax or the certification thereof to the county treasurer must be proven by the person alleging them. The presumption is that the requirements of the statutes in these matters were fully complied with. Stowell v. Blanchard, 122 Me. 368, 119 A. 866.

But person relying on tax deed must prove compliance with statutes in advertising and selling.—To complete his prima facie title under this section, the party relying upon the tax deed must submit proof that the county treasurer, in advertising and selling, proceeded in strict compliance with the statutes. And, as to his acts, the recitals in his deeds cannot be accepted as evidence. Otherwise proof that he has complied with the law would not have been expressly required. Stowell v. Blanchard, 122 Me. 368, 119 A. 866. See note to § 66.

Sec. 68. Repair of county roads and bridges in unorganized territory; expense assessed; agents.—County commissioners, in case of sudden injury to county roads and bridges in unincorporated townships and tracts of land in their counties or where said roads and bridges are rendered impassable by snow, may cause them to be repaired or made passable forthwith or as soon as they deem necessary, and may appoint an agent or agents, not members of their own board, to superintend the expenditure therefor, who shall give bond as required in section 63, if required, the whole expense whereof shall be added to their next assessment on said lands for repairs authorized by section 65, which assessment shall create a lien upon said lands for the whole amount thereof as effectually as is now provided in relation to repairs on such county roads. That portion of such assessment, which is for repairs of sudden injuries as aforesaid, shall be set down in the assessment in distinct items and shall be enforced in the same manner as provided for the enforcement of collection of county taxes. (R. S. c. 79, § 65. 1945, c. 41, § 34.)

Sec. 69. Purchasers acquire county's title only and have no claim on the county. — Purchasers of land sold for nonpayment of assessments for

opening and making roads have no claim against the county for any defect in the title under such sale, notwithstanding any irregularities in the proceedings or failure to comply with the law under which the sales were made. Deeds given pursuant to sales made for nonpayment of such assessments vest in the grantee the title of the county to the lands sold, subject to the conditions of sale, and no more. (R. S. c. 79, § 66. 1945, c. 41, § 35.)

Sec. 70. Part owner may redeem his share.—Any person having a legal interest in a tract so advertised, sold or forfeited may redeem his interest by paying within the times prescribed, the amount so required to discharge the claim thereon. The rate of interest upon unpaid assessments by county commissioners for opening and making roads shall be 6% a year, commencing at the expiration of 1 year from the date of the assessments, except when otherwise provided. (R. S. c. 79, § 67. 1945, c. 41, § 36.)

Sec. 71. State highway commission notified when location of certain highways changed. — Whenever the location of any state, state aid or third class highway is changed, added to, discontinued or a new location is established within a county, the county commissioners of said county shall place on file the description of such change and shall notify the state highway commission of such change with an accurate description of the courses and distances within 3 months from such action. Provided, however, that whenever the state highway commission has previous record of such action, no notification by the county commissioners to the state highway commission shall be deemed necessary. (R. S. c. 79, § 68. 1949, c. 322, § 3.)

See c. 96, § 62, re municipal officers to notify county commissioners when location of certain highways is changed.

Civil Defense.

Sec. 72. Civil defense. — County commissioners shall have the power to provide for civil defense activities as provided by law within their respective counties. The cost thereof shall be included in the annual estimate of the county commissioners as provided for in section 13. (1951, c. 55.)

Ferries and Toll Bridges.

All ferries governed by statute.—All ferries in Maine are governed by statute. It may be by the general statute regulating the establishment, licensing and control of ferries by county commissioners, as set forth in §§ 73-88, or it may be by special acts of the legislature. People's Ferry Co. v. Casco Bay Lines, 121 Me. 108, 115 A. 815; Waukeag Ferry Ass'n v. Arey, 128 Me. 108, 146 A. 10.

Sec. 73. Ferries; tolls; bond; property appraised.—County commissioners may license persons to keep ferries at such places and for such times as are necessary, except where they are otherwise legally established; may establish tolls for the passage of persons and property; revoke such licenses at pleasure; and shall take from the person licensed, a bond to the treasurer of state, with sureties, for the faithful performance of his duties. Whenever said commissioners remove a ferryman, they shall appraise the boat and other personal property used in running the ferry at its fair value, and the person appointed shall purchase the same at said appraisal, if the person removed assents thereto. (R. S. c. 79, § 77.)

Necessity of license.—No one may attempt to set up a ferry, so as to receive a compensation for it, unless under a license first had and obtained from the commissioners. Day v. Stetson, 8 Me. 365.

All ferries set up in this state derive their authority solely from the license of the commissioners. Day v. Stetson, 8 Me. 365.

The right to keep a ferry and to demand and receive toll is not incident or appendant to any estate in land. Day v. Stetson, 8 Me. 365.

Commissioners may license more than one ferry at same place. — The person keeping a ferry has no vested interest

therein beyond the public control, the franchise itself not being granted by the commissioners, but only the right to receive a fixed compensation for certain services, when performed. The commissioners may therefore license as many ferries at the same place, as may suit the public convenience. Day v. Stetson, 8 Me. 365.

Licenses granted by the commissioners are revocable at the pleasure of the commissioners. Waukeag Ferry Ass'n v. Arey, 128 Me. 108, 146 A. 10.

Ferry keeper must give bond whether appointed by commissioners or provided by towns.—It is necessary that the ferry keeper should be licensed and give bond to the state for the protection of passengers over the ferry, whether the licensee is appointed by the county commissioners or provided by the towns to be licensed when no person is found to keep the ferry for the tolls under § 74. Peru v. Barrett, 100 Me. 213, 60 A. 968.

Cited in People's Ferry Co. v. Casco Bay Lines, 121 Me. 108, 115 A. 815.

Sec. 74. Ferries supported by towns; neglect.—The county commissioners may establish ferries at such times and places as are necessary and fix their tolls, and in case no person is found to keep them for said tolls, shall regulate and fix the compensation of the ferryman, and shall discontinue such ferries when, in their judgment, it may be expedient. When no person is found to keep them for the tolls, the towns in which they are established shall provide a person to be licensed to keep them and shall pay the expenses, beyond the amount of tolls received, for maintaining them. When established between towns, they shall be maintained by them in such proportions as the commissioners order. For each month's neglect to maintain such ferry or its proportion thereof, a town forfeits $40. (R. S. c. 79, § 78.)

The right of towns to receive the compensation fixed for ferriage is incident to the obligation imposed upon them by this section to maintain the ferry, and § 78 protects them against wrongful interference. Peru v. Barrett, 100 Me. 213, 60 A. 968.

Towns obliged to act only when no person found to keep ferry.—While the obligation rests upon the towns to maintain a ferry so as to make it convenient for the public, they are only required to act when no person is found to keep the ferry for the established tolls. They are then obliged to provide a person to be licensed to keep it and to pay the expenses beyond the amount of tolls received for maintaining it. Peru v. Barrett, 100 Me. 213, 60 A. 968.

Ferry keeper provided by towns must give bond.—See note to § 73.

Cited in State v. Bangor, 98 Me. 114, 56 A. 589.

Sec. 75. Safe boats; prompt attendance. — Every keeper of a ferry shall keep a suitable and safe boat or boats for use on the waters to be passed and give prompt attendance for passage, according to the regulations established for the ferry. For neglecting to keep such boat he forfeits $20, and for neglect of attendance, $1, to the prosecutor in an action of debt; and is liable in an action on the case to the party injured for his damages. (R. S. c. 79, § 79.)

Sec. 76. Action on ferryman's bond. — Anyone injured in person or property by the negligence or default of a ferryman may commence a suit on his bond, in which the proceedings shall be similar to those in actions on the bonds of sheriffs. (R. S. c. 79, § 80.)

See § 164, re actions on bonds of sheriffs.

Sec. 77. Steam or horse ferry.—When a ferry established by the legislature is to be passed by a steam or horse boat, no other ferry shall be established on the same river within 1 mile above or below it. (R. S. c. 79, § 81.)

Purpose of section. — The purpose of the legislature in enacting this section was to prevent conflict of authority and, after a ferry had been established by the legislature, not to allow the county commissioners to establish another within the county commissioners is not specifically prescribed limits. People's Ferry Co. v. Casco Bay Lines, 121 Me. 108, 115 A. 815.

The fact that the "other ferry" which is prohibited after the establishment of a steam ferry means one established by the

expressed, but those words are necessarily implied considering the origin and history of this section. People's Ferry Co. v. Casco Bay Lines, 121 Me. 108, 115 A. 815.

History of section.—See People's Ferry Co. v. Casco Bay Lines, 121 Me. 108, 115 A. 815.

Sec. 78. Keeping ferry or conveying passengers or property contrary to law.—A person who keeps a ferry contrary to the provisions of sections 73 or 74, or without authority transports passengers or property across any licensed or established ferry for hire or furnishes for hire a boat or other craft for such purpose, forfeits $4 for each day such ferry is kept or for each time of transportation, and is also liable to the party injured and keeping the ferry at or near the place for damages sustained by him, in an action on the case. (R. S. c. 79, § 82.)

No common-law remedy to ferry keeper.—The only proprietorship in a ferry in Maine is the franchise conferred by statute, and the party holding it has no common-law remedy against those who, without right, interfere with his profits, but the remedy is by this section. Peru v. Barrett, 100 Me. 213, 60 A. 968.

Section not applicable to ferries established by special act.—This section grants a remedy to an established and licensed ferry against any party transporting without authority persons or property for hire across such established and licensed ferry. The section applies only to ferries established and licensed by the county commissioners and not to those established by special act of the legislature. People's Ferry Co. v. Casco Bay Lines, 121 Me. 108, 115 A. 815.

Declaration need not refer to this section.—It is not necessary in a civil action under this section to set out the section or to make any reference to it in the declaration, but the case must be brought within its provisions by alleging the requisite facts. Peru v. Barrett, 100 Me. 213, 60 A. 968.

And in an action under this section, it is not necessary to allege that the keeper was licensed and gave bond as required by law. It is presumed that all things have been correctly done by the plaintiffs to entitle them to a right of action. If any prerequisites have been omitted the defendants may raise the question in defense. Peru v. Barrett, 100 Me. 213, 60 A. 968.

Towns have right of action under this section.—When towns provide a person to keep a ferry, they are entitled to the tolls and profits of the ferriage (see § 74 and note) and have a right of action against those interfering with them. Peru v. Barrett, 100 Me. 213, 60 A. 968.

And it is unnecessary to allege in the declaration the action of the town in providing the ferry keeper. Peru v. Barrett, 100 Me. 213, 60 A. 968.

Test of liability for damages is interference causing loss of patronage.—Any person has a right to keep and use boats for his own accommodation in passing over a river, or transporting his family, servants and goods, and to occasionally carry over strangers within the line of travel implied in the location of an established ferry, because it would not be public carrying for hire. But he has no right to transport passengers and goods for hire so as clearly to diminish the profits of the ferry, the criterion being the interference with the ferry franchise causing a natural, appreciable loss of patronage. Peru v. Barrett, 100 Me. 213, 60 A. 968.

Sec. 79. Ice leveled and way kept in repair in winter.—When tidal waters over which ferries are established become so frozen that travelers may pass on the ice, the keepers of them shall level the ice and clear and repair the passageway from day to day so that the same may at all times be safe and convenient for travelers with teams, sleds and sleighs. Such way for passage may be made from a public landing sufficiently near to be connected with the opposite ferry landing. The commissioners shall fix a reasonable compensation therefor, to be paid from the county treasury; or they may contract with another person to perform such duties and give notice thereof to the keeper of the ferry before the river is closed; and during the continuance of such contract the liabilities of the keeper are transferred to the person contracting. (R. S. c. 79, § 83.)

Cited in Woodman v. Pitman, 79 Me. 456, 10 A. 321.

Sec. 80. Ferryman's neglect of duty.—The ferryman or person so con-

tracting forfeits $10 for each day's neglect to perform such duty and is liable, in an action on the case, for damages to any person injured thereby. (R. S. c. 79, § 84.)

Sec. 81. Use of horse or steamboats.—A licensed ferryman who uses at his ferry a boat propelled by steam or horse power forfeits his license and is liable to any person or corporation for damages occasioned thereby. (R. S. c. 79, § 85.)

Sec. 82. Use of other boats.—Persons required to use at a ferry steam or horse boats may, when the passage by them is dangerous, use other safe boats. (R. S. c. 79, § 86.)

Sec. 83. Obstruction to ferries.—Whoever places a weir or other obstacle or without necessity anchors or places a raft, vessel or water craft so as to obstruct the ordinary passageway of any boat at a ferry licensed or established forfeits $20 to the proprietor of the ferry, to be recovered in an action on the case; unless such obstruction was inadvertently made and removed within 30 minutes, if practicable, after notice given of its improper position, or unless it was occasioned by hauling into a wharf, pier, landing or dock, without unreasonable delay or willful misconduct. (R. S. c. 79, § 87.)

Sec. 84. Piers sunk to guide boats at ferries.—The proprietors of a ferry, to guide their boats, may sink piers near their ferry ways above and below the same on each side of the river not more than 12 feet in length or breadth and not so sunk as to injure any wharf or landing where vessels had previously taken or discharged freights. (R. S. c. 79, § 88.)

Sec. 85. Eminent domain.—Corporations organized for the purpose of owning, controlling, operating or managing any steam ferry boat regularly engaged in the transportation of persons or property for compensation upon tidal waters over regular routes between points within this state and under the jurisdiction of the public utilities commission are authorized and empowered to take and hold, as for public uses, such lands and easements as may be necessary for the proper location of any ferry wings or other structures designed and used in such transportation in the same manner as set forth in sections 11 to 22, inclusive, of chapter 52; provided, however, that such taking shall be approved and the public exigency determined by decree of the municipal officers of the city or town in which such land and easements are located, by the county commissioners of the county and by the public utilities commission. (R. S. c. 79, § 89.)

Sec. 86. Somerset commissioners, jurisdiction. — The commissioners of the county of Somerset have exclusive jurisdiction in all matters relating to ferries between the counties of Somerset and Kennebec. (R. S. c. 79, § 90.)

See c. 46, § 8, re penalty for evading payment of fare on ferry; c. 46, §§ 70, 71, re penalty for disorderly conduct.

Sec. 87. Injuring tollgate or attempting to pass without paying toll. —Whoever maliciously breaks down or otherwise destroys or injures any tollgate or toll bridge, or passes or attempts to pass such gate with intent to avoid the payment of toll when liable thereto and it is demanded, forfeits not less than $5 nor more than $50 to the proprietors of the bridge in addition to any actual damages caused by him; but no process shall be maintained to recover such penalty unless the corporation has complied with its charter and the bridge is in repair as public safety and interest require. Whoever evades or attempts to evade the payment of the established fare over a toll bridge, whether it be public or private, in addition to any other forfeitures therefor provided shall be guilty of a misdemeanor and shall be subject to a fine of not more than $50 or by imprisonment for not more

than 30 days, or by both such fine and imprisonment. The use of or the attempt to use any ticket or coupon book issued to any person other than the one tendering such ticket or coupon book to be used in paying the established fare for traveling over such bridge, unless otherwise provided by law, shall be deemed a violation of the provisions of this section. (R. S. c. 79, § 96.)

Applied in South-West Bend Bridge v. Hahn, 28 Me. 300.

Sec. 88. Owners of ferries and bridges may take land for tollhouses. —Towns, corporations and individuals owning ferries and bridges authorized to receive toll may take and use land within the limits of the highway for the erection and maintenance of tollhouses, but not to obstruct the public travel. (R. S. c. 79, § 100.)

Meridian Lines and Standards of Length.

Sec. 89. Meridian line; record.—The county commissioners, at the expense of their several counties, shall erect and forever maintain therein at such place or places remote from electrical disturbances as the public convenience requires, a true meridian line to be perpetuated by stone pillars with brass or copper points firmly fixed on the tops thereof, indicating the true range of such meridian; and shall protect the same and provide a book of records to be kept by the clerk of courts or by a person appointed by them nearer to such structure and accessible to all persons wishing to refer thereto. (R. S. c. 79, § 105.)

Sec. 90. Care and custody.—The structures referred to in the preceding section shall be under the care and custody of such clerk; and any surveyor residing in said county or engaged in surveying therein shall have free access thereto for the purpose of testing the variation of the magnetic needle. (R. S. c. 79, § 106.)

Sec. 91. Surveyors to annually verify compass; to record declination of needle, etc., and to enter same in field notebook. — When the meridian lines provided for in section 89 have been established and completed, every land surveyor shall, at least annually before making any survey, test and verify his compass or other instrument using the magnetic needle by the meridian line so established in the county where his surveys are to be made and shall enter the declination of such needle from the true meridian in the book mentioned in section 89, together with the style and make of such instrument and its number, if any, and the date and hour of observation and subscribe his name thereto for future reference; and shall insert corresponding entries as to date and declination in his field notebooks, which field notebooks shall also show dates at which his surveys are made. Neglect or refusal to comply with the provisions of this section shall render such surveyor liable to a penalty of $25 for each neglect, to be recovered on complaint in the county where any survey is made, half to the complainant and half to the county. The provisions of this section shall not apply to such surveys as are made by angles from some fixed, permanent line or by a solar instrument and independent of the magnetic needle. (R. S. c. 79, § 107.)

Sec. 92. Standard of length; description; care and custody; tape or chain verified. — The county commissioners at the expense of the several counties shall also erect and forever maintain therein, at such place or places as the public convenience may require, a standard of length of not less than 100 feet with suitable subdivisions marked thereon. Such standard may consist of stone monuments permanently fixed with metal plates on the tops thereof, properly marked and protected; or of a steel bar of the necessary length properly marked and suitably placed and protected. All such standards shall be made to correspond with the standard of the United States Bureau of Weights and Measures and shall be provided with proper means for determining the tension of tapes or chains during comparison. They shall be under the care and custody of the clerk of courts, who shall keep a suitable book for the record of comparisons, and they

shall be accessible to any person for comparing any tape, chain or other linear measure. Every surveyor shall before making surveys in this state and at least annually compare his tape or chain used in such surveys with the standard in the county in which he resides or in which surveys are to be made; and shall record the result in the book provided for that prupose, giving description of such tape or chain with the difference, if any, between the same and such standard, together with the date and temperature and the tension on such tape or chain at the time of comparison. When such standard shall have been completed in any county, any surveyor residing or making surveys in such county who shall neglect or refuse to comply with the terms of this section shall be liable to the penalties and disability set forth in section 91. (R. S. c. 79, § 108.)

Sec. 93. Governor to appoint commissioner to verify meridians.— When the meridian line or standard of length is established, repaired or rebuilt in any county, the governor with the advice and consent of the council shall appoint a competent commissioner, not necessarily a resident of this state, to inspect and verify the same. Such commissioner shall in case of a meridian line verify the same by astronomical observation and in his report shall give an accurate description of such structures, its latitude and longitude and the declination of the needle at the time; and in case of a standard of length shall give a description of the structure, its location and exact length as determined by comparison with some authentic standard from the United States bureau of weights and measures. All such reports shall be full and accurate and be deposited in the office of the secretary of state and a certified copy shall be filed and recorded in the office of the clerk of courts in the county where such structure is situated. Such commissioner shall receive from the state such just compensation as the governor and council shall allow. (R. S. c. 79, § 109.)

Sec. 94. Injuring meridians. — Whoever willfully displaces, alters, defaces, breaks or otherwise injures any of the pillars or points, plates, enclosures, bars, locks, bolts or any part of the structure of any meridian line or standard of length shall forfeit not more than $100, to be recovered by indictment, half to the prosecutor and half to the county, and shall also be liable in an action of debt for the amount necessarily expended in repairing damages caused by his act. (R. S. c. 79, § 110.)

Clerks of the Judicial Courts.

Election, Powers, Duties, Salaries, Fees, etc.

Sec. 95. Election; tenure.—Clerks of the judicial courts shall be elected and notified, their elections determined and vacancies filled in the same manner, and they shall enter upon the discharge of their duties at the same time as is provided respecting county commissioners, but they shall hold their offices for 4 years. (R. S. c. 79, § 111.)

The person who receives the highest number of votes for "county clerk" should be notified that he has been elected "clerk of the judicial courts." Opinion of the Justices, 107 Me. 514, 78 A. 656. See § 8 and note thereto.

Sec. 96. Military or naval service.—Whenever any clerk of court during his term of office shall, in time of war, contemplated war, emergency or limited emergency, enlist, enroll, be called or ordered or be drafted into the military or naval service of the United States or any branch or unit thereof, his status shall continue in the same manner as that provided in section 4 for county commissioners, and the temporary vacancy so created shall be filled by the same method as that provided in section 4 for county commissioners who have entered said service. (R. S. c. 79, § 112.)

Sec. 97. Bond.—Each clerk shall give a corporate surety bond or bonds to the state, to be lodged in the office of the state auditor, in amounts and form approved by the chief justice of the supreme judicial and superior courts, condi-

tioned that he will faithfully perform all the duties of his office, pay over all moneys and safely keep and immediately deliver all records, files, papers, muniments in said office and property of the county as required by law. (R. S. c. 79, § 113. 1945, c. 5.)

