

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 3

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

Chapter 96.

Forests. Parks. Ways. Sewers and Drains. Fences.

Section 1-A. State-Owned Lands.
Sections 128 to 150-A. Sewers and Drains.

State-Owned Lands.

Sec. 1-A. Profits from state-owned lands.—In towns where the state owns land as the result of acquisition of such land through the use of federal aid funds under the Pittman-Robertson Federal Aid to Wildlife Act and upon which natural products are sold or leased, 50% of the net profits received by the state from the sale or lease of such natural products shall be paid by the state to the town wherein such land is located. (1955, c. 405, § 43.)

Public Parks, Squares, Playgrounds and Shade Trees.

Sec. 5. Land taken for parks, squares, public libraries and playgrounds.—Any city or town upon petition in writing signed by at least 30 of its taxpaying citizens, directed to the municipal officers, describing the land to be taken as hereinafter provided, and the names of the owners thereof so far as they are known, may, at a meeting of such town or the city government, direct such municipal officers to take suitable lands for public parks, squares, playgrounds, buildings for municipal purposes or a public library building; and thereupon such officers may take such land for such purposes, but not without consent of the owner if at the time of filing such petition with such officers or in the office of the clerk of such town or city such land is occupied by a dwelling house wherein the owner or his family reside. When land is taken under the provisions of this section for a public park, the fee of such land may be taken and compensation assessed and paid accordingly. Land in any town so taken for a public park may by authority of a majority vote at a town meeting be transferred and conveyed to the federal government so as to become a part of a national park. Nothing herein shall be held to deprive the former landowners from proceeding to restrain the use of such land for other than public park purposes. (R. S. c. 84, § 5. 1955, c. 216.)

Effect of amendment.—Prior to the 1955 cities and towns containing more than amendment this section applied only to 1,000 inhabitants.

Sec. 12. Violations of sections 8 and 9.—Whoever violates any provisions of sections 8 and 9 shall be punished by a fine of not more than \$100, to be recovered on complaint, and shall also be liable to a civil action, brought by the park commissioners or by a taxpayer, in the name and for the benefit of the town or city wherein said offense is committed, for all damages sustained. (R. S. c. 84, § 12. 1961, c. 317, § 264.)

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

Sec. 15. Tree wardens, appointment and duties.—The municipal officers of cities and towns not having elected park commissioners as provided by sections 2 to 12 may annually appoint one or more tree wardens who shall have the care and control of all public shade trees upon and along such highways and in the parks thereof and all streets within any village limits and shall enforce all laws relative to the preservation of the same. (R. S. c. 84, § 15. 1959, c. 378, § 66.)

Effect of amendment.—The 1959 amendment, effective on its approval, January 29, 1960, substituted “annually” for “at any annual meeting or meetings called for that purpose”.

Town and Private Ways. Public Landings. Bridle Paths.

Sec. 29. Power of municipal officers respecting town and private ways; notice; duty of officers laying out way.

I. GENERAL CONSIDERATION.

Applied in *Howard v. Saco*, 155 Me. 252, 153 A. (2d) 124.

Sec. 34. Damages for ways; appeal.—The damages for a town way shall be paid by the town; for a private way, by those for whose benefit it is stated in the petition to be, or wholly or partly by the town, if under an article in the warrant to that effect it so votes at the meeting accepting such private way; or by cities, if it is proposed in the return laying out such way. Any person aggrieved by the estimate of such damages may have them determined as provided in chapter 89, section 42, by written complaint to the superior court, in the county where the land lies, within 60 days from the date of the establishment, alteration or discontinuance of such way by the town at its town meeting. Service shall be made upon the town where the land lies as in other actions, and by posting attested copies in 2 public and conspicuous places within said town and in the vicinity of the way; but the final judgment shall be recorded in said court and shall not be certified to the county commissioners. When any person, aggrieved by the estimate of damages for his land taken for a town or private way, honestly intended to appeal therefrom and has by accident or mistake omitted to take his appeal within the time provided by law, he may at any time within 6 months after the expiration of the time when said appeal might have been taken, apply to any justice of the court, stating in his said application the facts of his case. Said justice, after due notice and hearing, may grant to such petitioner permission to take his said appeal within such time as said justice shall direct and on such terms as said justice shall order, and the subsequent proceedings thereon shall be the same and with the same effect as if said appeal had been seasonably taken. (R. S. c. 84, § 33. 1959, c. 317, § 60.)