Cross reference. — See Me. Const., Art. 9, § 1, re oath.

Omission to perform duties of former clerk not breach of bond.—The clerk's bond requires that he shall "faithfully perform all the duties of his office." It does not provide that he shall perform the duties a former clerk failed to perform; nor would his omission to do so be a breach of the bond. Rockland Water Co. v. Pillsbury, 60 Me. 425.

Sec. 98. Salaries.—The clerks of the judicial courts in the several counties shall receive annual salaries from the treasuries of the counties in monthly or weekly payments as follows:

Androscoggin, $3,300,
Aroostook, $4,500,
Cumberland, $4,300; deputy clerk of courts, $3,500,
Franklin, $2,000,
Hancock, $2,600,
Kennebec, $3,100,
Knox, $2,820,
Lincoln, $2,500,
Oxford, $2,500,
Penobscot, $3,500; deputy clerk of courts, $2,900,
Piscataquis, $2,200,
Sagadahoc, $3,000,
Somerset, $3,500,
Waldo, $2,400,
Washington, $1,900,
York, $3,800.

The sums above mentioned shall be in full compensation for the performance of all duties required of clerks, including those performed by them as clerks of the supreme judicial court, the superior court and the county commissioners, or by clerks pro tempore employed by them; and the sum provided for the clerk in Lincoln county shall be in full for all such services and also in full for services as clerk of Lincoln municipal court, except as provided in section 13 of chapter 103. They shall account quarterly under oath to the county treasurer for all fees received by them or payable to them by virtue of the office, except fees collected by them in naturalization proceedings, specifying the items, and shall pay the whole amount of the same to the treasurers of their respective counties quarterly on the 1st days of January, April, July and October of each year. (R. S. c. 79, § 114. 1945, c. 167, § 2; c. 170; c. 206, § 1; c. 262, § 1; c. 263; c. 280, § 2; c. 322, § 1. 1947, c. 157, § 2; cc. 202, 210, 287. 1949, c. 185; c. 186, § 1; c. 198; c. 214, § 2; cc. 220, 287, 307, 330; c. 424, § 1. 1951, cc. 221, 224; c. 312, § 2; c. 313, § 2. 1953, c. 38, § 1; cc. 53, 61, 76; c. 135, § 2; c. 142, § 2; c. 149, § 1; c. 170; c. 216, § 2; c. 247, § 1; c. 269, § 2; c. 276, § 2; c. 278, § 2.)

Sec. 99. Fees.—The fees of clerks of the judicial courts shall be as follows:

For every blank writ of attachment with a summons, or of scire facias, or an original summons, 10¢.

Blank writs of replevin with the seal, signature and blank bond, 20¢.

Entry of an action, or entering up and recording the judgment, whether on a verdict, demurrer, nonsuit or default, $1.

Copies, minimum of $1, for first 500 words if the writing contains that number and 20¢ for each 100 words or fraction thereof in excess of 500 words.

Recording a petition for partition, and any order thereon, at the rate of 25¢ a page of 224 words.

Recording petition and proceedings for release of attachment and making copy and certificate, $2.

Making certificate of dissolution of attachment by judgment for defendant, 50¢.

Entry of a rule of court upon the parties submitting a cause to referees, 25¢.

Proving a deed in court and certifying the same, $1.

Making certificate of approval by judge, of sale of real estate and price, when husband or wife refuses to release interest and right by descent, $1.

Authenticating the official signature of a magistrate, 50¢.

Original or other writ of execution in personal matters and filing the same when returned, 50¢.

Writ of possession in real actions, 50¢.

Writ of protection or habeas corpus, 50¢.

Subpoena for 1 witness or more or with a duces tecum, 10¢.

Recording certificate of discharge of a soldier or seaman from the army or navy of the United States, 25¢ and for a copy of such record, 25¢.

Recording certificate of registration in veterinary surgery, $1.

For making up the record in an equity case, the court may allow a further sum, not exceeding $1 for the first 500 words if the writing contains that number, and 20¢ for each 100 words or fraction thereof in excess of 500 words, to be taxed by the clerk.

For each certificate or copy of judgment or decree in equity, 50¢ for the 1st page and 25¢ for each additional page which, together with the fees of the register of deeds for recording such certificate or copy, may be taxed in the costs of suit.

Warrant to make a partition, $1.

Process to enforce a lien on personal property, $2.

Commission to referee, auditor, surveyor or other officer appointed by the court, $1.50.

Writ of review, $1.

Writ of scire facias, $1.

Every writ and seal other than before-mentioned, $1. (R. S. c. 79, § 115. 1949, c. 413.)

See c. 112, § 74, re certificate of dissolution of attachment, fee.

Sec. 100. Account for moneys received; depository; accounts verified; deposits in name of court.—The clerk shall keep a true and exact account of all moneys which he receives or is entitled to receive for services by virtue of his office and shall pay the same to the county treasurer for use of the county in the manner required by law; all other moneys belonging to the county shall be paid in 30 days after they are received by him; and if, in either case he neglects to do so, he shall pay 25% interest thereon until paid; and the county treasurer shall notify the treasurer of state of any such known delinquency and the clerk's bond shall then be sued.

Proceeds of all sales of property made under the decree of the supreme judicial court and of the superior court and any and all other sums of money from whatever source derived in civil proceedings coming into the custody of the supreme judicial court and of the superior court shall be deposited in such depository as the court having custody of such money shall designate, and shall be withdrawn therefrom upon order of the clerk of courts, countersigned by any justice of the supreme judicial court or of the superior court in term time or vacation. Any justice of either of said courts in term time or vacation shall designate some proper bank or trust company as the depository for the funds hereinbefore referred to and such designation shall be minuted on the docket of the court. At each regular term of the superior court in each county, the presiding justice shall verify the account kept with such depository and shall cause to be minuted on the docket that he finds the same to be accurate and duly vouched. He shall affix

his signature to such certificates on the docket. Clerks of courts in the several counties shall keep a regular book containing the account of such funds showing the deposits and all accumulations thereof and the amounts withdrawn therefrom, specifying the date of such withdrawal and the case to which such matters relate. All deposits shall be in the name of the court. (R. S. c. 79, § 116.)

Sureties not discharged by provision as to interest.—The sureties of a clerk are not discharged by the provision of this section that, in case the clerk neglects or refuses to pay over any sum for which he is accountable, he shall pay interest thereon at the rate of 25% until paid. White v. Fox, 22 Me. 341.

Sec. 101. Receive and discharge fines and costs voluntarily paid.— The clerk shall receive all fines, forfeitures and bills of costs imposed or accruing to the use of the state when paid or tendered to him before a precept is issued to enforce collection, give discharges therefor and enter them of record. (R. S. c. 79, § 117.)

Sec. 102. May administer oaths. — Clerks of courts may administer oaths required by law unless another officer is specially required to do it. (R. S. c. 79, § 118.)

Sec. 103. To complete records of deceased clerk.—Under direction of the superior court, the clerk shall complete unfinished records of a former clerk deceased, when from entries on the dockets and papers on file it sufficiently appears what judgment was rendered. Such record, when approved by the court, is valid. (R. S. c. 79, § 119.)

Cited in Rockland Water Co. v. Pillsbury, 60 Me. 425.

Sec. 104. Duties as to lists of justices, discharges of soldiers and seamen and files of state paper.—The clerk shall record the list of magistrates furnished by the secretary of state in a suitable book; and such record and also copies thereof duly attested by him are legal but not conclusive evidence of the due appointment and qualification of all such officers. He shall also record in a book kept for that purpose, properly indexed, certificates of discharge of soldiers and seamen from the army, navy and air force of the United States; certified copies from such record when the originals are lost shall be evidence in court, and in the absence of other proof, have the same effect as the originals. He shall preserve and file for public inspection all copies of the state paper forwarded to him by the publisher thereof as required by law. (R. S. c. 79, § 120. 1951, c. 157, § 11.)

Sec. 105. Taking illegal fees. — A clerk who exacts or receives more than his lawful fees forfeits $50, to be recovered by indictment. (R. S. c. 79, § 121.)

Sec. 106. Deputy clerks; oath and bond; clerk pro tempore.—The clerk of the judicial courts in the counties of Androscoggin, Cumberland, Kennebec and Penobscot shall appoint a deputy clerk whose appointment shall be approved by a resident justice of the superior court or by the chief justice of the supreme judicial court. Clerks in the other counties may appoint a deputy to be paid out of the clerk's salary. The clerk in each county shall be responsible for all of the official acts of his deputy. Before entering upon his official duties, each deputy shall be sworn and shall give a bond to the clerk, approved by the county commissioners and lodged in the office of the county treasurer, in the sum of $8,000, conditioned that he will faithfully perform all the duties required of his office. Whenever the clerk is unable to perform the duties of his office, his deputy shall have all the power and perform all the duties of clerk and be subject to the same penalties for any neglect thereof.

Whenever the office of clerk shall be vacant by reason of death or resignation,

the chief justice of the supreme judicial court shall appoint a suitable person to act as clerk until an appointment is made by the governor and council. The said appointee shall be sworn and shall give such bond as said chief justice shall direct. Whenever a clerk is absent and an existing or immediate session of the court renders it necessary, the chief justice of the supreme judicial court may appoint a clerk pro tempore who shall be sworn and give such bond as said chief justice directs. (R. S. c. 79, § 122.)

Sec. 107. Record of civil cases.—After the rendition of final judgment or decree in any civil case at law or in equity, the clerk shall as soon as may be make such a record thereof as the court by general rule or special order may direct. If either party, however, files a request and tenders the fees therefor, a full, extended record shall be made. The court may establish the form of such full, extended record. (R. S. c. 79, § 123.)

Sec. 108. Record of criminal cases; certain convictions not criminal records.—In indictments for felonies, clerks shall make extended records of the process, proceedings, judgment and sentence. In other indictments, it is sufficient to record the title of the case, the nature of the indictment, the term when it was found, the proceedings in brief thereon and the judgment and sentence of the court. In criminal prosecutions brought up by appeal from inferior courts, it is sufficient to record the title of the case, the nature and date of the complaint, the name and official character of the magistrate before whom the case was tried and the sentence appealed from and its date; to be followed by correct minutes of the proceedings and judgment in the appellate court.

Convictions for violation of the fish and game laws or motor vehicle traffic laws or municipal ordinances where the fine imposed does not exceed $50 shall not be deemed to constitute a criminal record against any person so convicted; but the provisions of this section shall not exempt any court or trial justice from filing court abstracts as now required by law. (R. S. c. 79, § 124. 1947, c. 265, § 2.)

Stated in part in Nissenbaum v. State, 135 Me. 393, 197 A. 915.

Sec. 109. Examination and correction of records. — The superior court shall cause the records of each clerk to be examined at least as often as there is a change of clerk, and when found deficient, direct them to be immediately made or corrected, and when such order is not obeyed, the fact of such deficiency shall be certified to the treasurer of state, who shall cause the clerk's bond to be sued. (R. S. c. 79, § 125.)

Persons presumed to know errors may be corrected. — Errors and deficiencies in court records are to be expected. This section requires their correction. Third parties may be affected thereby, but they are presumed to know that if a clerk has made a mistake it may be corrected. Bean v. Ayers, 70 Me. 421.

Cited in Rockland Water Co. v. Pillsbury, 60 Me. 425.

Sec. 110. Disposal of money collected by suit on clerk's bond.—The money recovered in such suit shall be applied under direction of the court, to complete the deficient records. If more than sufficient, the balance inures to the state. If not sufficient, the balance may be recovered by the treasurer of state in an action on the case founded on the bond and facts. (R. S. c. 79, § 126.)

Sec. 111. No recording officer to be attorney or sue in his own court, nor draft or aid in drafting any paper which he is required to record.—No clerk, register or recording officer of any court of the state shall be attorney or counselor in any suit or matter pending in such court; neither shall he commence actions to be entered therein, nor draft nor aid in drafting any document or paper which he is by law required to record, in full or in part,

under a penalty of not more than $100, to be recovered by indictment for the benefit of the county. (R. S. c. 79, § 127.)

See § 8, re clerk of courts to be clerk of county commissioners; § 235, re duplicates of plans filed with clerks of courts to be filed in registry of deeds; c. 21, § 3, re duties re list of appointments of magistrates; c. 25, § 397, re clerks of courts to make returns of divorces granted, etc., to state registrar of vital statistics; c. 37, § 137, re clerks of courts to make reports of fines collected under inland fish and game laws; c. 149, § 50, re clerks of courts to make abstract on record, of pardon or commutation of sentence.

County Attorneys.

Election, Salaries, Powers, Duties, etc.

The office of county attorney is the creature of the legislature. It exists only by virtue of the statute, which fixes its tenure, prescribes its duties and determines its compensation. Rounds v. Smart, 71 Me. 380; Watts Detective Agency v. Sagadahoc County, 137 Me. 233, 18 A. (2d) 308.

And may be altered by legislature without impairment of vested rights.— Whether the office of county attorney shall be holden under appointment of the governor and council or by election is a matter dependent on the legislative will. So, that will may change its duties, diminish its compensation or repeal the statute by force of which alone it exists, and no vested rights will thereby be impaired. Rounds v. Smart, 71 Me. 380.

Attorney cannot institute proceedings for county.—See note to § 12.

Attorney has no authority to hire private investigators. — See Watts Detective Agency v. Sagadahoc County, 137 Me. 233, 18 A. (2d) 308. See also, note to c. 150, § 2.

Sec. 112. County attorneys; election; vacancies. — County attorneys shall be elected and notified, their elections determined and vacancies filled in the same manner, and they shall enter upon the discharge of their duties at the same time as is provided respecting county commissioners, but they shall hold office for 2 years. Only attorneys at law admitted to the general practice of law in this state and resident in the county shall be elected or appointed as county attorney, and removal therefrom vacates the office. Whenever the governor and council, upon complaint and due notice and hearing, shall find that a county attorney has violated any statute or is not performing his duties faithfully and efficiently, they may remove him from office and appoint another attorney in his place for the remainder of the term for which he was elected. (R. S. c. 79, § 128.)

Cross reference.—See c. 5, § 117, re prosecution for wilful negligence is not delivering election returns.

Cited in Watts Detective Agency v. Sagadahoc County, 137 Me. 233, 18 A. (2d) 308.

Sec. 113. Military or naval service; substitutes.—Whenever a county attorney during his term of office shall, in time of war, contemplated war, emergency or limited emergency, enlist, enroll, be called or ordered or be drafted into the military or naval service of the United States or any branch or unit thereof, he shall not be deemed or held to have thereby resigned from or abandoned his said office; nor shall he be removable therefrom during the period of his said military or naval service except that his term of office shall not be held to have been lengthened by reason of the provisions of this section. From the time of his induction into such service he shall be regarded as on leave of absence without pay from his said office, and the governor with the advice and consent of the council shall appoint a competent attorney, a resident of the county so affected, to fill said office while said county attorney is in the federal service but not for a longer period than the remaining portion of the term of said county attorney. During the period of said military or naval service, the treasurer of state shall pay to said substitute attorney a salary at the same rate as the rate of pay of the county attorney and amounts so paid shall be deducted from the salary of said county attorney. The attorney so appointed to fill the temporary vacancy shall have the

title of "substitute county attorney" and shall possess all the rights and powers and be subject to all the duties and obligations of the county attorney for whom he is substituting. (R. S. c. 79, § 129.)

Sec. 114. Salaries.—County attorneys of the several counties shall receive annual salaries from the state treasury in monthly payments on the last day of each month, as follows, and no other fees, costs or emoluments shall be allowed them:

Androscoggin, $3,300; assistant county attorney, $2,420,
Aroostook, $3,000,
Cumberland, $4,000; assistant county attorney, $3,000,
Franklin, $1,250,
Hancock, $1,800,
Kennebec, $2,500,
Knox, $2,000,
Lincoln, $1,500,
Oxford, $2,200,
Penobscot, $3,000; assistant county attorney, $2,000,
Piscataquis, $1,500,
Sagadahoc, $1,500,
Somerset, $2,500,
Waldo, $2,000,
Washington, $1,800,
York, $2,500. (R. S. c. 79, § 130. 1945, c. 34; c. 161, § 1; cc. 168, 178, 187; c. 202, § 1; c. 229; c. 280, § 3; c. 322, § 2. 1947, cc. 113, 114, 121, 122; c. 154, § 2; cc. 383, 389. 1949, c. 214, § 3; cc. 334, 337, 338; c. 424, § 2. 1951, c. 311, § 2; c. 312, § 3; c. 313, § 3. 1953, c. 269, § 3; cc. 271, 272, 273, 275; c. 276, § 3; c. 277; c. 278, § 3.)

Sec. 115. Duties in civil proceedings; compensation.—The county attorney in each county shall appear for the county, under the direction of the county commissioners, in all suits and other civil proceedings in which the county is a party or interested, or in which the official acts and doings of said county commissioners are called in question, in all the courts of the state, and in such suits and proceedings before any other tribunal when requested by said commissioners. All such suits and proceedings shall be prosecuted by him or under his direction. He shall prosecute to final judgment and execution all civil cases in which the state is a party in his county and shall institute scire facias against sureties on any recognizance upon which the principal and sureties have been defaulted, before the term next succeeding that at which such default was entered upon the docket of the court, unless by order in open court the presiding justice shall grant a delay in matters of scire facias.

Writs, summonses or other processes served upon the county or said commissioners shall forthwith be transmitted by them to him. The county commissioners may employ other counsel if in their judgment the public interest so requires. For the services herein mentioned the county attorney shall receive no compensation other than the salary from the state, except actual expenses when performing said services, the same to be audited by the county commissioners and paid from the county treasury. This section, however, shall in no way relate to or give the county attorney control of litigation in which the county is not financially interested although the official acts and doings of the county commissioners may be called in question. (R. S. c. 79, § 131.)

Quoted in part in Watts Detective Agency v. Sagadahoc County, 137 Me. 233, 18 A. (2d) 308.

Sec. 116. Duties in criminal proceedings.—The county attorney shall

attend all criminal terms held in his county and act for the state in all cases in which the state or county is a party or interested, and unless he makes an order of dismissal as hereinafter provided shall diligently and without delay prosecute to final judgment and sentence all criminal cases before the superior court of his county, and in the absence of the attorney general from a term in the county, shall perform his duties in state cases under directions from him, in the county, and he shall appear and act for the state with the attorney general in the law court in all state cases coming into said court from his county; but no additional compensation shall accrue to the county attorney by the discharge of such duties. (R. S. c. 79, § 132.)

Attorney may be appointed to aid county attorney.—When it appears to the court that such facts and circumstances exist that the public interest requires that the county attorney have the aid of some counsellor of the court in the trial of the cause, the court will appoint such person as may seem best fitted under the circumstances to aid in the promotion of justice. The selection and appointment of such person lie in the discretion of the presiding judge. And exercise of this power is not the subject of exception unless it infringes some rule of law. The needs and exigencies of the case are for his consideration and cannot be reviewed upon exceptions. State v. Bennett, 117 Me. 113, 102 A. 974.

Quoted in Watts Detective Agency v. Sagadahoc County, 137 Me. 233, 18 A. (2d) 308.

Cited in State v. Reed, 67 Me. 127.

Sec. 117. Dismissal of civil or criminal cases.—In order to dismiss civil or criminal cases, the county attorney shall indorse upon the back of the writ, indictment or complaint in such cases a written order of dismissal, together with a statement of reasons for dismissal, and said order of dismissal shall not take effect unless approved in writing by the justice presiding at the term when the said dismissal is made. (R. S. c. 79, § 133.)

Sec. 118. To enforce collection of fines and costs; as to examination of sheriff's bond.—The county attorney shall enforce the collection and payment to the county treasurer of all fines, forfeitures and costs accruing to the state and the faithful performance of their duties by sheriffs and constables and give information to the court of their defaults in this respect; and shall annually move the county commissioners, at their meeting next following the 3rd Tuesday of June, to examine and consider the sufficiency of the sheriff's bond. If he neglects either of said duties, he forfeits to the state not more than $100, to be recovered in an action of debt in the name of the treasurer of state. (R. S. c. 79, § 134.)

See § 144, re annual examination of sheriff's bond.

Sec. 119. Annual report to attorney general. — The county attorney shall, annually, by the 20th day of November, make such a report to the attorney general of the business done in his office during the year ending on the 1st day of said November as is required by section 14 of chapter 20, and failing to do so, he forfeits ½ of his salary for the current quarter, to be deducted by the attorney general, unless he is satisfied that there was reasonable cause therefor. (R. S. c. 79, § 135. 1953, c. 308, § 91.)

Sec. 120. Appointment of temporary substitute.—When the county attorney does not attend a criminal session or the office is vacant, the court may appoint an attorney to perform his duties during the session and allow him a reasonable compensation to be paid from the county treasury, and the justice shall notify the attorney general who shall deduct the same from the salary of such county attorney and forward the same to such county treasurer. (R. S. c. 79, § 136. 1953, c. 308, § 92.)

Quoted in part in State v. Bennett, 117 Me. 113, 102 A. 974.

Cited in State v. Reed, 67 Me. 127.

Sec. 121. Appointment of substitute in case of death or removal.—Whenever the office of county attorney becomes vacant by reason of the death, permanent incapacity or removal from the county of the incumbent of the office, except as provided for in section 113, the governor with the advice and consent of the council shall appoint a competent attorney, a resident of the county affected, to fill out the term of office of said incumbent. (R. S. c. 79, § 137.)

Sec. 122. Restrictions and obligations.—The county attorney is under the same restrictions as to fees and the same obligations as to witnesses as are imposed on the attorney general by sections 11 and 15 of chapter 20. (R. S. c. 79, § 138.)

Sec. 123. Assistant county attorney for Cumberland county; duties.—The county attorney of the county of Cumberland may appoint an assistant, to be approved by a justice of the superior court resident in said county or by the chief justice of the supreme judicial court. Said assistant shall take the oath prescribed for county attorneys; and assist the county attorney in the ordinary duties of his office, in the drawing of indictments, in the hearing of complaints before the grand jury and in the preparation and trial of criminal causes. He shall, when directed by the county attorney, act as counsel for the state in the trial of complaints before judges of municipal courts and trial justices. He shall hold his office during the term of the county attorney by whom he was appointed, subject to removal at any time by the chief justice of the supreme judicial court. (R. S. c. 79, § 139.)

Sec. 124. Assistant county attorney for Androscoggin county; duties; term of office.—The county attorney of the county of Androscoggin may appoint an assistant to be approved by a justice of the superior court resident in said county or by the chief justice of the supreme judicial court. Said assistant shall take the oath prescribed for county attorneys and assist the county attorney in the ordinary duties of his office, in the drawing of indictments, in the hearing of complaints before the grand jury and in the preparation and trial of criminal causes. He shall, when directed by the county attorney, act as counsel for the state in the trial of complaints before judges of municipal courts and trial justices. The assistant county attorney shall hold his office during the term of the county attorney by whom he was appointed, subject to removal at any time by the chief justice of the supreme judicial court. (R. S. c. 79, § 140.)

Sec. 125. Assistant county attorney for Penobscot county; duties; term of office.—The county attorney of the county of Penobscot may appoint an assistant, who shall be a resident of the county and duly admitted to the practice of law in this state, to be approved by a justice of the superior court resident in said county or by the chief justice of the supreme judicial court, and who shall hold his office during the term of the county attorney by whom he was appointed, subject to removal at any time by the chief justice of the supreme judicial court. Said assistant shall take the oath prescribed for county attorney and assist the county attorney in the ordinary duties of his office, in the drawing of indictments, in the hearing of complaints before the grand jury and in the preparation and trial of criminal causes. He shall, when directed by the county attorney, act as counsel for the state in the trial of complaints before municipal courts and trial justices. (R. S. c. 79, § 141.)

Cross references.—See § 33, re county attorneys shall collect compensation of county commissioners for assessment of damages in condemnation proceedings; §§ 155-158, re duties when office of sheriff is vacant; c. 5, § 117, re duties re willful negligence in not delivering return of votes; c. 16, § 72, re duties as to enforcing tax laws; c. 32, § 5, re shall assist commissioner of agriculture in enforcing pure food law; c. 32, § 125, re enforcement of laws relating to dairy products; c. 45, § 53, re county attorneys to enforce compliance with order of public utilities commission

to make repairs; c. 92, § 131, re duties to enforce bond of delinquent sheriffs; c. 96, § 51, re shall represent interests of state at hearing for abolishment of grade crossings; c. 150, § 2, re expenses incurred in performance of duties; c. 150, §§ 14, 15, re duties as to delinquent fines, forfeitures and costs in criminal cases.

Cited in Watts Detective Agency v. Sagadahoc County, 137 Me. 233, 18 A. (2d) 308.

County Treasurers.

Election, Salaries, Duties, etc.

The office of county treasurer is a public office. Cumberland County v. Pennell, 69 Me. 357.

In this state, the official duties of the county treasurer are prescribed in part by the common law and in part by the statute; the provisions of the latter more particularly defining his special duties, leaving his general duties unmodified. When the treasurer elect accepts his office, he thereby takes upon himself all the duties thereof, general as well as special. His general duties, arising from the very nature of his office, are to receive the money of the county lawfully deposited with him, keep it safely and pay it out according to law. Cumberland County v. Pennell, 69 Me. 357.

Sec. 126. Treasurer; election; vacancy.—A treasurer shall be elected for each county by the legally qualified voters thereof. He shall be a resident of such county and shall serve for a term of 4 years. Neither the attorney general, county attorney, clerk of courts, sheriff of the county nor any of his deputies shall be county treasurer.

If a person so chosen declines to accept or a vacancy occurs, the governor with the advice and consent of the council may appoint a suitable resident of the county who, having accepted the trust, given bond and been sworn, shall be treasurer until the 1st day of January following the next biennial election, at which said election a treasurer shall be chosen for the remainder of the term, if any; but in any event he shall hold office until another is chosen and qualified. (R. S. c. 79, § 142.)

Cross reference. — See Me. Const., Art. 9, § 2, re offices incompatible with each other.

Quoted in part in Grindle v. Bunker, 115 Me. 108, 98 A. 69; Duquette v. Merrill, 141 Me. 232, 42 A. (2d) 254.

Sec. 127. Elections; notice to county commissioners. — The meetings for election of treasurers shall be notified, held and all proceedings therein regulated, returns made and proceedings thereon had, as provided in section 213; and the governor and council shall forthwith notify the county commissioners of the county where such person resides of his election. (R. S. c. 79, § 143.)

Sec. 128. Bond and tenure of office. — The person so elected and accepting the office of county treasurer shall give bond to the county for the faithful discharge of his duties in such sum as the commissioners order and with such sureties as they approve in writing thereon, and shall hold his office for 4 years from the 1st day of the next January and until another is chosen and qualified in his place. (R. S. c. 79, § 144.)

Cross references.—See c. 11, § 8, re oath before member of council or magistrate; c. 150, § 13, re annual report to attorney general.

Bond enforces obligation of good faith, etc., in performance of duties.—From the general duties accepted by a county treasurer, springs a legal obligation that he will bring to their performance good faith and reasonable skill and diligence, to enforce which, this section requires him to give a bond with sureties. Cumberland County v. Pennell, 69 Me. 357.

Tender of bond with specified conditions entitles treasurer to discharge duties. —The tender of a bond containing the specified condition, "in such sum as the commissioners order and with such sureties as they approve in writing," entitles the treasurer elect to enter upon the discharge of his official duties. Cumberland County v. Pennell, 69 Me. 357.

And bond requiring more than "faithful discharge of his duties" cannot be de-

manded.—The treasurer might enter into a common-law bond containing stipulations making him liable at all hazards, but one requiring of him more than a "faithful discharge of his duties" cannot be demanded of him as a condition precedent to his being allowed to hold the office. Cumberland County v. Pennell, 69 Me. 357.

Degree of responsibility of treasurer measured by common law.—The responsibility of a county treasurer, in the absence of any statute enlarging it, is measured by the common-law rule applicable to bailees for hire other than common carriers and innholders. He is bound, virtute officii, to exercise good faith and reasonable skill and diligence in the discharge of his trust; or, in other words, to bring to its discharge that prudence, caution and attention which careful men usually exercise in the management of their own affairs; and he is not responsible for any loss occurring without any fault on his part. This is substantially the rule by which the common law measures the responsibility of those whose official duties require them to have the custody of property, public or private. Cumberland County v. Pennell, 69 Me. 357.

And is not extended or enlarged by this section.—The treasurer's degree of responsibility is simply that which the common law imposes upon him as bailee for hire. This section does not extend or enlarge it. His official bond does not increase his responsibility, but simply affords security for the performance of his legal obligations. Cumberland County v. Pennell, 69 Me. 357.

A loss by robbery can be set up in defense of an action on the treasurer's bond. Of course, the burden is upon the defendant. Cumberland County v. Pennell, 69 Me. 357.

And robbery is valid defense in absence of fault or negligence of treasurer.—If, without fault or negligence on his part, the county treasurer is violently robbed of money belonging to the county, it is a valid defense, pro tanto, to an action upon his official bond. Cumberland County v. Pennell, 69 Me. 357.

But evidence that the treasurer used a safe placed in the treasurer's office for his use by the county commissioners is immaterial in an action on the treasurer's bond wherein the defense is robbery. The commissioners have no authority to release a treasurer from responsibility. Cumberland County v. Pennell, 69 Me. 357.

Sec. 129. Deputy treasurer of Cumberland county; appointment; bond. — The treasurer of Cumberland county may appoint a deputy treasurer who shall assist the treasurer in performing the duties of his office. Such deputy treasurer shall give bond to the county for the faithful discharge of his duties in such sum as the county commissioners order and with such sureties as they approve in writing thereon, the premium of such bond to be met by the county. (R. S. c. 79, § 145.)

Sec. 130. Salaries.—County treasurers in the several counties shall receive annual salaries from the treasuries of the counties in monthly payments paid on the last day of each month, as follows:

Androscoggin, $2,750,
Aroostook, $2,400,
Cumberland, $3,500; deputy treasurer, $2,700,
Franklin, $900,
Hancock, $1,500,
Kennebec, $2,800,
Knox, $900,
Lincoln, $800,
Oxford, $1,600,
Penobscot, $2,400,
Piscataquis, $700,
Sagadahoc, $1,200,
Somerset, $1,600,
Waldo, $800,
Washington, $1,600,
York, $1,750.

Each of the counties shall pay the premium on the official bond of its treas-

urer. (R. S. c. 79, § 146. 1945, cc. 33, 157; c. 161, § 2; c. 167, § 3; cc. 171, 190; c. 280, § 4; c. 314; c. 322, § 3. 1947, c. 120; c. 154, § 3; c. 157, § 3; cc. 203, 284, 297. 1949, c. 184; c. 186, § 2; c. 189; c. 214, § 4; c. 308, § 2; c. 361; c. 424, § 3. 1951, cc. 59, 247, 275; c. 311, § 3; c. 312, § 4; c. 313, § 8; c. 326, § 2. 1953, cc. 30, 52, 118, 119; c. 149, § 2; c. 179, § 2; c. 216, § 3; c. 247, § 2; c. 269, § 4; c. 276, § 4; c. 278, § 4; c. 288, § 1.)

Sec. 131. Treasurer to account; may enforce payment of taxes.— The treasurer shall keep his books and accounts on such form and in such manner as shall be approved by the state department of audit and shall apply all moneys received by him for the use of the county toward defraying its expenses, as the county commissioners and the supreme judicial or superior court by their written order direct; each treasurer shall account with the commissioners of his county for all receipts and payments. He may enforce payment of taxes in the manner prescribed for the treasurer of state. (R. S. c. 79, § 147.)

Cross references.—See §§ 65, 66, 67, re roads in unincorporated places; c. 92, §§ 52, 61, 62, 125, 130, 131, 135, 154, re warrants for collection of taxes.

Moneys in official custody of treasurer belong to county.—All the language of the statute relating to the subject matter is predicated upon the idea that the moneys which come into the official custody of the county treasurer are not his own private funds, but the county's; and that they remain so until legally paid out. Cumberland County v. Pennell, 69 Me. 357.

The duty of the county treasurer to pay amounts allowed by the court, on the order thereof, is imperative. That officer is entrusted with no discretionary power in this matter. His duties are merely ministerial. The attempt on his part to exercise supervisory power is an assumption of authority without right, and to permit him to do so would be to consent to have the powers of the government inverted, and to subordinate that tribunal, whose duty it is to have the general superintendence of all courts of inferior jurisdiction, and to issue all processes which may be necessary for the furtherance of justice, and the due execution of the laws, to the caprice of every petty ministerial officer who should choose to withstand its mandates. Baker v. Johnson, 41 Me. 15.

Law gives no adequate remedy when treasurer refuses to pay after direction.— The law does not give parties remedy by action against the county for those claims which are to be paid from the county treasury, upon the order of the court. Nor is there any specific or adequate remedy given to parties by action against a county treasurer, who improperly withholds payment when thus ordered by the court. The law does not give to parties thus situated a right of action upon his official bond. Baker v. Johnson, 41 Me. 15.

And mandamus is available in such cases.—A mandamus is the appropriate remedy to compel the county treasurer to pay, when he refuses to pay a demand which the county commissioners or the court have directed to be paid. Baker v. Johnson, 41 Me. 15.

Applied in Clark v. Clark, 62 Me. 255.

Sec. 132. County funds, where deposited or invested. — The treasurer, with the approval of the county commissioners, may deposit the moneys received by him for the use of the county in any of the banking institutions or trust companies or mutual savings banks organized under the laws of this state or in any national bank or banks located therein, or when in his judgment there is money in the treasury which is not needed to meet current obligations, he may, with the advice and consent of the county commissioners, invest such amount as he deems advisable in bonds, notes, certificates of indebtedness or other obligations of the United States of America which mature not more than 1 year from the date of investment. (R. S. c. 79, § 148.)

Sec. 133. Receive costs in favor of state.—Costs in all civil actions in the name of the state on scire facias or other process, paid before execution issues, shall be paid to the clerk of the court where the suit is pending and be by him paid, without deduction, to the county treasurer. (R. S. c. 79, § 149.)

Sec. 134. Annual statement of financial standing. — Each treasurer

shall, at the end of each year in connection with the commissioners, make a statement of the financial condition of the county showing in detail all moneys received into and paid out of its treasury, including a statement in detail of all sums received under the provisions of section 21 of chapter 156 and other facts and statistics necessary to exhibit the true state of its finances, including the number of weeks' board and expense of clothing furnished prisoners, and shall publish in pamphlet form a reasonable number of copies for distribution among its citizens. (R. S. c. 79, § 150.)

See c. 42, § 15, re municipal county reports filed.

Sec. 135. Payments to county law libraries. — The treasurer of each county shall pay annually to the treasurer of the law library association of his county for the uses and benefits of the county law library, as follows:

Androscoggin, $2,000,
Aroostook, $2,500 of which $1,700 shall be for the use and benefit of the county law library in the court house at Houlton in said county and $800 shall be for the use and benefit of the county law library in the court house at Caribou in said county,
Cumberland, $2,000 which shall be paid to the treasurer of the Cumberland Bar Association for the Nathan and Henry B. Cleaves Law Library,
Franklin, $1,250,
Hancock, $1,500,
Kennebec, $2,000,
Knox, $1,000,
Lincoln, $1,000,
Oxford, $1,250,
Penobscot, $1,750,
Piscataquis, $800,
Sagadahoc, $500,
Somerset, $2,500,
Waldo, $850,
Washington, $1,200,
York, $2,250.

The treasurer of each county shall also pay to the treasurer of the law library association of his county all money received from persons admitted upon motion to practice in courts of record as attorneys without a certificate from the board of examiners of applicants for admission to the bar. (R. S. c. 79, § 151. 1945, c. 253. 1947, cc. 52, 103. 1949, cc. 47, 128, 157. 1951, cc. 179, 216. 1953, cc. 12, 14, 28, 31, 51, 86, 116, 134, 182, 205.)

Sec. 136. Record of fines and bills of costs.—The county treasurer shall enter in a suitable book an account of all fines, forfeitures and bills of costs accruing to the state, which are from time to time certified to him by the clerk of the judicial courts of the county, and he shall note in said book when any of said sums are paid. (R. S. c. 79, § 152.)

See c. 150, § 3, re duties of clerks of courts.

Sec. 137. Annual schedule of securities taken on discharge of prisoners.—The county treasurer shall, within 3 months before the 1st Wednesday of each January, lay before the county commissioners a schedule of all notes and securities taken by the sheriff of such county for fines and costs on the liberation of poor convicts from prison, and by him delivered to said treasurer. (R. S. c. 79, § 153.)

Sec. 138. Treasurer's account, with county estimate. — The county

treasurer shall, annually, prepare and deliver his account as treasurer to the close of every year to the clerk of the county commissioners and said account shall be enclosed with the estimates for county taxes made by said commissioners and transmitted to the secretary of state. (R. S. c. 79, § 154.)

See § 13, re estimates for county taxes.

Sec. 139. Accountable to county commissioners. — Every treasurer holding money or effects belonging to his county shall, annually and oftener if required, exhibit an account thereof to the county commissioners for adjustment. (R. S. c. 79, § 155.)

Quoted in Cumberland County v. Pennell, 69 Me. 357.

Sec. 140. Account for money paid by U. S. for use of jails.—The county treasurer shall receive, for the county, all money paid by the United States for the use and keeping of county jails and account therefor according to law. (R. S. c. 79, § 156.)

See c. 150, §§ 11-13, re duties of county treasurers as to fines and costs in criminal cases.

Sec. 141. Collection of accounts due counties. — County treasurers may charge off the books of account of their respective counties, in whole or in part, such accounts receivable including taxes as shall be certified to them as impracticable of realization by the boards of county commissioners of their respective counties. (R. S. c. 79, § 157.)

Sheriffs and Their Deputies.

Election, Powers, Duties, Salaries, Fees, etc.

Sec. 142. Election or appointment; bond.—Sheriffs shall be elected or appointed and shall hold their offices according to the constitution, and their election shall be effected and determined as is provided respecting county commissioners, and they shall enter upon the discharge of official duty on the 1st day of January following. Every person elected or appointed sheriff for the counties of York, Cumberland, Kennebec or Penobscot, before receiving his commission, shall give bond to the treasurer of state with at least 3 sufficient sureties or with the bond of a surety company authorized to do business in this state as surety, in the sum of $40,000; and for any of the other counties, in the sum of $25,000, conditioned for the faithful performance of the duties of his office and to answer for all neglect and misdoings of his deputies. (R. S. c. 79, § 158.)

Cross reference.—See Me. Const., Art. 9, § 10, re election of sheriffs and tenure.

Malfeasance breaks condition of bond. —The phraseology "faithful performance of the duties of his office" makes it clear that the condition of the bond is broken by the malfeasance of the sheriff in his office. Harris v. Hanson, 11 Me. 241.

Stated in part in Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 143. Approval of bond; filed with state auditor. — Every sheriff having executed the required bond shall file it in the office of the clerk of the county commissioners of his county, to be presented to them at their next meeting for approval, and after the bond has been so approved, the clerk shall record it and certify the fact thereon, and retaining a copy thereof, deliver the original to the sheriff who shall deliver it to the state auditor within 20 days after its approval to be filed in his office. (R. S. c. 79, § 159.)

Sec. 144. Annual examination of bonds.—County commissioners, at their 1st meeting after the 3rd Tuesday of June on motion of the county attorney, shall annually examine into the sufficiency of the bond of the sheriff of their

county and cause a record of their determination to be made by their clerks, who shall certify the same to the state auditor within 30 days. (R. S. c. 79, § 160.)

See § 118, re duty of county attorney as to sheriff's bond.

Sec. 145. If adjudged insufficient, new bond given. — If the bond of any sheriff is adjudged insufficient, the clerk within 10 days shall certify that fact to him, who within 20 days thereafter shall give a new bond with sufficient sureties, to be filed in the office of the clerk of the county commissioners and approved as aforesaid, and then filed in the office of the state auditor. (R. S. c. 79, § 161.)

Sec. 146. Forfeiture for neglect to give bond.—Any sheriff for each month's neglect to give the security required in sections 142 or 145, which neglect shall be reported by the auditor to the treasurer of state, forfeits $150 to the state to be recovered in an action of debt by the treasurer of state; and the attorney general shall prosecute therefor; and the clerk of courts of his county shall certify such sheriff's name to the governor and council and the attorney general; and unless reasonable cause therefor is shown, or within 20 days after the clerk has so certified, he gives or renews his security to the satisfaction of the governor and council, he thereby vacates his office. ((R. S. c. 79, § 162.)

Sec. 147. Governor may require new bond in certain cases.—When the treasurer of state certifies to the governor and council that moneys due to the state on warrants or any other sums or balances are in the hands of a sheriff and furnishes the names of his sureties, and it appears to them that the sureties are insufficient or have removed from the state, they may require him to give a new bond with sufficient sureties within 60 days after he is notified to be filed as aforesaid, and if he neglects it, his office becomes vacant. (R. S. c. 79, § 163.)

Sec. 148. New bonds required on application of sureties.—When a surety on the official bond of a sheriff or his heirs, executors or administrators petition the county commissioners of the same county to be discharged therefrom, they shall cause an attested copy of the petition to be served on such sheriff and may require him to give a new bond to their satisfaction; and when it is given and accepted, such surety or his legal representatives are not liable for any neglect or misdoings thereafter. (R. S. c. 79, § 164.)