Effect of amendment.—The 1959 amendment changed the form of the reference in the second sentence, substituted “in” for “returnable at the term thereof next to be held within” following “superior court” and substituted “within” for “after” preceding “60 days” in such sentence, rewrote the third sentence, divided the former last sentence into two sentences, deleted “in term time or vacation” following “court” in the present fourth sentence and substituted “within such time” for “to such term of said court” in what is now the last sentence.

Effective date and applicability of Public Laws 1959, c. 317.—Section 420, chapter

317, Public Laws 1959, provides as follows: “This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail.”

When service of complaint without sanction of court order is effective.—See note to c. 89, § 42.

Sec. 39. Public parking places; damages.

Applied in *Howard v. Saco*, 155 Me. 252, 153 A. (2d) 124.

Sec. 48. Location of ways crossing railroad tracks; expense; appeal.—Town ways and highways may be laid out across, over or under any railroad track or through or across any land or right-of-way of any railroad corporation,

except that no such location shall be legal or effective, nor shall any such way be constructed, unless the public utilities commission, on application of the municipal officers of the city or town wherein such way is located, the state highway commission or the parties owning or operating the railroad shall, upon notice and hearing, determine that such way shall be permitted to cross such track or land or right-of-way of any railroad corporation. Said public utilities commission shall have the right to refuse its said permission or to grant the same upon such terms and conditions as it may prescribe, including the manner and conditions in accordance with which the way may cross such track or land or right-of-way of any railroad corporation and the need, if any, for installation, maintenance and operation of automatic signals, gates or other protective measures to secure human life, and may determine whether the expense of building and maintaining so much of said way as is within the limits of such railroad corporation shall be borne by such railroad corporation, or by the city or town in which such way is located, or by this state, or said public utilities commission may apportion such expense between such railroad corporation and the city, town or state. The expense of operating and maintaining any protective device shall be borne by the corporation operating the railroad, and at crossings on state and state aid highways the expense of installing such protective device shall be apportioned between such corporation and the state as the commission shall determine; and on town ways the expense of installing such protective measure shall be apportioned between such corporation and the town as the commission shall determine. and conditions as it may prescribe, including the manner and conditions in accordance with which the way may cross such track or land or right-of-way of any railroad corporation and may determine whether the expense of building and maintaining so much of said way as is within the limits of such railroad corporation shall be borne by such railroad corporation, or by the city or town in which such way is located, or by this state, or said public utilities commission may apportion such expense equitably between such railroad corporation and the city, town or state. Said public utilities commission shall make a report in writing of its decision thereupon, file the same in its office and cause to be sent by mail or otherwise to each of the railroad corporations and the municipal officers of the city or town as the case may be, interested therein, and the state highway commission when interested, a copy of such decision. Such decision shall be final and binding upon all parties unless an appeal therefrom shall be taken to the superior court, in the county where the crossing is located. Said public utilities commission shall be made a party defendant in such appeal and entitled to be heard in all subsequent proceedings had upon such appeal. The appellant shall within 14 days from the date of the filing of such report, file in the office of the public utilities commission its reasons for appeal, and it shall forthwith cause to be served upon such other interested corporations or municipality or the state highway commission a copy of such reasons for appeal, certified by the clerk of the public utilities commission. The presiding justice shall make such order or decree thereon as law and justice may require. An appeal may be taken to the law court as in other actions. The final adjudication shall be recorded as provided in section 50 and a copy of such final decision sent to the public utilities commission by the clerk of the court where such final adjudication is made. Costs may be taxed and allowed to either party at the discretion of the court. (R. S. c. 84, § 47. 1959, c. 96; c. 317, § 61. 1961, c. 66.)