Sec. 149. Salaries.—The sheriffs of the several counties shall receive annual salaries from the treasuries of the counties in monthly or weekly payments as follows:

Androscoggin, $3,850,
Aroostook, $4,000,
Cumberland, $5,000,
Franklin, $2,200,
Hancock, $3,000,
Kennebec, $3,600,
Knox, $3,000,
Lincoln, $2,200,
Oxford, $2,400,
Penobscot, $4,500,
Piscataquis, $2,200,
Sagadahoc, $2,500,
Somerset, $3,000,
Waldo, $3,000,
Washington, $3,000,
York, $4,750,

together with free rental of the house or living apartment connected with the

county jail in each county, including the necessary light and fuel. Said salaries shall be in full compensation for services in attendance upon the supreme judicial court and upon the superior court, as jailer, master or keeper of the jail in each county, for receiving and committing prisoners therein and for the service of all criminal processes and the performance of all duties relating to the enforcement of all criminal laws. All actual and necessary expenses for travel and hotel bills within their respective counties and such necessary incidental expenses as are just and proper, incurred in the performance of their public duties including all necessary expenses for aid in keeping the jails, shall be allowed by the respective boards of county commissioners of said counties and paid from the county treasuries. (R. S. c. 79, § 165. 1945, c. 161, § 3; cc. 172, 241, 242, 243; c. 262, § 2; c. 280, § 5; c. 322, § 4; c. 352. 1947, c. 112; c. 154, § 4; c. 157, § 4; cc. 198, 207, 282. 1949, c. 178; c. 186, § 3; c. 214, § 5; cc. 255, 285; c. 308, § 3; c. 331; c. 424, § 4. 1951, cc. 226, 231; c. 311, § 4; c. 312, § 5; c. 313, § 9; cc. 335, 370. 1953, c. 38, § 2; c. 124; c. 179, § 3; c. 269, § 5; c. 276, § 5; c. 278, § 5.)

Cross reference.—See § 171, re fees accounted for.

Cited in Bowden's Case, 123 Me. 359, 123 A. 166.

Sec. 150. Fees. — Sheriffs and their deputies shall receive the following fees:

I. For service of all writs with summons, precepts, notices, subpoenas, executions, court orders, orders of service, copies, bills in equity with subpoena issued thereon and all other civil process or papers requiring service which are not specifically hereinafter enumerated, they shall receive therefor $2 for each such service.

II. For the service of petition and subpoena for disclosure before commissioner or for the service of citation by copy to creditor as provided by chapter 120, $3.50.

III. For the service of libel for divorce inserted in writ of attachment by serving summons and attested copy of writ and libel, or for the service of libel for divorce with order of court thereon by attested copy, $4.

IV. For attachment of real estate at registry of deeds, which includes fee of 50¢ to registry, $3.50.

V. For attachment of personal property or for the service of writ of replevin, $3.50, and in addition thereto $1 for each hour after the first required for such service.

VI. The fee for civil arrests shall be $2 for such arrest and $2 shall be charged for custody thereunder, including arrest and custody under bastardy proceedings.

VII. For service of tax summons and arrest under tax warrants the same as for service of civil process.

VIII. For levying and collecting executions in personal actions, for every dollar of the first $100, 4¢; for every dollar above $100 and not exceeding $200, 3¢; and for every dollar above $200, 2¢.

IX. For advertising in a newspaper a right in equity of redeeming mortgaged real estate to be sold on execution, such sums as he pays the printer therefor; for posting notice of the sale of such equity in the town where the land lies and in 2 adjoining towns, $6 and usual travel, and for a deed and return of the sale of such equity, $2.

X. Sheriffs and their deputies shall make a charge of $1, plus necessary travel, for making diligent search for persons upon whom they are commanded to serve civil process when such party cannot be located at an address given to

said sheriff or his deputy by the plaintiff or his attorney when commanding such service to be made.

XI. In addition to the fees so charged for service, travel shall be charged at the rate of 20¢ a mile from the officer's place of abode to the place of service.

XII. For the service of a warrant, the officer is entitled to $2 and $2 for the service of a mittimus to commit a person to jail and usual travel, with reasonable expenses incurred in the conveyance of such prisoner.

It is the officer who serves the warrant who has a claim for the conveyance of prisoners. He alone by this section is the person legally entitled to any claim for "reasonable expenses incurred in the conveyance" of prisoners. Bangor v. Penobscot County Com'rs, 87 Me. 294, 32 A. 903.

The commissioners are made the judges of what the reasonable expenses of conveying prisoners are, and the legislature has not seen fit to provide any appeal from their determination in such cases. It is a discretionary power. Bangor v. Penobscot County Com'rs, 87 Me. 294, 32 A. 903.

XIII. For each aid necessarily employed in criminal cases, including expenses, compensation at the prevailing rate per day for deputy sheriffs, and in that proportion for a longer or shorter time and 10¢ a mile for travel in going out and returning home, if necessary to travel by common carrier. (1953, cc. 297, 312)

XIV. For attending court and keeping the prisoner in criminal cases, $10 a day, and in that proportion for a greater or shorter length of time.

XV. Every deputy sheriff and court messenger, while in attendance upon the supreme judicial court or the superior court in their several counties, shall receive for said attendance and service $10 a day plus their necessary travel at 20¢ a mile from their place of abode for each day's attendance.

XVI. Every deputy sheriff while performing special duties under order of the sheriff shall receive for such services $10 a day, together with necessary, incidental expenses, to be paid from the county treasury, the bills for which shall be audited as provided in section 2 of chapter 150. Provided, however, that such officers shall not be entitled to fees for any services rendered in criminal matters while acting as per diem officers. (1953, cc. 32, 297)

XVII. The fees of the register of deeds for recording a levy upon real estate or the deed of the officer for the sale of real estate on execution and all sums paid by the officer for internal revenue stamps to be affixed to such deeds shall be taxed by the officer in his return; and every officer making levy on real estate by appraisal shall cause the execution and his return thereon to be recorded by the register of deeds for the district where the land lies within 3 months after such levy.

XVIII. No fee shall be charged by any sheriff or deputy sheriff for attesting copies of any writ. (R. S. c. 79, § 166. 1945, c. 293, § 14; c. 318; c. 378, § 66. 1947, c. 313, §§ 1, 2, 3. 1951, c. 212, §§ 1, 2. 1953, cc. 32, 297, 312.)

Cited in Norris v. McKenney, 111 Me. 33, 87 A. 689.

Sec. 151. Deputies; list; uniforms.—Every sheriff, elected or appointed, may appoint deputies for whose official misconduct and neglect he is answerable. Their appointment and discharge shall be in writing, signed by him, and recorded in the office of the clerk of courts in his county and are not valid until so lodged and recorded, except by operation of law or by vacancy in the office of sheriff. He shall also furnish to the clerk of courts in each county the names of the deputies by him appointed from time to time, with the residence and post-office address of each. He shall require any of said deputies, while engaged in the enforcement of the provisions of section 153 of chapter 22, to wear a uniform suf-

ficient to identify themselves as officers of the law. Upon approval of the county commissioners, uniforms required by this section, but not exceeding 2 for any one county, shall be furnished by the county. (R. S. c. 79, § 167. 1951, c. 123.)

Office of deputy sheriff incompatible with that of trial justice.—A person appointed and sworn as a deputy sheriff must be regarded as having accepted that office. By that acceptance he surrenders the office of trial justice, a judicial office incompatible with that of a deputy sheriff. His judicial authority, therefore, as a trial justice is at an end. Stubbs v. Lee, 64 Me. 195.

Section does not require that appointment remain in clerk's office.—This section, requiring the appointment of a deputy to be lodged in the clerk's office, does not intend that it shall forever remain there. It is to be lodged there for the purpose of being recorded. When recorded, the deputy may take it away. Dane v. Gilmore, 51 Me. 544.

Proof of relationship of sheriff and deputy.—If a person, as sheriff, appoints another a deputy sheriff under him, this is to be regarded as sufficient proof that they stood in the relation of sheriff and deputy in an action against the former for the default of the latter, as his deputy. Currier v. Brackett, 18 Me. 59.

Remedy against sheriff for injury by deputy. — The parties to a suit, or judgment and execution, who have been injured by a deputy sheriff, by reason of any of his omissions to do what his duty as an officer required him to perform, and strangers who have suffered by his official acts, have a remedy against the sheriff, commensurate with the injury received. Kendrick v. Smith, 31 Me. 162.

The sheriff and his deputies are one in the enforcement of the laws and protection of the people against infraction of the laws. Moulton v. Scully, 111 Me. 428, 89 A. 94.

Sheriff liable for deputy's acts done under color of office.—If the act from which the injury resulted was an official act, the authorities are clear that the sheriff is answerable. But an official act does not mean what a deputy might lawfully do in the execution of his office; if so, no action could ever lie against a sheriff for the misconduct of his deputy. It means, therefore, whatever is done under color or by virtue of his office. Harris v. Hanson, 11 Me. 241.

The sheriff is responsible for all official neglect or misconduct of his deputy; and also for his acts not required by law, where the deputy assumes to act under color of his office. Harrington v. Fuller, 18 Me. 277.

But sheriff not liable for deputy's neglect of act or duty not required by law.—Touching the sheriff's liability the rule is that he is not responsible for the neglect of any act or duty which the law does not require the deputy officially to perform. Harrington v. Fuller, 18 Me. 277; Dyer v. Tilton, 71 Me. 413.

The liability of the sheriff for the acts of his deputy has been repeatedly held to extend only to the violation of official duty; and bonds, which sheriffs have usually taken of their deputies, have been restricted in their operation to security against the like delinquency, and have not been regarded as sufficient to sustain their promises. Kendrick v. Smith, 31 Me. 162.

Nor for acts not performed in ordinary course of duty.—The sheriff is not amenable for the acts of his deputy, unless they are performed in the ordinary course of his official duty, as prescribed by law. Dyer v. Tilton, 71 Me. 413.

Sheriff not responsible when deputy given power over execution not given by law.—Where the plaintiff in an execution gives to the deputy sheriff a power over it not given by law, or gives directions for the management of it otherwise than as required by law, the sheriff is not responsible. Dyer v. Tilton, 71 Me. 413.

The acts and omissions of the deputy, for which the sheriff is made liable are tortious in their character and, therefore, cannot properly be anticipated in all cases. Hence, the importance of a provision for the indemnity of those who may suffer thereby, such as this section has provided. Kendrick v. Smith, 31 Me. 162.

Sheriff not liable for deputy's contracts which are not part of official duties.—The sheriff is not liable on the contracts of his deputy, though such contracts grow out of and are connected with his official duties, so long as they are no part thereof. Dyer v. Tilton, 71 Me. 413.

Thus, he is not liable on contract requiring deputy to do act not required by law.—The sheriff is answerable civiliter for the defaults of his deputies by nonfeasance or malfeasance in the duties of their office, enjoined upon them by law; but not for a breach of a contract made with a plaintiff, obliging themselves to do what by law they were not obliged to do. Dyer v. Tilton, 71 Me. 413.

Nor is he liable for compensation claims of agents employed by deputy.—A deputy may be obliged for various reasons to make use of agencies, auxiliary to the full discharge of his duties as a minister of the law, and for the services performed by those employed by him he is entitled to reasonable compensation. It often becomes necessary that goods attached on mesne process should be removed and that expense should be incurred afterwards in their safe custody. The persons employed for this purpose by the officer who made the attachment may be numerous, their services more or less important, some being to a very small sum and others to a much larger, as compensation for their respective services, each as they severally agree with the officer, or as the aid afforded may properly require. The individuals who have thus assisted him in his duties have done it under a personal contract which renders the officer liable; but it cannot be contended that each would have a claim against the sheriff who appointed and commissioned the officer. Kendrick v. Smith, 31 Me. 162.

The omission of the deputy sheriff to compensate one whom he employs to take charge of property attached by him is not an omission contemplated by this section. Kendrick v. Smith, 31 Me. 162.

Sheriff's liability for deputy's wrongful attachment ceases when property is changed.—Where the deputy takes the goods of one person on a writ against another, and afterwards sells them by the consent of the parties to that suit, the sheriff is liable while the property in the goods, or money received from the sale of them, remains unchanged. But, if the owner of the goods brings trespass against the deputy for taking them, recovers judgment and takes out execution, the property is changed and it becomes a part of the estate of the deputy, and the sheriff is no longer responsible. As this transfer of the right of property to the deputy is the legal consequence of the act of the plaintiff, it is not held by the deputy as a new fund in his official capacity; the debt due for it becomes the private debt of the deputy by the plaintiff's own election; and the sheriff ceases to be responsible for any after act or neglect of the deputy. Harrington v. Fuller, 18 Me. 277.

The sheriff is not liable for goods attached by a deputy of his predecessor, which were receipted for; though the same individual was a deputy of his when the execution in the suit upon which the attachment was made was placed in his hands. Pillsbury v. Small, 19 Me. 435.

Applied in Lambard v. Fowler, 25 Me. 308.

Cited in Lambard v. Rogers, 31 Me. 350.

Sec. 152. Special deputies. — Whenever a state of war shall exist or be imminent between the United States and any foreign country, sheriffs may appoint male citizens more than 18 years of age not eligible for military service as special deputies, who shall have and exercise all the powers of deputy sheriffs appointed under the general law, except the service of civil process. Such special deputies shall be personally responsible for any unreasonable, improper or illegal acts committed by them in the performance of their duties, but the sheriffs shall not be liable upon their bonds or otherwise for any neglect or misdoings of such deputies. (R. S. c. 79, § 168.)

Sec. 153. Notification of appointment; compensation. — Any sheriff appointing such special deputy sheriffs shall notify the clerk of courts and the county commissioners for the county in which such appointments are made, giving the names of such deputies and the date of their appointments, and such county commissioners shall fix and order paid from the treasury of the county to such deputies a reasonable compensation, not exceeding $3.50 per day for the time actually employed, together with actual and necessary expenses incurred in the performance of duty. (R. S. c. 79, § 169.)

Sec. 154. Obey orders of governor.—Sheriffs shall obey all such orders relating to the enforcement of the laws as they from time to time receive from the governor. (R. S. c. 79, § 170.)

Cross references.—See c. 14, § 2, re may call aid for militia; c. 15, § 15, re recording of fingerprints; c. 37, § 61, re have powers of inland fish and game wardens; c. 61, § 78, re special duties.

Section does not make sheriffs employees of state.—Although this section places sheriffs and their deputies under the di-

rection and control of the executive department, it does not thereby make them employees of the state. Bowden's Case, 123 Me. 359, 123 A. 166.

Nor does sheriff exercise executive function by virtue of section.—A deputy sheriff, while acting as court officer during a session of the court, is not and cannot be held to be exercising an executive function while acting as such court officer, under the direction and control of the executive department by virtue of this section. Bowden's Case, 123 Me. 359, 123 A. 166.

Sec. 155. Chief deputy.—Subject to the provisions of section 151, the sheriff in each county shall, as soon as may be after he takes office, appoint a chief deputy to serve under him, who shall have all the powers and duties of a deputy sheriff and who shall be subject to the direction of the sheriff in the administration of his office. (R. S. c. 79, § 171.)

See c. 15, § 2, re cooperation with state police.

Sec. 156. Qualification and bond of chief deputy; approval and filing of bond.—Every person appointed chief deputy under the provisions of section 155 shall give bond to the treasurer of state before receiving his commission with at least 3 sufficient sureties, or with the bond of a surety company authorized to do business in this state as surety, in such sum as the county commissioners of his county shall require, conditioned for the faithful performance of the duties of his office and to answer for all neglect and misdoings of the deputies in said county during such time as he shall serve in the period of a vacancy in the office of sheriff. Said bond shall be filed and approved in the same manner as is required for the bond of a sheriff under the provisions of section 143, and all of the provisions of said section shall apply to the bond of such chief deputy. (R. S. c. 79, § 172.)

Sec. 157. Powers of chief deputy during vacancy in the office of sheriff.—In the event of a vacancy in the office of sheriff by reason of death, resignation or otherwise, said chief deputy shall have and exercise the same rights and powers and be subject to the same duties and liabilities as a sheriff until the vacancy in the office of sheriff shall have been filled as provided in the constitution and the new sheriff shall have qualified according to law. (R. S. c. 79, § 173.)

Sec. 158. Powers of other deputies during vacancy. — During the vacancy in the office of sheriff, all other deputies of the sheriff vacating the office shall continue to have and exercise the powers and duties of deputy sheriffs and shall be subject to the direction and control of said chief deputy in the same manner and to the same extent as if he were sheriff. (R. S. c. 79, § 174.)

Sec. 159. Duty of sheriff and deputies to serve precepts; fees paid or secured. — Every sheriff and each of his deputies shall serve and execute, within his county, all writs and precepts issued by lawful authority to him directed and committed, including those in which a town, plantation, parish, religious society or school district, of which he is at the time a member, is a party or interested, but his legal fees for service shall first be paid or secured to him; and if they are not when the process is delivered to him, he shall forthwith return it to the plaintiff or attorney offering it; or if sent to him by mail or otherwise, he shall put it into some post office within 24 hours, directed to the person sending it; otherwise he waives his right to his fees before service. (R. S. c. 79, § 175.)

Applied in Patterson v. Eames, 54 Me. 203.

Quoted in part in Benson v. Smith, 42 Me. 414.

Stated in part in Morrell v. Cook, 31 Me. 120.

Cited in Frothingham v. Maxim, 127 Me. 58, 141 A. 99.

Sec. 160. Service of writs and precepts in which the sheriff is a

party.—All writs and precepts in which the sheriff of any county is a party may, unless served or executed by a constable, be served or executed by the sheriff of any county adjoining that of which he is sheriff. (R. S. c. 79, § 176.)

Sec. 161. Service upon deputy. — Any writ or precept in which the deputy of a sheriff is a party may be served by any other deputy of the same sheriff. (R. S. c. 79, § 177.)

One deputy cannot serve on another except by statutory authorization. Graves v. Smart, 75 Me. 295.

No authority is given by this section to the sheriff to serve any precept upon his deputies. Graves v. Smart, 75 Me. 295.

Sec. 162. Duty of sheriffs and deputies in serving processes on vacating office.—Sheriffs and their deputies have the same authority and their deputies are under the same obligation to serve, execute and return all processes in their hands, when for any cause they cease to hold such office, as before; and official neglects or misdoings of a deputy after his principal is out of office are a breach of such sheriff's bond. (R. S. c. 79, § 178.)

The officer who has an execution and begins its service before the termination of his office might proceed afterwards to complete the service. Clark v. Pratt, 55 Me. 546.

Sec. 163. Actions survive against them. — Actions for the neglect or misdoings of a sheriff or his deputies survive the sheriff and may be brought against his executors or administrators. (R. S. c. 79, § 179.)

Sec. 164. Person injured by misdoings of sheriff may sue his bond at his own expense; indorsement of writ; costs; judgment.—Any person injured by the neglect or misdoings of a sheriff, who has first ascertained the amount of his damages by judgment in a suit against him, his executors or administrators, or by a decree of the probate court allowing his claim, may, at his own expense in the name of the treasurer of state, institute a suit on his official bond in the county where he was authorized to act and prosecute it to final judgment and execution. His name and place of residence or that of his attorney shall be indorsed on the writ and the indorser alone is liable for costs. If judgment is rendered for the treasurer of state, it shall be for the damages ascertained as aforesaid, or so much thereof as remains unpaid, with interest; and the party's name for whom the suit was brought shall be expressed in the execution issued thereon. If the judgment is for the defendant, it shall be against the party for whom the suit was brought. (R. S. c. 79, § 180.)

The sureties on a sheriff's bond are not liable for his unauthorized and illegal acts or omissions to act. Dane v. Gilmore, 51 Me. 544.

And no recovery against surety for failure of sheriff to serve unauthorized precept.—If, in a suit on the official bond of the sheriff, it is admitted that the sheriff had no authority by law to serve the precept, the failure to serve which was the neglect complained of, judgment will be given for the defendants, although the plaintiff had recovered a judgment against the sheriff for the same alleged default. Dane v. Gilmore, 51 Me. 544.

Judgment against sheriff is prerequisite to action on bond.—Before an action can be maintained on a sheriff's official bond, the party seeking that remedy must obtain a judgment against the sheriff, founded directly upon his official delinquency. Bailey v. Butterfield, 14 Me. 112.

A judgment against the sheriff for his default is a prerequisite for maintaining a suit upon his official bond. Dane v. Gilmore, 51 Me. 544. See Cony v. Barrows, 46 Me. 497.

But issuance of execution and notice to sureties not necessary.—It is not necessary, in order to maintain an action under this section, to issue an execution, or to notify the sureties of the default or of the judgment. Cony v. Barrows, 46 Me. 497.

And suit against sheriff need not be in any particular form.—This section in its terms does not require that the suit in which the damages are ascertained shall be in any particular form of action. The manifest intention of the legislature was to prevent sureties from being troubled by suits before the liability of the officer and the amount had been settled by a proper suit. Dane v. Gilmore, 49 Me. 173.

And the original action against the

sheriff need not be instituted against him in his official capacity. Dane v. Gilmore, 49 Me. 173.

Nor must official character of act be set forth.—This section does not require that the official character of the act complained of be set forth in the original action against the sheriff. Dane v. Gilmore, 49 Me. 173.

Hence, plaintiff must show aliunde official action by sheriff.—Unless the plaintiff can show aliunde the facts which establish official action, he can have no remedy on a bond given for the express purpose of securing individuals against the official misconduct of the sheriff. Dane v. Gilmore, 49 Me. 173.

For the purposes of this section, there is no reason why the damages may not be as well determined in an action of trover as in an action of trespass against the sheriff. In neither form of action would the official character of the act complained of appear, if the count was a simple one. A judgment in trespass would establish only what a judgment in trover would—a simple wrongful taking—without establishing the official character of the act. In either case, this must be established by proof aliunde. Dane v. Gilmore, 49 Me. 173.

Evidence of official misfeasance sufficient to support judgment against sureties.—If, from evidence aliunde, it appears that the act complained of in the first suit was official, and that the judgment was in fact for such act, it would be sufficient to show an official misfeasance, which is a breach of the bond, and establishes the plaintiff's right to judgment for such breach. Dane v. Gilmore, 49 Me. 173.

And plaintiff may show sheriff acted under color of office.—It is competent for the plaintiff, in an action on a sheriff's bond, to show, by the record and by other proof, that the wrong for which the action was instituted against the sheriff was done under color of office. Dane v. Gilmore, 49 Me. 173.

Judgment against sheriff is prima facie evidence in suit against surety.—It is well settled law that, where one person is surety for the faithful performance of duty by another, a judgment recovered against that other for a failure, if without fraud or collusion, is prima facie evidence in a suit against the surety. Dane v. Gilmore, 49 Me. 173.

But sureties not absolutely concluded thereby.—The sureties are not parties to the judgment against the sheriff, and are not, therefore, to be absolutely concluded thereby. Dane v. Gilmore, 51 Me. 544.

And may introduce exonerating evidence.—Where a judgment has been recovered against a sheriff, the sureties, in a suit against them, may show that the taking was not by color of office or that the judgment was obtained by collusion, by which an act done by an officer in his private character, is made to appear as an official delinquency, or any other matter which exonerates the surety. Dane v. Gilmore, 49 Me. 173.

If such judgment is obtained by fraud or collusion, it is not conclusive against the sureties on the bond. Dane v. Gilmore, 51 Me. 544.

No legal presumption will arise from a lapse of time less than twenty years that a judgment against a sheriff has been satisfied. Cony v. Barrows, 46 Me. 497.

And delay less than that will not bar action under this section.—A delay of several years in bringing a suit on a sheriff's bond, after judgment against him, will be no legal bar to the action, if there has been no contract, consideration or motive for the delay. Cony v. Barrows, 46 Me. 497.

Action for misfeasance does not survive.—Neither by the common law, nor by the provisions of this section do actions of tort for the misfeasance of sheriffs survive, as against their legal representatives. Gent v. Gray, 29 Me. 462.

Cited in Potter v. Frank, 106 Me. 165, 76 A. 489.

Sec. 165. Actions on sheriff's bond; proceedings.—Any other person having a right of action on such bond may file an additional declaration in the same action in the office of the clerk of courts, who shall issue a summons, directed to the defendant, specifying the cause of action and the amount demanded, returnable to the same court and indorsed by the name and place of residence of such other person or his attorney; and such indorser is liable for costs like indorsers of writs. (R. S. c. 79, § 181.)

Sec. 166. Service; right of person filing declaration; answer. — The property of the defendant may be attached on such summons as on mesne process, and it shall be served on the defendant as an original summons; and thereupon such person has all the rights of a plaintiff in the suit; and the defendant shall

answer to said declaration, and judgment may be rendered thereon as if it were filed in an action originally instituted for the same cause. (R. S. c. 79, § 182.)

Sec. 167. Damages assessed on rendition of judgment; issue of executions.—When judgment is rendered against the defendant in such action, damages shall be assessed on each declaration for the amount which the party filing it would recover in a suit on the bond, with costs; and executions shall issue therefor in the name of each party so recovering in the order in which the declarations were filed, but not beyond the amount of the bond. If judgment is for the defendant on any such declaration, execution for costs shall issue against the party filing it. No such action shall be dismissed, discontinued or nonsuited, except by order of court, without the consent of all parties interested as plaintiffs. (R. S. c. 79, § 183.)

Sec. 168. Any person entitled to copy of bond; unless execution disputed, it is evidence.—The treasurer of state shall deliver an attested copy of a sheriff's bond to anyone applying and paying for it, which shall be competent evidence in any case relating thereto, unless its execution is disputed, in which case the court may order the treasurer to produce it in court for the purposes of the trial. (R. S. c. 79, § 184.)

Sec. 169. Exemption from arrest in civil action; proceedings upon failure to pay execution; office vacated.—No sheriff shall be arrested upon any writ or execution in a civil action; but when a judgment is rendered against him in his private or official capacity, the execution thereon shall issue against his property but not against his body; yet he may, after notice that such execution has issued, unless upon a judgment for his own official delinquency, cite the creditor and make disclosure of the actual state of his affairs in the manner provided for poor debtors arrested upon execution; and if the execution is returned unsatisfied and he has not made such disclosure or if the judgment was rendered for his own official delinquency, the creditor may file an attested copy of such execution and return with the governor and council, and serve on such sheriff a copy of such copy, attested by the secretary of state, with a notice under his hand of the day on which such first copy was filed; and if such sheriff does not, within 40 days after such service, pay the creditor his full debt with reasonable costs for copies and service thereof, he thereby vacates his office. When he ceases to be sheriff, the clerk may issue alias executions against his property and body, as in other cases. (R. S. c. 79, § 185.)

Sec. 170. Fees from deputies.—No sheriff shall receive from any of his deputies any of the fees earned by said deputies or any percentage thereon. (R. S. c. 79, § 186.)

Sec. 171. Legal fees collected and accounted for. — All fees chargeable under the statutes of the state for the performance of any of the duties prescribed in section 149 shall be charged and collected by said sheriffs as now provided by law and an accurate account thereof and of those specified in the following section kept and transmitted to the county treasurer on the last days of March, June, September and December annually, and the amount deducted from the quarter's salary for the quarter then ending. If such fees are in excess of the amount of salary then due the sheriff, he shall pay said excess to the county treasurer, and no county treasurer shall pay any quarter's salary until said statement shall have been filed. (R. S. c. 79, § 187.)

Sec. 172. Fees collected from other counties, etc., disposed of as in § 171. — For all prisoners committed from other counties or from any court of the United States and for all other persons confined for debt and on other civil processes, the said sheriffs shall collect the same fees for their entire support as are now provided by law or may be fixed by the county commissioners under the

authority vested in them by statute, and include the same in the statement provided for in the preceding section, and the same shall be deducted from the salary as herein prescribed. They shall not make any charge or collect any fees for the support of prisoners committed on criminal process from any court in the county in which said jail is situated. (R. S. c. 79, § 188.)

Sec. 173. Special deputies in Cumberland county; compensation.— The sheriff of Cumberland county shall appoint 3 deputy sheriffs, who shall serve at the pleasure of said sheriff and whose special duty shall be to enforce the criminal laws in said county and who shall receive as compensation therefor the sum of $8 per day and such additional pay as the county commissioners may approve, to be paid from the county treasury, together with such incidental expenses as may be necessary for the proper enforcement of said laws; bills for which shall be audited as provided in section 2 of chapter 150. (R. S. c. 79, § 189. 1947, c. 313, § 4. 1951, c. 212, § 3.)

Jails and Jailers.

Sec. 174. Custody of jail and prisoners; jailer. — The sheriff has the custody and charge of the jail in his county and of all prisoners therein and shall keep it himself, or by his deputy as jailer, master or keeper for whom he is responsible. The jailer, master or keeper shall appoint all subordinate assistants and employees for whom he is responsible, and the pay of whom, including the jailer, shall be fixed by the county commissioners and paid by their several counties, except when otherwise provided by law. (R. S. c. 79, § 190.)

Sheriff has exclusive control over prisoners.—The sheriff is the official whose authority and control are intended to extend exclusively to the care and custody of the prisoners while they are within the confines of the jail. Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

The language of this section is definite, unambiguous and clear. The sheriff has (1) the custody and charge of the jail; (2) of all prisoners therein; (3) shall keep it himself; (4) or by his deputy as jailer, master or keeper; (5) for whom he is responsible. Nowhere are these five direct and positive functions of the sheriff modified by express statute or necessary implication or conflict of authority. Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

And commissioners have no such control.—Nowhere in the statute are the commissioners vested with the powers of jailer or given control or custody of prisoners while confined in jail. No responsibility by bond or penalty is placed upon them for the care, custody or condition of the prisoners. Nor are they required to be present at all at the jail to look after the prisoners or to delegate any agent to represent them in this regard. Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sheriff to appoint persons whose duties would require contact with prisoners.— The situation and circumstances, in view of the general duties, respectively, of the sheriff and county commissioners, would strongly suggest that the sheriff is the official intended to be made responsible for and vested with the authority to employ every person whose employment requires him to have access to the cells of the prisoners. Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

The duties imposed on the sheriff by the first sentence in this section, if he performs those duties, make it absolutely necessary that he should have the appointment of every person, no matter what his employment—lawyer, doctor or minister—who shall be permitted to enter the jail and come in personal contact with the prisoners. Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

And sheriff alone authorized to employ physician for prisoners.—This and the following sections not only give, but impose upon, the sheriff or his deputy, as jailer, the sole responsibility for the care, custody and safeguarding of the prisoners. And, by necessary implication, they authorize him, alone, when necessary, to employ a physician to administer to the prisoners. Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Subordinate assistants cannot recover pay until fixed by commissioners.—This section provides that for all subordinate assistants and employees of the jailer the county commissioners shall fix their pay.

They therefore cannot bring suit against the county until the pay is fixed. Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

And commissioners not compelled to fix pay unless assistant legally employed.—A petitioner for mandamus to compel the commissioners to fix the pay of a person hired by the jailer must show that he was legally employed and had a legal claim against the county upon which it was the duty of the county commissioners to fix the amount to be paid. The legality of his bill depends upon the legality of his employment. When the latter question is determined the former will be taken care of. Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 175. Jailer's duties when office of sheriff vacant. — When a vacancy occurs in the office of sheriff, the jailer lawfully acting continues in office and shall retain charge of the jail and of all prisoners therein or committed thereto, and his official neglects and misdoings are a breach of his principal's official bond until a new sheriff is qualified, or the governor and council remove such jailer and appoint another, which they may do; and the jailer so appointed shall give bond in the manner required of a sheriff for the faithful discharge of his duties. (R. S. c. 79, § 191.)

Sec. 176. When offices of jailer and sheriff vacant, county commissioners appoint.—If the office of jailer becomes vacant while the office of sheriff is vacant, the county commissioners may appoint a jailer, who shall give bond as a sheriff is required to do and continue in office, if his appointment is confirmed at their next meeting, during the vacancy in the office of sheriff or until he is removed and a new jailer appointed. (R. S. c. 79, § 192.)

Sec. 177. Jail kept clean and healthful.—The sheriff shall see that the jail in his county is kept as clean and healthful as may be; cause the walls to be whitewashed in April or May annually and as often as the county commissioners order, at the expense of the county; and pay strict attention to the personal cleanliness of the prisoners. (R. S. c. 79, § 193.)

Cross references.—See c. 27, §§ 2, 15, re inspection and licensing of institutions; transfer of prisoners.

Stated in Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 178. Jailer to live in jail. — Every keeper of a jail shall reside constantly with his family, if he has any, in the house provided for him, if in the opinion of the county commissioners it is good and sufficient; and if he neglects to do so, he forfeits not more than $300 to be recovered for the county by indictment. (R. S. c. 79, § 194.)

Quoted in Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 179. Jailer to furnish Bible and other books and instruction to prisoners.—The jailer, at the expense of the county, shall furnish to each prisoner who is able to read a copy of the Bible, and to all, on Sundays, such religious instruction as he may be able to obtain without expense, and to such as may be benefited thereby, instruction in reading, writing and arithmetic 1 hour every evening except on Sunday. It shall be his further duty to receive for their use from whatever source, by loan or contribution, any books or literature of a moral or religious tone and to exclude those of opposite tendencies. (R. S. c. 79, § 195.)

Stated in Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 180. Pay for labor of prisoners before sentence.—Any person charged with crime or awaiting sentence who, while confined in any jail where provision for labor has been made, chooses to labor as provided for persons

under sentence, shall receive therefor such sum as, in the judgment of the commissioners of said county, he has earned. (R. S. c. 79, § 196.)

See §§ 21, 22, re county commissioners to provide workshops and employment for prisoners.

Sec. 181. Supplies for jails; accounts audited.—The county commissioners of the several counties shall, without extra charge or commission to themselves or to any other person, procure all necessary supplies, including necessary food, fuel, bedding and clothing for the jails and the prisoners therein, to be furnished and purchased under their direction and at the expense of the counties. No county commissioner shall be interested directly or indirectly in the purchase of any such supplies or in any contract therefor made by the board of which and while he is a member thereof, and all contracts made in violation hereof are void. A suitable person shall be employed to prepare the foods of the prisoner in each county at the expense of the county, and the service of the food to the prisoners shall be under the general direction of the jailer, master or keeper. The person employed to prepare the food of the prisoners shall be appointed by the sheriff in each county, subject to the approval of the county commissioners. The county commissioners may at any time direct specific rations or articles of food, clothing, soap, fuel or other necessaries to be furnished and served to the prisoners. The bills and accounts for supplies furnished and the items of expense incurred in preparing and serving the same shall be audited by the state department of audit, as provided by subsection II of section 3 of chapter 19. (R. S. c. 79, § 197.)

Sec. 182. Commissioners of Cumberland may annually advertise for proposals for supplies.—The county commissioners of the county of Cumberland may each year, as soon after the 1st day of January as may be, make an estimate of the amount of food, fuel, clothing and supplies as far as practicable which will be required by the county jail and for the support of the prisoners therein for the current year, and advertise for sealed proposals for furnishing the same according to specifications furnished by them, in the daily papers of the city of Portland, 3 days successively, at least 14 days before the time limited for the reception of such proposals, at which time they shall examine all such proposals and award the contract to the lowest responsible bidder; and the county commissioners shall procure such other necessary supplies and articles for the foregoing purposes as may not be furnished by contract and account for the same in the manner provided for in the preceding section. (R. S. c. 79, § 198.)

Sec. 183. Deduction from sentence for good conduct; care of convicts, sick at expiration of sentence.—The keeper of each jail shall keep a record of the conduct of each convict, and for every month during which it thereby appears that he has faithfully observed all the rules and requirements of the jail, he is entitled to a deduction from his sentence according to and not exceeding the following rate and proportion: for a convict under sentence for 6 months and less than 1 year, 2 days for each month of good conduct; for 1 year and over, 3 days a month; and for every day that any convict is punished for disobedience of said rules, a record thereof shall be made and 2 days deducted therefor from any commutations to which he is entitled. Whenever a convict at the expiration of his sentence is sick and unable to be removed from jail, he shall be cared for by the jailer at the expense of the county until the county commissioners deem it safe for him to be removed. (R. S. c. 79, § 199.)

Section gives commissioners no implied authority over prisoners.—The right of the commissioners given by this section to say when it is safe for a prisoner to be removed does not show implied authority in the commissioners over the prisoners. Even after the expiration of the sentence, a sick prisoner continues in the care of the jailer. The reason for this is obvious and in perfect harmony with the theory that

the legislature did not intend that the jail should be invaded by any person not admitted by the jailer. Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226. See note to § 174.

Sec. 184. Assistance to discharged prisoners.—The sheriff or his deputy keeping the jail may, at the expense of the county, give a prisoner about to be discharged from jail a sum of money not exceeding $2 and wearing apparel to the value of not exceeding $10 and may also furnish to such discharged prisoner a railroad ticket, nontransferable, to any place to which the fare does not exceed $8. All sums so expended by the sheriff or jailer shall be repaid to him from the county treasury after the account thereof has been audited and the amount found correct by the county commissioners. (R. S. c. 79, § 200.)

Stated in part in Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 185. Record of persons committed.—Every sheriff shall keep in a suitable bound book a true and exact calendar containing, distinctly and fairly registered, the names of all prisoners committed to the jail under his charge, their places of abode, additions, time of their commitment, for what cause and by what authority; and a particular description of the persons of those committed for offenses; and he shall register in said book the name and description, the time when and the authority by which any prisoner was discharged; and the time and manner of any prisoner's escape. (R. S. c. 79, § 201.)

Section predicated on practice of keeping written evidence of cause of detention.—This section and § 187, defining the duties of the jailer in relation to keeping and exhibiting a calendar and keeping a file of the official papers or copies thereof specified therein, seem to be predicated upon the practice of having in his possession written evidence of the cause of each prisoner's detention. Jones v. Emerson, 71 Me. 405.

Calendar is not judicial record.—The calendar kept by the sheriff, though required by law, is in the nature of memoranda or history of current events in the jail, and does not rise to the dignity of a judicial record. It is prima facie evidence of the facts recited, but may be overcome by evidence which shows it to be erroneous. Goodrich v. Senate, 92 Me. 248, 42 A. 409.

Stated in part in Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 186. Jailer to return list of prisoners at each criminal session of court.—Every jailer, at the opening of every criminal term of the superior court for his county, shall return a list of prisoners in his custody and afterwards a list of all committed during the session, certifying the cause for which and the person by whom committed; and shall have the calendar of prisoners in court for its inspection; and for neglecting to do so, the court may impose a reasonable fine. (R. S. c. 79, § 202.)

Stated in Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 187. Official papers filed and kept with calendar and delivered to successor.—All warrants, mittimuses, processes and other official papers by which any prisoner is committed or liberated, or attested copies thereof, shall be regularly filed in order of time; and with the calendar aforesaid safely kept; and when he vacates his office, they shall be, by the sheriff or his personal representative, delivered to his successor on penalty of forfeiting $200 to the county. (R. S. c. 79, § 203.)

Cited in Jones v. Emerson, 71 Me. 405.

Sec. 188. Sheriff answerable for delivery of prisoners to successors.—Every sheriff is answerable for the delivery to his successor of all prisoners in his custody at the time of his removal; and for that purpose shall re-

tain the keeping of the jail in his county and the prisoners therein until his successor enters on the duties of his office. (R. S. c. 79, § 204.)

Stated in Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 189. Upon application, transfer of prisoners when jail adjudged unfit or insecure.—Whenever complaint on oath is made to a justice of the superior court that any jail is unfit for occupation or is insufficient for the secure keeping of any person charged with crime and committed to await trial or under sentence, he shall cause not less than 3 days' notice of such complaint to be given to the jailer or sheriff of the county to appear at the time and place fixed in such notice, and if on examination the matter complained of is found true, he may issue his warrant for the transfer of such prisoner at the expense of said county to any jail where he may be more securely kept; and if by fire or other casualty any jail is destroyed or rendered unfit for use, any justice of the superior court may, upon being notified by the county attorney of the county where such jail was or is located, issue his order to the sheriff and his deputies and constables of said county to cause all prisoners who might be liable to imprisonment in said county to be imprisoned in the jail of some adjoining county, said order to be printed in the newspapers of said county. (R. S. c. 79, § 205.)

See c. 62, § 6, re plans for new jails to be submitted to department of institutional service.

Sec. 190. Liability of sheriff for escape of prisoners.—When a prisoner escapes through the insufficiency of the jail or the negligence of the sheriff or jailer, the sheriff is chargeable to the creditor or other person at whose suit he was committed or to whose use any forfeiture was adjudged against such prisoner. (R. S. c. 79, § 206.)

Sheriffs will not be excused for the escape of a person under arrest, although an armed multitude breaks the jail and rescues him; for the sheriff has the power of the county at his beck, to aid him in the execution of precepts; and the law supposes the posse to be a sufficient defense against a rescue, and that no force is able to resist successfully the sheriff and his posse. Cumberland County v. Pennell, 69 Me. 357.

Jailer liable for liberating prisoners without proper bond.—The jailer is liable for an escape if he permits a prisoner committed to jail on execution to go at large without giving a bond approved as required by statute. And the mere sending for a bond not in accordance with the statute and its retention without suit upon it or any action in regard to it is not a waiver of its want of legal approval. Hotchkiss v. Whitten, 71 Me. 577.

Plaintiff entitled only to actual damages.—In an action against a sheriff under this section, the plaintiff is only entitled to the damages actually sustained. The true measure of damages is the value of the custody of the debtor at the time of the escape. Hotchkiss v. Whitten, 71 Me. 577.

Stated in Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 191. If escape happens through insufficiency of jail, sum paid, reimbursed.—When such escape happens through the insufficiency of the jail, the county commissioners may order the county treasurer to pay to the sheriff the amount paid by him to such party; and if they do not make such order within 6 months after the demand is laid before them, the sheriff may bring his action on the case against the inhabitants of such county, to be tried therein or in an adjoining county; and an attested copy of the writ left with the county treasurer, 30 days before the sitting of the court to which it is returnable, is a sufficient service. (R. S. c. 79, § 207.)