Effect of amendments.—This section was amended twice by the 1959 legislature. P. L. 1959, c. 96, deleted the words “used for station purposes”, formerly appearing three times in the first two sentences. Chapter 317, § 61, rewrote the fourth, fifth, sixth and seventh sentences of the section. Chapter 317 became effective December 1,

1959. See note to § 34 of this chapter.

The 1961 amendment inserted the provisions relating to automatic signals and other protective measures in the second sentence, deleted “equitably” near the end of that sentence and added the present third sentence.

Sec. 49. Maintenance of ways already laid out.—Notwithstanding the provisions of any section of chapter 45, in case of ways already laid out which cross over or under any railroad track or tracks and not at grade, the allocation of the expense of maintaining so much thereof as is within the limits of such railroad shall be determined, de novo, as provided by section 48, by the public utilities commission upon application to it by any corporation whose track is or tracks are so crossed, or upon application by the municipal officers of any town in which the crossing is located, or upon application by the state highway commission. (R. S. c. 84, § 48. 1945, c. 293, § 17. 1947, c. 22. 1957, c. 356, § 1.)

Effect of amendment. — The 1957 amendment deleted the words “rebuilding, reconstructing and” formerly preceding the word “maintaining” near the middle of the section and substituted “section 48” for “the preceding section”.

Abolishment of Grade Crossings.

Sec. 51. Petition to abolish, reconstruct or alter crossings; damages; expenses; temporary ways.—The state highway commission or the municipal officers of a city or town whenever a public way over which they have jurisdiction crosses or is crossed by a railroad, whether such crossing be at grade or otherwise, or any railroad company may file a petition in writing with the public utilities commission alleging that safety or public convenience either to the traveling public or in the operation of the railroad requires the abolishment of or the reconstruction of or an alteration of such crossing or its approaches; or a change in the method of crossing a public way; or the closing of a crossing and the substitution of another therefor; or the removal of obstructions to the sight at such crossing, and praying that the same may be ordered. Whereupon said commission shall appoint a time and place for a hearing thereon after notice of not less than 10 days to the petitioners, the state highway commission, the railroad corporation, the municipality in which such crossing is situated, the owners or occupants of the land adjoining such crossing or adjoining that part of way to be changed in grade, and to the attorney general of the state whose duty it shall be, by himself or through the county attorney of the county wherein the crossing is located to represent the interests of the state at such hearing. After such notice and hearing the commission shall determine what abolishment, reconstruction, alteration, change or removal, if any, shall be made to insure safety or public convenience and by whom such abolishment, reconstruction, alteration, change or removal shall be made. The jurisdiction and authority of said commission as conferred by this section shall exist whether the change or alteration in such crossing is within or without the located limits of a public way. To facilitate such abolishment, reconstruction, alterations, changes or removals, highways and other ways may be raised or lowered or the courses of the same may be altered to permit a railroad to pass at the side thereof. For the purposes aforesaid land may be taken and damages awarded as provided for laying out highways. The commission shall determine how much land may be taken and shall fix the damages sustained by any person whose land is taken and the special damages which the owner of land adjoining the public way may sustain by reason of any change in the grade of such way. Appeal from any decision, order or award of the commission may be had as provided in section 53. The commission shall apportion the expenses pertaining thereto and damages as follows: if the way involved is a state highway, 50% to the state highway commission and 50% to the corporation operating the railroad; if the way involved is a state aid highway, 50% to the state highway commission and the municipality or municipalities in which the way is located, the pro rata share being determined by the percentage of state aid granted on the way involved and 50% to the corporation operating the railroad; if the way involved is a town way, 35% to the state, to be paid out of the general fund, 15% to the town, or in cases under the provi-

sions of the last paragraph of this section, 15% to the county commissioners of the county, in which the way is located and over which the county commissioners have jurisdiction, and 50% to the corporation operating the railroad; provided, however, that the public utilities commission may vary the aforesaid percentages of expenses and damages as it may deem proper after due consideration of the relative benefits to be derived from such abolishment, alteration or reconstruction; and provided, further, that the amount ordered to be paid by the corporation operating the railroad shall not in any event exceed 50% of said expenses and damages. The commission may approve agreements made by the corporation or other parties interested, including the state, acting by and through the state highway commission, in respect to the work, or varying the above percentages provided the amount to be paid by the town by agreement shall not exceed the 15% herein specified unless the town shall otherwise vote. As to any elimination or alteration made under the provisions of this section, the commission may determine what work fairly and properly should be regarded as highway construction.