Functions of commissioners and sheriff entirely distinct.—This section shows that the functions of the sheriff and county commissioners, regarding the condition of the jail and the custody of the prisoners, are entirely distinct. Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 192. Agent to defend county appointed by commissioners; execution.—The commissioners may appoint an agent to appear and defend the suit; and if they have no meeting between the time of service and the return day thereof, it shall be continued to the next term, saving all advantages to the defendants; and if judgment is rendered against the county, the execution may be levied on the estate of any inhabitant, who has his remedy against the county to recover the amount so levied. (R. S. c. 79, § 208.)

Sec. 193. Treatment of prisoners for debt and minors.—Every jail keeper shall keep prisoners committed for debt separate from prisoners charged with felony or infamous crimes; and shall keep all minors so committed and all prisoners upon a first charge, before or after conviction, separate from notorious offenders and those convicted more than once of felony or infamous crimes, so far as the construction or state of the jail admits. (R. S. c. 79, § 209.)

Sec. 194. Violation of § 193 or furnishing liquor to prisoners.—If any jail keeper violates the provisions of the preceding section or voluntarily or negligently suffers any prisoner in his custody, charged with or convicted of any offense, to have any intoxicating liquor, unless the physician authorized to attend the sick in such jail in writing certifies that such prisoner's health requires it and prescribes the quantity, he forfeits in each case, for the first offense, $25, and for the second, $50, to be recovered for the county by indictment, or by any person suing therefor, to his own use; and shall be removed from office and shall be incapable of holding the office of sheriff, deputy sheriff or jailer for 5 years. (R. S. c. 79, § 210.)

Sec. 195. Liability of keeper and sheriff, if prisoner escapes. — If any jail keeper, through negligence, suffers a prisoner charged with an offense to escape, he shall be fined according to the nature of the offense charged against the escaped prisoner; but if a person committed for debt escapes from jail and the sheriff or jail keeper, within 3 months thereafter, returns him thereto, the sheriff is liable only for the costs of any action commenced against him therefor. (R. S. c. 79, § 211.)

Cross reference.—See c. 135, § 26, re negligent escapes and refusal to receive prisoners.

Commissioners not charged with responsibility for escape of prisoners.—This section provides that if any keeper suffers a prisoner charged with an offense to escape he shall be fined according to the nature of the offense charged. The county commissioners are not here mentioned or charged with any responsibility for the escape of a prisoner. Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 196. United States prisoners. — The keepers of the several jails shall receive and safely keep all prisoners committed under authority of the United States until discharged, under the penalties provided for the safekeeping of prisoners under the laws of the state. (R. S. c. 79, § 212.)

Sec. 197. Disposal of body of person dying in jail.—When a person dies in jail, the jailer or sheriff shall deliver the body to his friends, if requested; otherwise, he shall dispose of it for anatomical purposes as provided in sections 10 to 17, inclusive, of chapter 66, unless the deceased at any time requested to be buried, in which case he shall bury the body in the common burying ground and the expenses thereof shall be paid by the town in which he had a settlement, if he had any in the state, and if not, by the state. (R. S. c. 79, § 213.)

Stated in Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 198. Fines applied to building and repair of jail.—All fines imposed by the provisions of sections 142 to 211, inclusive, not otherwise appropriated, shall be applied to building and repairing the jails in the county where the offense is committed. (R. S. c. 79, § 214.)

Sheriffs and Constables.

Sec. 199. Service of precepts by constables; right of pursuit.—A warrant issued by a municipal court or a trial justice for an offense committed in his county or under the laws for the maintenance of bastard children may be directed to and executed by a constable of any town therein; and if the accused has gone into another county before or after the warrant was issued, a sheriff or his deputy or a constable having the warrant may pursue and arrest him in any county and carry him to the county where the act complained of was committed; and when such officer arrests a person to commit to the jail of his county, he may convey him by the most convenient and suitable route, although it pass through other counties. Except for the purpose of retaking a prisoner whom he has arrested and who has escaped, or for the purpose of taking a person before such a court or trial justice, or for the purpose of executing a mittimus given to him by such a court or trial justice, or for the purpose of pursuing a person who has gone into another town and for whose arrest a constable or a city marshal has a warrant, no constable of the several towns or city marshal of the several cities shall have any authority in criminal matters beyond the limits of the town or city in which he is elected or chosen. (R. S. c. 79, § 215.)

Applied in Paquet v. Emery, 87 Me. 215, 32 A. 881.

Sec. 200. Officers may serve precepts for work-jails in one or more counties. — An officer of any county qualified to serve precepts in criminal cases in the county where he resides may serve any precept required by the laws providing for work-jails, whether such service is performed in whole or in part in one or more counties, and processes shall be issued and directed accordingly. (R. S. c. 79, § 216.)

Sec. 201. Aid required by officer; refusal.—Any officer aforesaid, in the execution of the duties of his office in criminal cases, for the preservation of the peace, for apprehending or securing any person for the breach thereof or in case of the escape or rescue of persons arrested on civil process, may require suitable aid therein; and any person so required to aid, who neglects or refuses to do so, forfeits to the county not less than $3 nor more than $50; and if he does not forthwith pay such fine, the court may imprison him for not more than 30 days. (R. S. c. 79, § 217.)

Stated in State v. Freeman, 122 Me. 294, 119 A. 668.

Sec. 202. Execution of precepts when officer disqualified. — If any officer aforesaid who has commenced the service or execution of a precept becomes disqualified, it may be completed by any other qualified officer with the same legal effect; and if any officer aforesaid has made, in fact, any service, attachment or levy by virtue of any process placed in his hands for service and for any cause has not made his return thereon, such return shall be made by a sheriff, any deputy or other proper officer under direction of a justice of the superior court held in the county where said writ is returnable, the facts to be set forth by said officer in said return to be proved to the satisfaction of said justice; or if a deputy sheriff dies after he has served and returned a precept, the sheriff if alive, and if not, any deputy in commmission at the time of such service may be allowed by the court to amend such return as the officer who made it might, but the rights of third parties shall not be affected thereby. (R. S. c. 79, § 218.)

For a case concerning the right of a sheriff to complete his deceased deputy's return prior to the enactment of the provisions relating thereto in this section, see Lovett v. Pike, 41 Me. 340.

Sec. 203. Copy of writ delivered to defendant on request; neglect. —Every officer, plaintiff or his attorney, having in his possession a writ on which

an attachment has been made, shall make and deliver to the debtor or his attorney, if requested and the legal fee tendered, an attested copy thereof, and if he unreasonably refuses or neglects to do so for 24 hours, he forfeits $5 and $5 additional for every subsequent 24 hours that he so refuses or neglects, and such forfeit shall be recovered by the debtor to his own use, in an action of debt. (R. S. c. 79, § 219.)

Sec. 204. Officer to pay money collected.—Any officer aforesaid, who unreasonably neglects or refuses, on demand, to pay money received by him on execution to the person entitled to it, shall pay 5 times the lawful interest thereon so long as he so retains it. (R. S. c. 79, § 220.)

Demand must be made by person authorized to receive money.—In order to charge an officer with 5 times the lawful rate of interest on money collected by him and not paid over upon demand, it is necessary that the demand be made by a person having authority to receive the money and execute a legal and valid discharge. Bulfinch v. Balch, 8 Me. 133.

Evidence sufficient to show demand made.—Where it is proved that an officer who had collected money on an execution, on being inquired of by an agent of the creditor why he had not sent the money, promised to send it to the creditor immediately, a jury may properly find, from such evidence, that a demand of the money had been made. Currier v. Brackett, 18 Me. 59.

Sec. 205. No officer to be attorney or draw papers; no employee of jailer to act as magistrate or attorney.—No officer aforesaid shall appear before any court or justice of the peace as attorney or adviser of any party in a suit or draw any writ, plaint, declaration, citation, process or plea for any other person; and all such acts done by either of them are void; and no person employed by the keeper of a jail in any capacity shall exercise any power or duty of a magistrate or act as attorney for any person confined in the jail; and all such acts are void. (R. S. c. 79, § 221.)

This section refers exclusively to civil proceedings. The object is to prevent the officers from acting as attorneys or advising in any suit or drawing writs, etc., for any other person. But a complaint for a criminal offense is not a suit within the meaning of this section. Criminal proceedings are in the name of the state, not of the party complaining. The complaint is in behalf of the state, not of the complainant. It is by the complainant, not for the complainant. The process issues in the name of the state, not "of any other person." The fine or forfeiture, if there be one, enures to the state, not to the complainant. The judgment is for the state, not for the complainant or "for any other person." State v. McCann, 67 Me. 372.

The language of this section relates to civil proceedings. The word "writ" has application to civil proceedings. "Plaint" is the exhibiting of any action, real or personal, in writing; and the party making it is called the plaintiff. The term "declaration" is applicable only to civil procedure. "Citation" is a summons to appear, applied particularly to process in the spiritual court, but adopted in civil procedure from the canon and civil law. "Process" is so called because it proceeds or goes out upon former matter, either original or judicial. It assumes former matter. The process may be criminal where the "former matter" whence it proceeds or goes out is criminal. But in this section there is no reference to any criminal procedure. The words preceding and following have no relation to anything criminal. State v. McCann, 67 Me. 372.

Writing complaint or warrant not violation of this section.—Writing a complaint for a violation of law, which another is to sign and to the truth of which he is to make oath, or inserting the appropriate names in the blank form of a warrant or writing it out, ready for signature of the magistrate, cannot be regarded as a violation of this section. State v. McCann, 67 Me. 372.

Sec. 206. Service of writs in actions against officers for breach of duty, where principal defendant out of state.—In actions against sheriffs, deputy sheriffs and constables for breach of official duty where the principal defendant is out of the state, the writ may be served on such defendant by leaving

a copy of the same with each of the sureties on his official bond 14 days before the return day thereof, and the court in the county where the writ is returnable, either before or after entry, may order further notice to the defendant by publication of an abstract of the writ and order thereon in some newspaper published in the county where the writ is returnable, or in the state paper or in such other manner as the court directs; and if the order is complied with and proved, the defendant shall answer to the suit and judgment in such case has the same effect as if personal service was made upon the principal defendant. (R. S. c. 79, § 222.)

See § 11, re legal processes from county commissioners.

Constables and Police Officers.

Sec. 207. Constables may serve precepts; bond; acting before giving bond.—A constable may serve, execute and return upon any person in his town or in an adjoining plantation any writ of forcible entry and detainer, or any precept in a personal action when the damage claimed does not exceed $100, including those in which a town, plantation, parish, religious society or school district of which he is a member, is a party or interested; but before he serves any process, he shall give bond to the inhabitants of his town in the sum of $500, with 2 sureties approved by the municipal officers thereof, who shall indorse their approval on said bond in their own hands, for the faithful performance of the duties of his office as to all processes by him served or executed; and for every process that he serves before giving such bond, he forfeits not less than $20 nor more than $50 to the prosecutor. (R. S. c. 79, § 223.)

I. General Consideration.
II. Bond.
III. Service of Precepts by Constable.
  A. In General.
  B. What Precepts May Be Served.
  C. Penalty for Service without Bond.

I. GENERAL CONSIDERATION.

What constitutes personal action within meaning of section.—Personal actions, within the meaning of this section, are those brought for the specific recovery of goods and chattels, or for damages or other redress for breach of contract and other injuries of every description, the specific recovery of lands and tenements only excepted. Hall v. Decker, 48 Me. 255.

An action for damages for flowing land is a personal action within the meaning of this section and a constable may serve the precept. Hall v. Decker, 48 Me. 255.

Applied in Spaulding v. Yeaton, 82 Me. 92, 19 A. 156.

II. BOND.

It is not necessary that the names of the obligor and his sureties should appear in the bond required by this section. The principal signs and adds principal to his name and the sureties sign specifically as such. The bond being signed and sealed by the principal and his sureties they are bound thereby. Fournier v. Cyr, 64 Me. 32.

And that the bond was signed and sealed before the condition and immediately after the penal part does not affect its validity. Where an obligor signs his name and affixes his seal in the space between the penal part of the bond and the condition thereof, the condition is as much a part of the instrument as if the signature were at the foot of it. Fournier v. Cyr, 64 Me. 32.

The bond takes effect from its delivery. The day of delivery may be shown whenever it becomes material. The date of a bond is not essential. It will be valid though there is no date or the date is erroneous. Fournier v. Cyr, 64 Me. 32.

Bond may be delivered to city clerk.—The clerk of a city is an officer to whom a bond under this section may in the first instance be properly delivered. Stacey v. Graves, 74 Me. 368.

This section is silent as to whom the bond shall be delivered. It is to be approved by the municipal officers, which, in the case of cities, mean the mayor and aldermen (c. 10, § 22, sub-§ xxvi). The city clerk is their clerk and he has the

custody and care of their papers. A delivery to him is, in contemplation of law, a delivery to the board of aldermen. Stacey v. Graves, 74 Me. 368.

Municipal officers' indorsement not essential to validity of bond.—It is not essential to the validity of the bond that the approval of the officers should be indorsed upon it. That provision is directory to them and intended to be beneficial to the constable by affording evidence that his sureties had been adjudged to be sufficient, and also to those who might become interested in the bond by showing that such adjudication had been formal and deliberate. A provision merely directory cannot constitute a part of the contract, which may be enforced should the officers required to perform such duty neglect it. Eustis v. Kidder, 26 Me. 97.

And constable not responsible for officers' failure to indorse.—The words, "who shall indorse their approval on said bond and in their own hands," are not used to prescribe the constable's duties. It could not have been the intention to make the constable responsible for the performance of duties required of the municipal officers, and to subject him to a penalty for their neglect. Eustis v. Kidder, 26 Me. 97.

The constable has done his duty when he furnishes a bond with sufficient sureties and delivers it to one of the municipal officers. The bond is legally binding upon the parties thereto, and the constable is not responsible for the performance by the officers of the duties required of them. Fournier v. Cyr, 64 Me. 32.

When a constable has executed and delivered a good and sufficient bond, he has performed all which this section requires of him. It could not have been the intention to make the constable responsible for the performance of duties required of the municipal officers, and to subject him to a penalty for their neglect. Stacey v. Graves, 74 Me. 368.

Nor for indorsement in wrong place.—The mistake of the municipal officers in erroneously placing their signatures of approval in the wrong place upon the bond cannot make the constable a trespasser, without fault or omission of duty on his part. Fournier v. Cyr, 64 Me. 32.

Sureties only liable for faithful performance of duty in relation to precepts constable authorized to serve.—By this section, any constable is authorized and empowered to serve any precept in a personal action, where the damage claimed does not exceed $100, provided that, before he serves the same, he gives the required bond, with two sureties, for the faithful performance of his duties, as to all processes by him served or executed. The processes last mentioned must be limited to such as are lawfully in his hands and within his jurisdiction. The liabilities of his sureties cannot, upon any sound construction, be extended farther. They must be deemed to undertake only for the faithful performance of his duty in relation to such processes as he might serve as constable. Barter v. Martin, 5 Me. 76.

Condition of bond held in substantial compliance with section.—The provision of this section requiring the bond to secure the "faithful performance of the duties of his office as to all processes by him served or executed," was held to be substantially complied with by giving a bond conditioned to "faithfully discharge his duty as constable," in Quimby v. Adams, 11 Me. 332.

Alteration of bond for mutual mistake.—See Potter v. Frank, 106 Me. 165, 76 A. 489.

III. SERVICE OF PRECEPTS BY CONSTABLE.

A. In General.

Person served need not be inhabitant of town where service made.—By this section, a constable is authorized to serve "upon any person in his town" any precept in a personal action, where the damages claimed do not exceed $100. It is not necessary that the person upon whom the service is made should be an inhabitant of the same town in which the service is made. It is sufficient that the service is made upon him in that town. Blanchard v. Day, 31 Me. 494.

Section not applicable to citation in poor debtor's disclosure.—This section is applicable only to writs and precepts in personal actions, and to writs and precepts in which damages are claimed. A citation in a poor debtor's disclosure is neither. It is not a writ or precept in a personal action; nor is it a writ or precept in which damages are claimed. It is simply a notice to the creditor of what the debtor intends to do. Consequently, this section does not apply, and the objection that a constable could not serve the citation because the amount due the creditor is in excess of $100 is not valid. Bliss v. Day, 68 Me. 201.

B. What Precepts May Be Served.

Constable may serve precept not directed to him.—No objection is perceived to the service of a writ by a constable duly empowered, though it is not directed to him.

He might not be obliged to make it, unless the precept is directed to him, but he may do the act without such direction, which, being a mere matter of form, cannot be necessary to give it validity. Morrell v. Cook, 35 Me. 207.

If a constable had official power to serve an execution, if it had been directed to him, and he made the levy in conformity with the forms and requirements of law, the omission to direct the process to him was an error of the court, or of its clerk, and was, in fact, a judicial error. Such errors are never suffered to operate to the prejudice of a party, when they can properly be corrected by an amendment. Morrell v. Cook, 31 Me. 120.

Constable authorized to serve precept where costs would make amount collected more than $100.—A constable may serve an execution wherein the damage claimed is not more than $100, although, if the cost is added, the amount to be collected shall be more than that sum. Berry v. Staples, 33 Me. 494.

"Precept" includes executions.—It is evident that the term "precept," as used in this section was designed to include executions. Morrell v. Cook, 31 Me. 120; Berry v. Staples, 33 Me. 494.

And constable may levy on real estate.—Being authorized to serve executions by this section, a constable must obey the legal mandate of the precept in making the service. His power or authority in this respect is not diminished or varied by being restricted to precepts in personal actions. The levy on real estate does not constitute a service of the process in a real action; nor does the form of proceedings change the character of the process, although it may affect the title to real estate. The duty and authority of constables in levying executions, within their jurisdiction, upon real estate, are coextensive with those of sheriffs and their deputies in executing such precepts. As the legislature has made no distinction in this respect, there is none which the court can make. Morrell v. Cook, 31 Me. 120.

C. Penalty for Service without Bond.

The constable may lawfully act as soon as his bond is given. Stacey v. Graves, 74 Me. 368.

And the penalty of this section is not incurred if constable serves a writ after delivery of his bond and before it is approved. The language of the section is that "for every process he serves before giving such bond, he shall forfeit," etc. It does not say that for every process he shall serve before such bond is approved, he shall forfeit the sum named. Stacey v. Graves, 74 Me. 368.

Penalty recovered only when precept was within constable's authority to serve.—In an action against a constable for the penalty given by this section, for serving a justice's execution and taking fees before he had given bond, it is necessary that the amount of the debt should be set forth, that it may appear that the precept was within his authority to serve. Barter v. Martin, 5 Me. 76.

When a plaintiff sues for the penalty given by this section, he is bound to present a case strictly within it, and to omit nothing which the law deems to be essential in the form of declaring. Barter v. Martin, 5 Me. 76.

Declaration must allege that defendant was constable.—In an action for forfeiture under this section, the omission of the declaration to allege that the defendant was a constable is a material defect. A person may, without being a constable, act in the capacity of one, and thereby commit an offense, but if he should do so, he would not incur a forfeiture under this section by neglecting to give the bond required of a constable. Eustis v. Kidder, 26 Me. 97.

Sec. 208. Constables' fees.—For services which may be performed either by a deputy sheriff or a constable, the constable is allowed the same fees as a deputy sheriff, unless otherwise provided. (R. S. c. 79, § 224.)

Sec. 209. Misconduct of constable.—Persons injured by the neglect or misdoings of a constable have the same remedy by preliminary action, and action on his bond, as in case of a sheriff's bond. (R. S. c. 79, § 225.)

Cross reference.—See § 164 and note, re actions on bonds of sheriffs.

Judgment prerequisite to suit on bond.—Before an action can be maintained on a constable's official bond, the party seeking that remedy must obtain a judgment against the constable founded directly upon his official delinquency. Bailey v. Butterfield, 14 Me. 112.

Judgment in action of assumpsit, etc., not sufficient to support action on bond.—A judgment against a constable in an action of assumpsit, declaring for money had and received, or on an account annexed to the

writ, on a promise implied by law, is not sufficient evidence to support an action on his official bond. Bailey v. Butterfield, 14 Me. 112.

Action for misfeasance does not survive. —Neither by the common law nor by the provisions of this section do actions of tort for the misfeasance of constables survive, as against their legal representatives. Gent v. Gray, 29 Me. 462.

Applied in Potter v. Frank, 106 Me. 165, 76 A. 489.

Sec. 210. Constables of Bristol may serve on islands.—The constables of the town of Bristol may serve all precepts on Muscongus and Harbor islands, in the county of Lincoln, the same as in their own town, until and unless said islands can legally elect constables. (R. S. c. 79, § 226.)

Sec. 211. Power of police.—Police officers appointed in any city have the powers of constables in all matters criminal or relating to the by-laws of their city. (R. S. c. 79, § 227.)

See c. 37, § 26, re powers of inland fish and game wardens; c. 91, § 72, re powers and removal of police officers; c. 100, § 153, re duties of constables and police officers to enforce law as to dairy products.

Registers of Deeds.

Election, Duties, Salaries, Fees, etc.