The commission may make such order relative to the maintenance of crossings at grade or otherwise as it may deem necessary, and may determine whether such expense shall be borne by such railroad corporation, by the municipality in which any such crossing is located or by the state acting by or through the state highway commission; or said commission may apportion such expense equitably between such railroad corporation, such municipality and the state acting by or through the state highway commission.

While the use of any way is obstructed in carrying out the foregoing provisions of this section, such temporary way shall be provided as the commission may order. The commission shall not make any order upon any petition filed under the provisions of this section until they are satisfied, by investigation or otherwise, that the financial condition of the corporation operating the railroad in question will enable said corporation to comply with such order, and that the probable benefit to the public will warrant said order and the probable expense resulting therefrom, and that said order can be complied with without exceeding the state appropriation available therefor.

The county commissioners shall have the same right of petition under the provisions of this section, with respect to roads in unorganized places laid out by them under the provisions of section 55 of chapter 89, as have municipal officers of a municipality under the foregoing provisions of this section. In case a petition is filed by them, all parties interested in the subject matter of the petition shall be notified by the public utilities commission of the filing of such petition and given opportunity to appear and be heard thereon. (R. S. c. 84, § 50. 1953, c. 13. 1957, c. 356, § 2.)

Effect of amendment. — The 1957 amendment rewrote this section.

Sec. 52. Public way crossing tracks of more than one railroad.— Whenever the public utilities commission, upon an application or petition brought under the provisions of section 51, finds that a public way crosses or is crossed by tracks of more than one railroad and the tracks of such railroads are so near together that public safety or convenience requires the work of abolishment, reconstruction, alteration, change or removal to be done under and in compliance with one order, they shall give notice to all the corporations operating such railroads to appear before them and be heard upon the application. After such notice and hearing said commission shall determine what abolishment, reconstruction, alteration, change or removal, if any, of said crossing shall be made and shall determine by whom such work shall be done and shall apportion the percentage of expense to be borne by the railroad corporations between such cor-

porations in such manner as said commission shall deem just and proper. (R. S. c. 84, § 51. 1957, c. 356, § 3.)

Effect of amendment. — The 1957 amendment inserted the words "safety or" preceding the word "convenience", inserted the word "reconstruction" in two places, and made other minor changes.

Sec. 54. Amount paid by state or railroad corporation limited.—The amount to be paid in any year by the public utilities commission acting for the state under the provisions of sections 51, 52 and 53, except as herein provided, shall not exceed \$25,000 for work in connection with town ways, and said amount shall be appropriated from the general fund for each fiscal year. The said appropriation shall be cumulative and any part of said sum of \$25,000 not expended during the year for which it is appropriated shall be added, at the close of said year, to the sums subsequently appropriated and may be expended in any subsequent year or years. No railroad corporation shall be required to expend, under the provisions of the 3 preceding sections, more than \$110,000 during any period of 3 consecutive calendar years. (R. S. c. 84, § 53. 1957, c. 356, § 4.)

Effect of amendment. — The 1957 amendment rewrote this section.

Sec. 55. Repealed by Public Laws 1961, c. 395, § 34.

Effective date.—The 1961 act repealing this section became effective on its approval, June 17, 1961.

Assessments upon Abutters on City Streets.

Sec. 59. Collection of assessments.—All assessments and charges made under the provisions of sections 56 to 58, inclusive, shall be certified by the municipal officers and filed with the tax collector for collection. If the person assessed, within 30 days after written notice of the amount of such assessments and charges, fails, neglects or refuses to pay said municipality the expense thereby incurred, a special tax in the amount of such assessment and charges may be assessed by the municipal assessors upon each and every lot or parcel of land so assessed and buildings upon the same, and such assessment shall be included in the next annual warrant to the tax collector for collection, and shall be collected in the same manner as state, county and municipal taxes are collected. (R. S. c. 84, § 58. 1957, c. 397, § 46.)

Effect of amendment. — The 1957 amendment rewrote this section.

Sec. 62. County commissioners notified when certain highways changed.—Whenever the location of any state aid or town way that was designated as a 3rd class highway at the time that the 3rd class highway designations were rescinded is changed, added to, discontinued or a new location is established by a town or city, the municipal officers of said town or city shall notify the county commissioners of the county of which said town or city is a part of such change with an accurate description of the courses and distances, within 3 months from such action. (R. S. c. 84, § 61. 1961, c. 395, § 35.)

Effect of amendment.—The 1961 amendment substituted "town way that was designated as a 3rd class highway at the time that the 3rd class highway designations were rescinded" for "3rd class highway" near the beginning of this section.

Liability for Repair of Ways and for Injuries.

Sec. 70. Snow removed; repair; damage.—When any ways are blocked or encumbered with snow, the road commissioner shall forthwith cause so much of it to be removed or trodden down as will render them passable. The town

may direct the manner of doing it. In case of sudden injury to ways or bridges, he shall, without delay, cause them to be repaired. All damage, accruing to a person in his business or property through neglect of such road commissioner or the municipal officers of such town to so render passable ways that are blocked or encumbered with snow, within a reasonable time, may be recovered of such town by a civil action. (R. S. c. 84, § 69. 1961, c. 317, § 265.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “a special action on the case” at the end of this section. Cited in *Wardwell v. Inhabitants of Castine*, 154 Me. 123, 144 A. (2d) 530.

Sec. 72. Materials taken from lands not enclosed or planted.

Cited in *Wardwell v. Inhabitants of Castine*, 154 Me. 123, 144 A. (2d) 530.

Sec. 73-A. Recording of eminent domain proceedings.—No taking, layout or acceptance of land or any interest therein by a municipality or other municipal corporation, or the discontinuance of same, after the effective date of this act, shall be effectual against persons without actual notice thereof, unless there is recorded in the registry of deeds for the county where the land lies, either a deed or certificate attested by the clerk of said municipal corporation, describing the land, and setting forth the final action of the municipal corporation in regard thereto. (1959, c. 91.)

Sec. 74. Duties of road commissioners.

Cited in *Wardwell v. Inhabitants of Castine*, 154 Me. 123, 144 A. (2d) 530.

Sec. 75. Repair of roads by road machines after August 10th.

Cited in *Wardwell v. Inhabitants of Castine*, 154 Me. 123, 144 A. (2d) 530.

Sec. 77. Watercourses not made to injure; remedy.

Cited in *Wardwell v. Inhabitants of Castine*, 154 Me. 123, 144 A. (2d) 530.

Sec. 79. Violation of § 78; jurisdiction.—Whoever willfully violates any provision of section 78 shall be punished, for the first offense by a fine of not more than \$50 and costs, and for each subsequent offense by a fine of not more than \$100 and costs, and shall be further liable for double the amount of the actual damage, to be recovered in a civil action by the municipality, or, in behalf of any unorganized place, by the county where the offense is committed. All fines recovered under the provisions of this section, except in cases where the way involved was maintained by the state, shall be paid to the treasurer of the city, town or plantation, or, for an unorganized place, to the treasurer of the county where such offense is committed and shall thereafter be expended in the construction and maintenance of public ways or drains therein. In all prosecutions under this section, the district court shall have, upon complaint, jurisdiction concurrent with the superior court. (R. S. c. 84, § 78. 1947, c. 219, § 2. 1951, c. 321, § 8. 1961, c. 317, § 266. 1963, c. 402, § 120.)

Effect of amendments. — The 1961 amendment substituted “section 78” for “the preceding section” and “a civil action by the municipality” for “an action on the case by the city, town or plantation” in the first sentence of this section.