Sec. 212. Register of deeds; how elected; vacancies.—A register of deeds shall be elected for each county and in each registry district by the legally qualified voters thereof, who shall serve for a term of 4 years.

Vacancies shall be filled for the unexpired term by election as provided for in section 213 at the next September election after their occurrence; and in the meantime, the governor with the advice and consent of the council may fill vacancies by appointment, and the person so appointed shall hold his office until the 1st day of January, next after the election last mentioned. (R. S. c. 79, § 228. 1949, c. 349, § 115.)

Election of register of deeds depends on statute.—The constitution makes no provision for the election of a register of deeds. The election or appointment of that officer depends wholly upon statutory provision. Rose v. Knox County Com'rs, 50 Me. 243.

History of section. — See Grindle v. Bunker, 115 Me. 108, 98 A. 69.

Such an important position as that of register of deeds should not be left without an incumbent, and this has been carefully provided for. Under § 221, the clerk of court shall assume immediate charge, and then under this section the governor may temporarily fill the vacancy by appointment until the first day of January following the next election, and at that next election some person shall be chosen to serve the unexpired term. Grindle v. Bunker, 115 Me. 108, 98 A. 69.

The right of the people to elect and of the governor to appoint are predicated upon the same situation. There cannot be one kind of a vacancy calling into action the power of the people to elect, and another kind calling into action the power of the governor to appoint. They both exist or neither. Grindle v. Bunker, 115 Me. 108, 98 A. 69.

The vacancy referred to in this section and in § 221 is an actual one, such as might be caused by death, resignation or other similar event. It means an office destitute of an incumbent. Grindle v. Bunker, 115 Me. 108, 98 A. 69.

And death of register elect before qualification creates no vacancy.—The death of a person elected to the office of register of deeds, before his qualification and before his term of office begins, creates no vacancy. Grindle v. Bunker, 115 Me. 108, 98 A. 69.

If office filled by incumbent.—No vacancy has occurred within the meaning of this section that would permit the governor to appoint, if the office is filled by an incumbent who was elected to hold it not only for four years but "until another is chosen and qualified," (§ 213). Grindle v. Bunker, 115 Me. 108, 98 A. 69.

Former provision of section. — For a holding that, when a register of deeds was elected to fill a vacancy, the election was only for the unexpired term, even before this section so specified, see Opinion of the Justices, 64 Me. 596.

Sec. 213. Election; governor and council to examine lists of votes; certificates of election; tenure of office.—The meetings for such election shall be notified, held and regulated and the votes received, sorted, counted, declared and recorded in the same manner as votes for representatives, and fair copies of the lists of votes shall be attested by the municipal officers and clerks of towns and sealed up in open town meeting; and town clerks shall cause them to be delivered into the office of the secretary of state within 30 days next succeeding such meeting. The governor and council shall, by the 1st day of December following, open and examine the same and the list of votes of citizens in the military service returned to said office. They have the same power to correct errors as is conferred by section 50 of chapter 5; and they shall forthwith issue certificates of election to such persons as have a plurality of all the votes for each county or registry district; and the person thus elected and giving the bond required in the following section approved by the county commissioners shall hold his office for 4 years from the 1st day of the next January and until another is chosen and qualified. (R. S. c. 79, § 229.)

This section expressly states the length of the term to be for four years and until another is chosen and qualified. This grants a specific term of four years and a conditional term added thereto. The additional period is, by an express provision of the section, as much a part of his official term as the definite number of years fixed in his commission. When he holds over, therefore, his term is extended in exact compliance with the section, and the period during which he holds over is a part of his statutory tenure. It necessarily follows that no vacancy can occur so long as the elected incumbent continues to perform the duties of the office. Grindle v. Bunker, 115 Me. 108, 98 A. 69. See note to § 212.

Cited in Opinion of the Justices, 64 Me. 596.

Sec. 214. Bond.—Each register shall give bond with sufficient sureties to the county in the sum of $2,000 for the faithful discharge of his duties. (R. S. c. 79, § 230.)

See Me. Const., Art. 9, § 1, re oath.

Sec. 215. Salaries.—Registers of deeds in the several counties shall receive annual salaries from the treasuries of the counties in monthly or weekly payments, as follows:

Androscoggin, $3,300,
Aroostook, northern registry, $2,700; southern registry, $3,200,
Cumberland, $4,100,
Franklin, $1,700,
Hancock, $2,100,
Kennebec, $2,950,
Knox, $2,460,
Lincoln, $1,820,
Oxford, eastern registry, $2,000; western registry, $1,400,
Penobscot, $2,000,
Piscataquis, $2,200,
Sagadahoc, $1,850,
Somerset, $2,900,
Waldo, $2,400,
Washington, $2,250,
York, $2,500.

The sums above mentioned shall be in full compensation for the performance of all official duties and no other fees or compensation shall be allowed them. All registers, except in the western district of Oxford county, shall devote their entire time to the duties of the office. They shall account quarterly under oath to the county treasurers for all fees received by them or payable to them by virtue of the office, specifying the items, and shall pay the whole amount of the same

to the treasurers of their respective counties quarterly on the 15th days of January, April, July and October of each year. They may make abstracts and copies from the records and furnish the same to persons calling for them and may charge a reasonable fee for such service, but shall not give an opinion upon the title to real estate. Fees charged by them for abstracts and copies shall be retained by them and not paid to the county. (R. S. c. 79, § 231. 1945, c. 141; c. 161, § 4; c. 167, § 4; c. 260, § 1; c. 280, § 6; c. 322, § 5. 1947, c. 110; c. 154, § 5; c. 157, § 5; cc. 200, 212, 288, 307, 309. 1949, c. 187, § 1; c. 214, § 6; c. 253; c. 286, § 1; c. 288; c. 308, § 4; c. 353, § 2; c. 424, § 5. 1951, cc. 58, 230; c. 311, § 5; c. 312, § 6; c. 313, § 4. 1953, c. 29; c. 38, § 3; c. 142, § 3; c. 151, § 1; c. 216, § 4; c. 247, § 3; c. 269, § 6; c. 276, § 6; c. 278, § 6; c. 288, § 2.)

History of section.—See Cram v. Cumberland County, 148 Me. 515, 96 A. (2d) 839.

Section excludes additional compensation for revising index.—The provision of this section that the salaries mentioned shall be in full compensation for the performance of all official duties and that no other fees or compensation shall be allowed is, save for the exception, all inclusive, and excludes any right to the additional compensation allowed under § 227 for revising and consolidating the index. Cram v. Cumberland County, 148 Me. 515, 96 A. (2d) 839.

Sec. 216. Fees.—Registers of deeds shall receive for:

Recording a deed or mortgage that fits the printed form currently in use in the registry, $1.50.

Recording an assignment or discharge of mortgage, discharge of attachment or discharge of a municipal tax lien in the usual short form, $1.

Entering in the margin of a record, a discharge of mortgage, attachment or tax lien, to be signed by the person discharging it, 50¢.

Receiving from an officer a copy of writ of attachment of real estate or a copy of writ of attachment of personal property in an unincorporated place, minuting it when it is received, keeping it on file and entering it in a book kept for that purpose, 50¢.

Receiving and filing a certificate of election of a clerk of a corporation, resignation of such clerk, or certificate of change of name or change of location of a corporation, $1.

Filing and indexing copy of process against a domestic corporation, to be paid by the officer serving it, 50¢.

Recording certificates of organization of corporations and certifying copies thereof for filing with the secretary of state: corporation with capital stock, $5; corporation without capital stock, $2.

Recording and indexing notices and discharges of liens for internal revenue taxes of the United States of America under provisions of section 240 when paid by the United States, 50¢.

Recording, indexing and preserving a plan, a minimum of $3; plans requiring more than 1 page of the plan book shall be $3 per page.

Recording abstracts of wills when received from registers of probate within the state, $1.50.

Recording a municipal tax lien in accordance with provisions of section 98 of chapter 92, $1.

Receiving, recording and indexing of any deed or mortgage that will not fit the printed form, any assignment or discharge in long form or any other instrument by law entitled to record, the sum of $2 for the first 500 words and the sum of 25¢ for each 100 words or a fraction thereof in excess of 500 words; provided, however, that if recording is done by photographic, photostatic or other mechanical methods as permitted by law the charge shall be $1 for each record page or fraction of a record page so recorded.

When there are more than 4 names that must be indexed in any instrument presented for record, an additional fee of 25¢ each shall be charged for indexing each additional name over four.

The above fees shall be paid when the instrument is offered for record. (R. S. c. 79, § 232. 1947, c. 380. 1949, c. 404, §§ 1, 2, 3. 1953, cc. 50, 150.)

See c. 16, § 83, re filing of delinquent state, county and forestry district taxes.

Sec. 217. Clerk; oath and duties.—Each register may appoint a clerk for whose doings and misdoings he shall be responsible, who shall be sworn. In case of sickness, absence or any temporary disability of the register, such clerk shall make and sign for him all certificates and make all entries and minutes required to be signed or made by the register, and such certificates, entries and minutes shall be as valid as if made by the register. (R. S. c. 79, § 233.)

Sec. 218. Western district in county of Oxford.—The towns of Hiram, Porter, Brownfield, Denmark, Fryeburg, Sweden, Lovell, Stoneham and Stowe, in the county of Oxford, compose the western registry district of Oxford county and the register shall keep his office at Fryeburg. (R. S. c. 79, § 234.)

Sec. 219. Northern district in county of Aroostook.—All that part of the county of Aroostook lying north of a line commencing at the southeast corner of township F, in the 1st range, west from the east line of the state, thence west on the south line of said township and the south line of township K in the 2nd range, to township number 15 in the 3rd range, thence north to the northeast corner of township number 15 in the 3rd range, thence west to the northwest corner of township number 15 in the 3rd range, thence south to the southwest corner of township number 15 in the 3rd range, thence west to the northwest corner of township number 14 in the 4th range, thence south to the southwest corner of township number 14 in the 4th range, thence west on the dividing line of townships 13 and 14 to the 7th range line, thence north to the northeast corner of township number 14 in the 8th range, thence west to the west line of the state, compose the northern registry district of Aroostook county, and the register shall keep his office in the town of Fort Kent. (R. S. c. 79, § 235.)

Sec. 220. Office in shire town.—The register of deeds in each county in which there is but 1 register shall keep his office in the shire town. (R. S. c. 79, § 236.)

Sec. 221. Clerk of courts register, when necessary. — In case of vacancy in the office of register and of his clerk in any county or registry district, the clerk of the judicial courts of the same county, being first sworn, shall perform all duties and services required of a register of deeds during such vacancy; complete all unfinished business; receive the same compensation and be subject to the same liabilities as a register of deeds; and his certificate shall have the same effect as if made by the register. (R. S. c. 79, § 237.)

Cross reference.—See Me. Const., Art. 9, § 2, re offices incompatible with each other.

By this section, the clerk is required to perform the duties of the register of deeds for a limited time only; not as a part of his own duties as clerk, but as the duties of the vacant office. White v. Fox, 22 Me. 341.

What constitutes vacancy.—See note to § 212.

Quoted in Grindle v. Bunker, 115 Me. 108, 98 A. 69.

Stated in Rose v. Knox County Com'rs, 50 Me. 243.

Sec. 222. Assistant.—In any county where there are two or more registry districts, the clerk of the judicial court in the county may appoint some suitable person under him to take charge and perform the duties of said office, during such vacancy, in the district or districts in which the registry is not kept in the shire town. The person so appointed shall be sworn and said clerk shall be responsible in all cases for his doings. (R. S. c. 79, § 238.)

Sec. 223. Register removed for misconduct or incapacity.—When on presentment of the grand jury or information of the attorney general to the supe-

rior court, any register of deeds, by default, confession, demurrer or verdict, after due notice, is found guilty of misconduct in his office or incapable of discharging its duties, the court shall enter judgment for his removal from office and issue a writ to the sheriff to take possession of all the books and papers belonging thereto and deliver them to the clerk of said court, that he may perform the duties of register as prescribed in sections 221 and 222. (R. S. c. 79, § 239.)

The legislature did not intend this to be a strictly penal statute, for the punishment by fine or imprisonment of the individual offender, but intended by this mode to reach every register of deeds who should use his office or his official name in a false or fraudulent manner. State v. Leach, 60 Me. 58.

This section is not one providing for the punishment of the individual offender by fine or imprisonment for an offense against its provisions. It is not in that sense a strictly penal statute. It is rather in the nature of an inquest of office, and the consequences of a conviction under it reach only to the possession of the office and its emoluments. State v. Leach, 60 Me. 58.

"Misconduct" does not necessarily imply corruption or criminal intention. The legislature used the word in its more extended and liberal sense. This statute is not, strictly speaking, a penal statute, but rather remedial and protective. State v. Leach, 60 Me. 58.

When an officer, acting in his official capacity and under his official signature, does an act which has relation and refers to matters belonging to his department, and under his particular charge, and he acts knowingly, designedly, falsely, and the act is one calculated to mislead, and one that in its nature may be used for purposes of fraud or imposition, it is misconduct in office, within the intent of this section. And this although no actual corruption by bribery or otherwise is proved. The mischief is the same, if the wrong was the result of unpardonable weakness in listening and yielding to the solicitations or representations of a fraudulent schemer, as when it is the result of a direct bribe. State v. Leach, 60 Me. 58.

No power to remove for acts in no way connected with office.—This section did not intend to confer upon the court the unlimited power to remove an individual from office, upon proof of facts showing immoral or felonious conduct, entirely disconnected from his office, and not being or purporting to be in any sense an official act, or assuming to be such. State v. Leach, 60 Me. 58.

But misconduct is not limited to acts which law required or authorized.—It was not the intention to limit the misconduct in office, however flagrant, to acts which can be shown to have been strictly such as the law required or directly authorized the officer to perform. State v. Leach, 60 Me. 58.

Where a register of deeds, over his official signature, knowingly, purposely, and designedly, but neither corruptly nor with intent to defraud, made and delivered to another a certificate that he had examined the title of an individual therein named to a particular lot of land, and found no incumbrance on the same whatever, when the register then well knew that the registry contained the record of an incumbrance by an attachment, and that the certificate was false, he is guilty of misconduct in his office, although it was no part of his official duty to make such examination, or issue such certificate. State v. Leach, 60 Me. 58.

Sec. 224. Register's successors may complete records and grant certificates.—Such clerk as referred to in section 222, or his substitute, or the newly appointed or elected register, or any successor within 5 years after the original vacancy occurred shall complete, compare and certify any unfinished record or certificate required by law and make all requisite certificates upon deeds and other papers recorded, which his removed predecessor should have done if such records and certificates had been completed by him, which certificates shall be as effectual in law as if made by his predecessor; for doing this, the minutes made by his predecessor upon such deeds or other papers and the entries made by him in the books required to be kept for such purposes shall be sufficient authority. If payment for such services has been made to his predecessor, he shall be paid for them out of the county treasury; and the former register and his sureties shall refund such payments to the county treasury, to be recovered by suit upon his official bond. (R. S. c. 79, § 240.)

Sec. 225. Certificates, conditions and requisites of. — No such cer-

tificate shall be made, except upon comparison of the original instrument with the record thereof, by the register making the certificate, and such certificate shall state the date when it was made, the fact of comparison and the date when the original instrument was left for record; but shall be only prima facie evidence of the last fact. (R. S. c. 79, § 241.)

Sec. 226. Recording officer not to draft or aid in drafting any document he is to record.—No city, town, county or state officer whose duty is to record conveyances of any kind, assignments, certificates or other documents or papers whatsoever shall draft or aid in drafting any conveyance, assignment, certificate or other document or paper which he is by law required to record, in full or in part, under a penalty of not more than $100, to be recovered by any complainant by action of debt for his benefit or by indictment for the benefit of the county. (R. S. c. 79, § 242.)

See § 111, re similar provisions as to clerks and registers; c. 153, § 31, re limitation of powers of a register of probate.

Sec. 227. Records; index.—The records in each registry office shall be made on a paper of firm texture, well sized and finished, the principal ingredient of which is linen. The registers shall make an alphabetical index to the records without charge to the county, in the form known as ledger index, so that the same surnames shall be recorded together in each column of index, or in lieu of such book shall make a suitable card index. All indexes made under the provisions of this section shall show in addition to the names of the parties and the nature of the instrument, the date of the instrument, the date of its record and the name of the city, town or unincorporated place where the land conveyed is situated. As often as every 10 years the register shall revise and consolidate such index in such manner that all deeds recorded since the last revision of the index shall be so indexed that the same surnames shall appear together and all names in alphabetical order. Such revised and consolidated index shall contain all data as to each and every such deed or other instrument as is above set forth. Whenever for any cause it may become necessary to revise, renew or replace any index, the new volume shall be made in conformity with the provisions hereof. (R. S. c. 79, § 243.)

History of section.—See Royal v. Evans, 123 Me. 217, 122 A. 569; Cram v. Cumberland County, 148 Me. 515, 96 A. (2d) 839.

No additional compensation for revising index.—See note to § 215.

Sec. 228. Books for records of plans; plan drawn on strong linen paper.—The county commissioners shall provide, at the expense of the several counties, suitable books at least 24 by 33 inches in dimension, of the best quality of strong linen drawing paper, alternated with pages of the best quality of tracing cloth, substantially bound, for the recording of such plans presented for record as may be traced or redrawn upon its pages; and shall provide other books at least 24 by 33 inches in dimension of substantial binding with stubs for the insertion and preservation of such plans as may be presented for record drawn in ink upon muslin backed paper or parchment that it may not be expedient to copy into the first book mentioned; no plan shall be accepted for record except to be redrawn upon the pages of said books, except said plan shall be drawn with ink upon strong linen paper or tracing cloth. Each register shall make a suitable index of all plans on record in his office. (R. S. c. 79, § 244. 1951, c. 98.)

Sec. 229. Deeds considered recorded when minute of time of reception made; records attested by volume.—Every register shall, at the time of receiving any deed or instrument for record, certify thereon the day and the hour and minute when it was received and filed; every such paper shall be considered as recorded at the time when it was received and such time shall be entered on

the record thereof. Within 1 hour after its delivery to him, the register shall enter such time, the names of the grantor and grantee and their places of residence, the nature of the instrument, the amount of the consideration named therein and the name of the town or unincorporated place as shown by the instrument in which the property conveyed is located, in a book kept for that purpose and open to inspection in business hours; and he shall suffer no deed or instrument for the conveyance of real estate to be altered, amended or withdrawn until it is fully recorded and examined. The records may be attested by the volume, and it shall be deemed to be a sufficient attestation of such records, when each volume bears the attest with the written signature of the register or other person authorized by law to attest such records. (R. S. c. 79, § 245.)

Quoted in part in Handley v. Howe, 22 Me. 560.

Stated in part in Monaghan v. Longfellow, 81 Me. 298, 17 A. 74; Stafford v. Morse, 97 Me. 222, 54 A. 397.

Sec. 230. Miscellaneous records. — Registers shall receive and record all certificates in equity, copies of judgments and decrees certified by the clerk of courts in the county where the bill is pending or the judgment or decree is rendered, certified copies of the proceedings of any court, corporation, municipal body or other tribunal through or by which the right of eminent domain has been or may hereafter be exercised to affect the title to real estate, copies of portions of wills devising real estate situated in their respective counties or districts and all other instruments which they are by law required to record. They shall receive all copies of seizures on execution and special attachments made and attested by any officer of real property situate in their respective counties or districts and certify on them the time when they are received; also certificates of advertised stallions and copies of processes against domestic corporations filed for service by officers in the registry, keep them on file for the inspection of parties interested and enter them in suitable books, properly indexed. (R. S. c. 79, § 246.)

See § 216, re fees; c. 52, § 12, re record of location of property taken for public uses; c. 112, § 20, re record of service on domestic corporation when no officer found; c. 153, § 25, re copy of will by register of probate when real estate devised.

Sec. 231. Records of towns delivered to Maine Historical Society for safekeeping; certified copies used in evidence.—All persons, other than registers of deeds, having possession of or owning the records of the original proprietors of any town or plantation in this state, may deliver the same to the Maine Historical Society for preservation and safekeeping. Said society shall cause a true copy thereof to be made and certified by the secretary of the society and the same shall then be filed in the registry of deeds in the county or registry district in which said town or plantation is situated, and be kept there as a public record. Any transcript from said copy of said records, certified by the register of deeds, may be used in evidence in all cases in which the same is material and with the same effect as though the original records were produced. (R. S. c. 79, § 247.)

Sec. 232. Owner of original records reimbursed for expenses. — Whoever, having possession of or owning any such original records, delivers them to the Maine Historical Society as provided in the preceding section, shall be paid from the state treasury the reasonable expenses incurred by him in obtaining possession or becoming the owner thereof, whenever the amount of such expenses shall have been certified to by the Maine Historical Society and approved by the governor and council; and the cost of making said copy and of filing it in the registry of deeds shall be paid to said Maine Historical Society by the treasurer of state whenever said cost shall have been certified to and approved by the governor and council; provided, however, that the sums expended in any year under the provisions of this section shall not exceed in the aggregate the sum of $500. (R. S. c. 79, § 248.)