The 1963 amendment deleted “the provisions of” preceding “this section,” substituted “the district court” for “trial justices within their county” and deleted “mu-

nicipal courts and” preceding “the superior court” in the last sentence.

Application of amending act. — Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Sec. 81. Damages by raising or lowering streets. — When a way or street is raised or lowered by a road commissioner or person authorized to the injury of an owner of adjoining land, he may within a year apply in writing to the municipal officers, and they shall view such way or street and assess the damages, if any have been occasioned thereby, to be paid by the town; and any person aggrieved by said assessment may have them determined, on complaint to the superior court, in the manner prescribed in section 34. Said complaint shall be filed in the superior court, in the county where the land is situated within 60 days from the date of assessment. (R. S. c. 84, § 80. 1959, c. 317, § 62.)

Effect of amendment.—The 1959 amendment substituted “in” for “at the term of” preceding “the superior court” and for “next to be held within” following such words in the last sentence and substituted

“within” for “after” preceding “60” in the same sentence. Chapter 317 became effective December 1, 1959. See note to § 34.

Sec. 82. When appropriation insufficient.

Cited in *Wardwell v. Inhabitants of Castine*, 154 Me. 123, 144 A. (2d) 530.

Sec. 83. Money raised for ways and bridges.

Cited in *Wardwell v. Inhabitants of Castine*, 154 Me. 123, 144 A. (2d) 530.

Sec. 84. Expenditure of money.

Cited in *Wardwell v. Inhabitants of Castine*, 154 Me. 123, 144 A. (2d) 530.

Sec. 85. Powers and duties of road commissioner.

Cited in *Wardwell v. Inhabitants of Castine*, 154 Me. 123, 144 A. (2d) 530.

Sec. 87. Repealed by Public Laws 1955, c. 424, § 6.

Sec. 89. Persons injured by highway defects; damages; notice.—Whoever receives any bodily injury or suffers damage in his property through any defect or want of repair or sufficient railing in any highway, town way, causeway or bridge may recover for the same in a civil action, to be commenced within one year from the date of receiving such injury or suffering damage, of the county or town obliged by law to repair the same, if the commissioners of such county or the municipal officers or road commissioners of such town or any person authorized by any commissioner of such county or any municipal officer or road commissioner of such town to act as a substitute for either of them had 24 hours' actual notice of the defect or want of repair, but not exceeding \$4,000 in case of a town. If the sufferer had notice of the condition of such way previous to the time of the injury, he cannot recover of a town unless he has previously notified one of the municipal officers of the defective condition of such way. Any person who sustains injury or damage or some person in his behalf shall, within 14 days thereafter, notify one of the county commissioners of such county or of the municipal officers of such town by letter or otherwise, in writing, setting forth his claim for damages and specifying the nature of his injuries and the nature and location of the defect which caused such injury. If the life of any person is lost through such deficiency, his executors or administrators may recover of such county or town liable to keep the same in repair, in a civil action, brought for the benefit of the estate of the deceased, such sum as the jury may deem reasonable as damages, if the parties liable had said notice of the deficiency which caused the loss of life. At the trial of any such action the court may, on motion of either party, order a view of the premises where the defect or want of repair is alleged when it would materially aid in a clear understanding of the case. (R. S. c. 84, § 88. 1953, c. 344. 1961, c. 317, § 267.)

I. GENERAL CONSIDERATION.

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into three sentences and substituted “a civil action” for “a special action on the case” in the present first sentence. It also divided the former second sentence into two sentences and substituted “a civil action” for “an action on the case” in the present fourth sentence.

Section provides exclusive remedy. — The statutory provision for liability of a town for injuries caused by defects in highways was intended to cover the “whole subject” and provides the sole and exclusive remedy for such injuries. *Dugan v. Portland*, 157 Me. 521, 174 A. (2d) 660.

The repair and regulation of public streets is a governmental duty. *Dugan v. Portland*, 157 Me. 521, 174 A. (2d) 660.

And no liability for highway defects exists at common law. *Dugan v. Portland*, 157 Me. 521, 174 A. (2d) 660.

The liability is a statute liability, etc.

Independent of this section there is no liability whatever on the part of municipalities for injuries caused by defective highways. The liability is a creature of this section, and it does not extend beyond the express provisions. *Dugan v. Portland*, 157 Me. 521, 174 A. (2d) 660.

Sec. 92. Slippery sidewalk no cause of action.

This section is not unconstitutional as denying equal protection of the laws, in violation of § 1 of the fourteenth amendment to the constitution of the United States, and the guaranties under § 1 of art. 1 of the constitution of Maine. *Verreault v. Lewiston*, 150 Me. 67, 104 A. (2d) 538.

Exemption is unrestricted and absolute.—Whatever may be the character of a ridge of ice or snow in a roadway, as distinguished from a sidewalk, as a defect therein, if the same be created by act of those having charge of the streets and allowed to remain therein, this section re-

Sec. 93. Railroad company notified of action against town for defective crossing.—In a civil action against a town for damages alleged to have occurred by reason of a defect in a railroad crossing constituting part of a highway which said town is obliged to keep in repair, the railroad company owning or occupying such crossing may be notified of the pendency of the action and take upon itself the defense of the same. (R. S. c. 84, § 92. 1961, c. 317, § 268.)

Effect of amendment.—The 1961 amendment substituted “In a civil action” for “In an action” at the beginning of the sec-

Sec. 94. Liability of railroad company.—In such trial described in section 93, after notice as provided therein, if the plaintiff recovers and the jury finds specially that the damage was occasioned by the fault of such company, it

Rights and liabilities limited by, etc.

The rights of the traveling public and the liability of the municipality with respect to injuries caused by defects in highways are limited by the scope of this section. *Dugan v. Portland*, 157 Me. 521, 174 A. (2d) 660.

And all conditions and limitations must be, etc.

In accord with 1st paragraph in original. See *Dugan v. Portland*, 157 Me. 521, 174 A. (2d) 660.

The state in granting a right of recovery for defects in highways can make the right granted as broad or as narrow as it sees fit. *Dugan v. Portland*, 157 Me. 521, 174 A. (2d) 660.

V. LIABILITY OF TOWNS FOR INJURIES.

C. What Constitutes Defect.

Defect may not be denominated a nuisance.—One who was injured by reason of a defect in a town way could not escape the rigorous and limiting requirements of this section by denominating the defect as a nuisance and seeking recovery under the provisions of c. 141, § 6. *Dugan v. Portland*, 157 Me. 521, 174 A. (2d) 660.

Applied in *Verreault v. Lewiston*, 150 Me. 67, 104 A. (2d) 538.

lieves a municipality from liability to an action for damages to any person on foot, on account of snow or ice, on any sidewalk or cross-walk. This exemption is unrestricted, is absolute and there is no exception contained therein or thereto. *Verreault v. Lewiston*, 150 Me. 67, 104 A. (2d) 538.

And cannot be avoided even if snow or ice constitutes public nuisance.—The effect of this section cannot be avoided even if the snow or ice on a sidewalk constitutes a public nuisance. *Verreault v. Lewiston*, 150 Me. 67, 104 A. (2d) 538.

tion and substituted “action” for “suit” near the end of the section.

shall be liable to the defendants in said action in a civil action for all damages and costs paid by them. (R. S. c. 84, § 93. 1961, c. 317, § 269.)

Effect of amendment.—The 1961 amendment substituted “said action in a civil action” for “said suit in an action of debt” in this section.

Sec. 95. Notice to company.—The notice required in section 93 shall be by copy of the summons and complaint served upon the company at least 30 days before the action is in order for trial unless the court orders otherwise. (R. S. c. 84, § 94. 1959, c. 317, § 63.)