Sec. 233. Plans of land lotted for sale filed; neglect.—Whoever lots or causes to be lotted for the purpose of sale any tract of land shall, before making any deed of such land or any part thereof, file with the register of deeds for the county or registry district wherein such land is situated an accurate plan of such property, which plan shall give such courses, angles and distances as will be sufficient to enable a skillful surveyor to locate any lot shown thereby. If such party, after request by any interested party or by the register of deeds, fails to comply with the provisions of this section, he shall be liable to a penalty of not more than $50, to be recovered in an action of debt in the name of the register of deeds for the benefit of the county. (R. S. c. 79, § 249.)

Sec. 234. Recording of releases or waivers of conditions.—Whenever land has been lotted in accordance with the provisions of section 233 and lots described therein have been conveyed by deeds of conveyance containing one or more uniform conditions which restrict the full and unqualified enjoyment of the right or estate granted, the grantor may subsequently by a writing under seal and by the grantor signed and acknowledged and recorded in the registry of deeds for the county or registry district in which the land lies, release and waive one or more of such conditions by reference to lot numbers, block numbers, section numbers or other apt description, and such release and waiver need not state a consideration and need not contain the names of the grantees or present owners of the respective parcels. Such release and waiver shall thereafter accrue to the respective individual benefit of the owners of the parcels described in such release and waiver and may be used by them as a bar to any action by the said grantor for breach of any such condition thus released and waived. Provided, however, that such writing shall not in any way affect or impair like conditions in respect to other deeds of lots shown on such plans and not included in such release and waiver, and such writing shall not in any way affect or impair other conditions contained in deeds of the parcels referred to in such release and waiver. (1953, c. 411.)

Sec. 235. Duplicates of plans on court files.—Whenever in the settlement of any disputed line or in the division of any estate any plans are made for filing in the office of the clerk of courts or the register of probate, duplicate plans shall in all cases be filed in the registry of deeds. (R. S. c. 79, § 250.)

Sec. 236. Plans of townships; copies; filing and indexing. — The county commissioners shall, at the expense of their respective counties, procure such plans of the townships in their counties as may be in existence; and if the original plans are not in existence or cannot be had at a reasonable price, they shall procure copies of the most authentic plans known to exist. All such copies shall be on the best quality of linen paper backed with cloth. Suitable filing cases shall be provided in each registry of deeds for the reception and preservation of such plans and a suitable index thereof shall be made. (R. S. c. 79, § 251.)

Sec. 237. Other plans of interest to county.—The county commissioners may at their discretion procure such plans, other than township plans, of properties within their counties, either originals or copies, as they deem for the interest of their counties to have preserved on the files of the registry of deeds. This section shall not be construed to allow the purchase of any plan which the proprietor of any estate is required by law to file with the register of deeds. (R. S. c. 79, § 252.)

Sec. 238. Plans showing allotment of lands in cities and towns recorded.—The aldermen of any city and the selectmen of any town may, and upon the written request of three or more taxpayers of the city or town shall, cause any plans in the possession of the city or town or otherwise available, showing the allotment of lands in said city or town, to be recorded in the registry of

deeds in the county or registry district wherein any such city or town is situated. Said plans shall be transcribed or copied upon mounted drawing paper of the best quality in a suitable book furnished by the register at the expense of the county. (R. S. c. 79, § 253.)

Sec. 239. Copies of transfers of lands in unorganized territory sent to state tax assessor.—In each county containing lands in unorganized territory, so called, the register of deeds shall transmit to the state tax assessor certified copies of the record of all transfers of lands in unorganized territory made after the 20th day of March, 1907, within 10 days after such record is made. Such copies shall be placed on file and retained for future reference by the state tax assessor. (R. S. c. 79, § 254.)

Sec. 240. Lien notices for internal revenue taxes filed and recorded. — Notices of liens for internal revenue taxes payable to the United States of America and certificates discharging such liens, prepared in accordance with the laws of the United States pertaining thereto, may be filed in any county in this state in the registry of deeds for that county or counties within which the property subjected to such lien is situated.

Registers of deeds shall receive, record and index such notices and discharges in the same manner as similar instruments are recorded and indexed.

The fee to be paid by the United States to registers of deeds for recording each such notice or discharge is 50¢, which need not be prepaid. (R. S. c. 79, § 255.)

Sec. 241. Owner of farm lands may designate specific name for such lands.—The owner of any farm lands may designate a specific name for such lands and the said name together with a description of said farm lands according to the latest authentic survey thereof may be filed with the register of deeds of the county wherein the said lands or a part thereof are situated; and the said name together with the description of said lands shall be recorded by the register of deeds in a book to be provided for such purpose upon payment of a fee of 50¢, but no 2 names so designated and recorded shall be alike in the same county. (R. S. c. 79, § 256.)

Sec. 242. Transfer of name. — Whenever any owner of farm lands, the name of which has been recorded as provided in the preceding section, transfers by deed or otherwise the whole of such farm lands, such transfer may include the registered name thereof; but if the owner shall transfer only a portion of such farm lands, then the registered name thereof shall not be transferred to the purchaser, unless so stated in the deed of conveyance. (R. S. c. 79, § 257.)

See c. 23, § 20 et seq., re proceedings for taking of land by state highway commission; c. 36, § 6, re copies of records of deeds in office of forest commissioner; c. 37, § 15, re order of commissioner of inland fisheries and game, setting apart waters for fish culture; c. 37, § 19, re description of land taken for fish hatcheries; c. 38, § 19, re proceedings for taking of land for cultivation of shell fish; c. 57, § 64, re proceedings for location of lands reserved for public uses; c. 60, § 89, re certificate of claim to lien for amount due on premium note given to mutual insurance company; c. 96, § 51, re proceedings for abolishment of grade crossings; c. 155, § 18, re certificate discharging lien of inheritance tax; c. 166, § 50, re decree for judicial separation of husband and wife; c. 170, § 15, re notices of election to waive will and claim share of estate; c. 176, § 21, re judgment for partition.

Medical Examiners.

Appointment, Duties, Compensation, etc.

Sec. 243. Appointment of medical examiners; duties.—Medical examiners for each county in the state shall be appointed by the governor with the advice and consent of the council for a term of 4 years or during the pleasure of

the governor and council. They shall be able and discreet men, learned in the science of medicine and anatomy, and bona fide residents of the county for which they are appointed. The number of medical examiners so to be appointed shall be as follows: for the counties of Franklin, Knox, Lincoln, Piscataquis, Sagadahoc, Somerset and Waldo, 2 each; for the counties of Hancock, Oxford and Washington, 3 each; for the counties of Kennebec and York, 4 each; for the counties of Androscoggin and Aroostook, 5 each; and for the counties of Cumberland and Penobscot, 6 each; and they shall be appointed with reference to territorial distribution. Each medical examiner before entering upon the duties of his office shall be duly sworn to the faithful performance of his duty. They shall make examinations, as hereinafter provided, whenever any person shall die from criminal violence, or by suicide or in any suspicious or unusual manner. (R. S. c. 79, § 258. 1947, c. 190, § 1. 1949, c. 339.)

Sec. 244. Notice of finding of body.—Whoever finds the body of any person, who may be supposed to have come to his death by criminal violence, or by suicide or in any suspicious or unusual manner, shall immediately notify one of the municipal officers, a police officer or constable if in a city or town; or a member of the board of assessors if in a plantation; and if in an unorganized place, the most readily accessible of such officials in any city, town or plantation within the county. Such official shall immediately take charge of such body and retain custody thereof without moving the same, except as hereinafter provided, until the arrival of a medical examiner, the county attorney, the sheriff or a member of the state police. The official taking charge of said body shall immediately notify the county attorney or sheriff, who shall in turn arrange for the attendance of the most readily accessible medical examiner. If the body, where found, is in danger of being destroyed or damaged by fire, vehicular traffic or otherwise, or of being lost in any body of water, any person may take steps as may seem necessary for its preservation or retention prior to the arrival of the medical examiner, sheriff, a member of the state police or the county attorney, but in such event shall first, whenever practicable, exactly mark the location and position of the body. If no such danger exists, the body shall not be moved until the arrival of the medical examiner, the sheriff, a member of the state police or the county attorney, and until photographs have been taken or measurements and drawings have been made to record the physical facts relative to the location and position of the body, under the supervision of the county attorney, the state police or sheriff, or unless the attorney general or the county attorney waives such requirements. After such photographs or such measurements and drawings have been made or have been waived as aforesaid and after the medical examiner has completed such examination as required of him in the following section, the body may be removed to a convenient place. The body shall not be finally released for embalming or burial, except by order of the county attorney or sheriff. If and when it shall appear to the county attorney that the case is one of probable homicide, he shall notify the attorney general of the fact. (R. S. c. 79, § 259. 1947, c. 190, § 2.)

Sec. 245. Proceedings by medical examiner upon receiving such notice.—Upon notice that there has been found or is lying within his county the body of a person who is supposed to have come to his death by criminal violence, or by suicide or in any suspicious or unusual manner, the medical examiner shall forthwith repair to the place where such body lies and take charge of the same, and before said body is removed, he shall reduce or cause to be reduced to writing a description of the location and position of the body and any and all facts that may be deemed important in determining the cause of death. He shall, upon authorization of the county attorney or the attorney general, make an autopsy in the presence of a physician and one other discreet person sufficient in his judgment to disclose such facts as may be attainable thereby which may be of as-

sistance in determining the cause of death. He may compel the assistance of such physician and person, by subpoena if necessary, and he shall then and there at the time of such autopsy reduce or cause to be reduced to writing every fact and circumstance disclosed by such autopsy tending to show the manner and cause of death, which record shall be signed by himself and the witnesses who have attended, who shall in addition to their names subscribe their address and place of business. In case at the time of finding of such body there be no medical examiner available within the county by reason of vacancy in the office, incapacity or absence from the county, any medical examiner in an adjoining county may be notified, whose duty it shall be to attend and perform all duties prescribed by sections 243 to 253, inclusive, as though he were a medical examiner within the county. (R. S. c. 79, § 260. 1947, c. 190, § 3.)

Cited in O'Brion v. Columbian Nat. Life Ins. Co., 119 Me. 94, 109 A. 379.

Sec. 246. Notice to attorney general; return of death to town clerk.—Immediately after such view with personal inquiry or autopsy as is required by the preceding section, the medical examiner shall file with the county attorney of the county in which the body is found and with the attorney general a duly attested copy of the record of the case. He shall also make a return of the death of such person to the city or town clerk as required by law, which shall be supplemented with a personal description of the deceased for identification. (R. S. c. 79, § 261.)

Sec. 247. Autopsy ordered by attorney general; inquest.—The county attorney or attorney general may require the medical examiner to perform an autopsy if in their judgment the same is advisable, in cases where the medical examiner has not deemed it necessary to do so, and on receiving from a medical examiner the report of an autopsy made by him in pursuance of the provisions of sections 243 to 253, inclusive, and finding some person or persons probably implicated, may, when deemed necessary, authorize the medical examiner to take an inquest upon the view of the dead body of the person whose death is supposed to have been occasioned unlawfully; such medical examiner shall thereupon summon to appear before him such witnesses as the county attorney or attorney general may direct, who shall be examined under oath by said county attorney or attorney general. All such testimony shall be reduced to writing by the medical examiner or under his direction and shall be signed by the witness and sworn to. The medical examiner shall preside at such inquest and shall report in writing his conclusions, when and where and by what means the person came to his death, to the county attorney or attorney general, and if it appears to him that it was a case of homicide, he shall so state and may state the name of the person who, in his judgment there is probable cause to believe, contributed to such death, if known to him. The county attorney and the attorney general shall then proceed to execute the laws of the state governing the offices which they hold and may direct the holding of witnesses as they shall deem necessary. (R. S. c. 79, § 262.)

Cited in Watts Detective Agency v. Sagadahoc County, 137 Me. 233, 18 A. (2d) 308.

Sec. 248. Inquest when county attorney or attorney general disagree with medical examiner.—If a medical examiner reports that a death was not caused by criminal violence, or by suicide or in any suspicious or unusual manner and the county attorney or attorney general is of a contrary opinion, nothing in sections 243 to 253, inclusive, shall be construed to prevent either of these officers directing an inquest in accordance with the provisions of these said sections. (R. S. c. 79, § 263. 1947, c. 190, § 4.)

Sec. 249. Expert aid called; compensation. — The medical examiner, with the advice and consent of the county attorney or attorney general may, if he deems necessary, call a chemist or other expert to aid in the examination of the body or of substance supposed to have caused or contributed to the death of such person, and such chemist or other expert shall be entitled to such compensation for his services as the medical examiner and the county attorney shall certify to be just and reasonable. Any person employed to reduce to writing the results of any of the proceedings provided for in sections 243 to 253, inclusive, shall be sworn and shall be allowed reasonable compensation. (R. S. c. 79, § 264.)

Sec. 250. Disposal of dead body after autopsy; if body unidentified; expense of burial.—The medical examiner upon the completion of his examination, autopsy or inquest shall deliver the dead body upon their claim therefor to one or more of the persons hereinafter named, and they shall be entitled thereto as follows: 1st, the husband or wife as the case may be; 2nd, the next of kin; 3rd, any friend of the deceased. If the dead body is unidentified or is unclaimed for a period of not less than 48 hours following the view thereof, the medical examiners shall deliver the body to the overseers of the poor in the town, or if in a plantation or unorganized place, to the county commissioners, who shall decently bury the same or shall deliver it to the board of distribution as provided in section 12 of chapter 66. The expense of burial shall be borne by the municipality liable for the support of the deceased, if any within the state, and if not, by the state. (R. S. c. 79, § 265.)

Sec. 251. Personal effects.—In all cases arising under the provisions of sections 243 to 253, inclusive, the medical examiner shall take charge of any money or any other personal effects of the deceased found upon or near the body and, subject to the right of the state to use the same as evidence, shall deliver them to the person or persons entitled thereto, or if there is any doubt regarding to whom they shall be delivered, this fact shall be made known to the judge of probate for the county, whose directions in the case shall be followed. (R. S. c. 79, § 266.)

Sec. 252. Compensation of medical examiner. — Every medical examiner shall render an account of the expenses of each case, including his fees, to the county attorney, who shall audit and approve the same before it is submitted to the county commissioners for their approval, and the fees allowed the medical examiner shall not exceed the following, viz.: for a view and inquiry without an autopsy, $15; for a view and autopsy, $50; for an inquest, $10 per day for the time actually spent in holding such inquest and for all necessary travel at the rate of 10¢ per mile. Witnesses summoned to testify at such inquest shall be allowed the same fees as witnesses in the superior court. The physician and other person required to be present at an autopsy as provided in section 245 shall be allowed a reasonable compensation, to be audited by the medical examiner and county attorney. (R. S. c. 79, § 267. 1947, c. 190, § 5.)

Sec. 253. Preparation and distribution of record books and blanks. —The attorney general and secretary of state shall prepare for the use of medical examiners forms of record books, blank returns and other papers necessary to carry out the provisions of sections 243 to 253, inclusive; they shall be printed at the expense of the state and distributed to the several medical examiners who shall take care of the same, each entering thereon all the work and reports of his office, keeping the books open for the inspection of the county attorney and attorney general. Whenever a medical examiner resigns or ceases to hold office, all books and papers pertaining to the office shall be delivered to his successor. (R. S. c. 79, § 268.)

County Offices.

Clerk Hire.

Sec. 254. Clerk hire.—The several county treasurers shall pay weekly to the clerks employed by the several officials in their respective counties the wages to which they may be entitled and shall take their individual receipts therefor. County officials for whom provision for clerk hire may be made shall certify to the county treasurer the names of the clerks and the weekly wages at which they may be employed. Clerks shall be allowed a vacation not exceeding 2 weeks in any one year without loss of pay. The total sums to be paid annually to such clerks as wages shall not exceed the following:

Androscoggin county: for clerks in the office of register of deeds, $7,670; for clerks in the office of register of probate, $1,820; for clerks in the office of clerk of courts, $3,400; for clerks in the office of sheriff, $600; for clerk hire in the office of county treasurer and county commissioners, $1,560.

Aroostook county: for clerks in the office of register of deeds of the northern district, $1,820; for clerks in the office of register of deeds for the southern district, $6,240; for clerks in the office of register of probate, $1,560; for clerks in the office of clerk of courts, $2,600; for clerks in the office of the county attorney, $1,000; for expenses of clerk of courts and his subordinates while attending sessions of the superior court at Caribou, such sums as allowed by the court.

Cumberland county: for clerks in the office of register of deeds, $25,000; deputy register of deeds, $3,200; for clerks in the office of register of probate, $11,700; for clerks in the office of clerk of courts, $10,104; for clerks in the office of the recorder of the Portland municipal court, $5,096; for clerks in the office of county attorney, $742; for clerks in the office of sheriff, $728.

Franklin county: for clerks in the office of register of deeds, $1,300; for clerks in the office of register of probate, $600; for clerks in the office of clerk of courts, $1,300.

Hancock county: for clerks in the office of register of deeds, $3,500; for clerks in the office of register of probate, $3,000; for clerks in the office of clerk of courts, $1,375.

Kennebec county: for clerks in the office of register of deeds, $3,100; for clerks in the office of register of probate, $2,600; for clerks in the office of clerk of courts, $2,500; for clerks in the office of county treasurer, $500. The deputy clerk of courts shall receive such additional amount for services as shall be approved by the county commissioners not to exceed $300 annually.

Knox county: for clerks in the office of register of deeds, $2,620; for clerks in the office of register of probate, $1,920; for clerks in the office of clerk of courts, $2,320; for clerk hire in the office of the county treasurer, $180.

Lincoln county: for clerks in the office of register of deeds, $1,400; for clerks in the office of register of probate, $1,820; for clerks in the office of clerk of courts, $650.

Oxford county: for clerks in the office of the register of deeds, $3,500; for clerks in the office of the register of probate, $1,600; for clerks in the office of clerk of courts, $1,600.

Penobscot county: for clerks in the office of register of deeds, $4,807; for clerks in the office of register of probate, $3,795, and this sum shall cover the cost of indexing all documents, papers and records of said office; for clerks in the office of clerk of courts, $2,632; for clerks in the office of county attorney, $1,150.

Piscataquis county: for clerks in the office of the register of deeds, $1,820; for clerks in the office of register of probate, $910; for clerks in the office of clerk of courts, $1,820.

Sagadahoc county: for clerks in the office of register of deeds, $2,574; for clerks in the office of register of probate, $1,716; for clerks in the office of clerk of courts, $1,716.

Somerset county: for clerks in the office of register of deeds, $4,800; for clerks in the office of register of probate, $2,000; for clerks in the office of clerk of courts, $2,500.

Waldo county: for clerks in the office of register of deeds, $2,080; for clerks in the office of register of probate, $1,040; for clerks in the office of the clerk of courts, $1,040.

Washington county: for clerks in the office of register of deeds, $2,730; for clerks in the office of register of probate, $1,500; for clerks in the office of clerk of courts, $1,500; for expenses of clerk of courts and his subordinates while attending sessions of the superior court at Calais, such sums as may be allowed by the court.

York county: for clerks in the office of register of deeds, $6,000; for clerks in the office of register of probate, $3,680; for clerks in the office of clerk of courts, $3,550. (R. S. c. 79, § 269. 1945, cc. 32, 35, 37, 38, 140; c. 161, § 5; cc. 188, 201; c. 202, § 2; c. 205, § 1; c. 206, § 2; cc. 212, 215, 218, 224, 225, 226, 227; c. 260, § 2; c. 261, § 1; c. 280, § 7; cc. 287, 290; c. 319, § 1; c. 322, § 6; c. 339. 1947, c. 154, § 6; cc. 199, 204, 205, 209, 213, 254, 259, 293, 300, 301, 302, 303, 304, 315, 316, 318, 319, 341; c. 371, § 1. 1949, cc. 50, 175, 180; c. 186, § 4; c. 187, § 2; c. 214, § 7; cc. 228, 257; c. 260, § 1; c. 286, § 2; cc. 295, 306, 350; c. 353, §§ 1, 3. 1951, c. 274; c. 311, § 6; c. 312, § 7; c. 391. 1953, cc. 91, 120; c. 135, § 3; c. 149, § 3; c. 151, § 2; c. 269, § 7.)

Cited in Watts Detective Agency v. Sagadahoc County, 137 Me. 233, 18 A. (2d) 308.

Sec. 255. Clerk hire in county offices.—In all county offices there shall be allowed for clerk hire the amount authorized by statute, together with such additional amounts as may from year to year be authorized by the county commissioners of the various counties. (1949, c. 341.)

Fees in Waldo County.

Sec. 256. Fees in Waldo county. — All fees for copies of any public or official documents or records, of whatever nature, and charges for the publication of notices required by law, which may be payable to any county officer of Waldo county, shall be payable to the treasurer of Waldo county for the use and benefit of the county. (1953, c. 216, § 7.)