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

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

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

Sec. 104. Towns to maintain guide-posts at crossings of ways.—Towns shall erect and maintain at all crossings of highways, and where one public highway enters another, guide-posts and guideboards indicating the name of the next town on the route and of such other place as the municipal officers direct, with the number of miles thereto. Such guide-posts and guideboards shall be of such reasonable form, height and design as the state highway commission may direct; and for any neglect hereof towns are subject to a fine of not less than \$10 nor more than \$50, to be recovered by complaint or indictment. The district court shall have jurisdiction concurrent with the superior court. Of all fines provided for by this section, and recovered on complaint, $\frac{1}{2}$ shall go to the prosecutor and $\frac{1}{2}$ to the county where the town committing the offense is situated. (R. S. c. 84, § 103. 1959, c. 184. 1963, c. 402, § 121.)

Effect of amendments. — The 1959 amendment substituted “guide-posts and guideboards indicating” for “substantial guideposts not less than 8 feet high, and fasten to the upper end of each a board on which shall be plainly printed in black letters on white ground” in the first sentence, deleted “and a figure of a hand with the forefinger pointing thereto” at the end of such sentence and deleted “If erected on state or state aid highways” at the be-

ginning of the second sentence.

The 1963 amendment divided the former last sentence into two sentences, substituted “The district court” for “Trial justices within their county” at the beginning of the present next to the last sentence and deleted “municipal courts and” preceding “the superior court” at the end of such sentence.

Application of amending act.—See note to § 79.

Sec. 105. Neglect by town or plantation officers. — If the municipal officers of any town unreasonably neglect to cause a guide-post to be erected in their town as provided by law, they forfeit \$5 for each month’s neglect, to be recovered in a civil action by any person suing therefor. Plantations assessed in state or county taxes and their officers are under the same obligations and subject to the same penalties in these respects as towns. (R. S. c. 84, § 104. 1961, c. 317, § 270.)

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

Sec. 106. Excavations near ways; responsibilities.—Persons desiring to make an excavation near a street or public way may make written application to the municipal officers, setting forth its nature and extent and requesting their direction thereon. Such officers shall in writing direct whether it may or may not be made and, if permitted, the manner of making it; and when so made, no liability is incurred thereby. If not so made, the person making it is liable to the town, in an action for all damages occasioned by the repair of the way or

paid to persons injured by defects therein caused by such excavation. (R. S. c. 84, § 105. 1961, c. 317, § 271.)

Effect of amendment.—The 1961 amendment deleted “on the case” following “action” in the last sentence of this section.

Repair of Private Ways Owned in Common.

Sec. 122. Surveyor’s duties; neglect of owners to pay.—The surveyor chosen under the provisions of section 121, with respect to such way or bridge, has the powers of a road commissioner. For refusing to accept the trust or to take the oath he forfeits \$4, to be recovered as provided in section 124. If any owner or occupant, on requirement of the surveyor, neglects to furnish his proportion of labor, materials or money, the same may be furnished by the other owners and occupants and recovered of him in a civil action. (R. S. c. 84, § 122. 1961, c. 317, § 272.)

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

Closing of Ways in Winter.

Sec. 125. Roads closed by county commissioners for part of winter months; notices; effect of order.

The county commissioners may, without petition, give notice and hold public hearing to close roads for winter in unorganized territory. (R. S. c. 84, § 125. 1957, c. 211.)

Effect of amendment. — The 1957 amendment added the sentence set out above as the last paragraph of this section. As the rest of the section was not changed by the amendment, it is not set out.

Sewers and Drains.

Sec. 130-A. Service charges for sewage disposal.—The municipal officers may establish a schedule of service charges from time to time upon improved real estate connected with a municipal sewer or disposal system for the use of the system. Such service charges shall include reserve fund contributions. The charges shall be collected according to section 134. (1957, c. 405, § 18. 1963, c. 227.)

Effect of amendment.—The 1963 amendment substituted “The municipal officers” for “A municipality” at the beginning of the section, deleted “with buildings on it” following “real estate” near the middle of the first sentence, deleted “actual” preceding “use” near the end of that sentence, added the present second sentence and deleted “of chapter 96” at the end of the section.

Sec. 134. Collection of assessments.—All assessments and charges made under the provisions of sections 128 to 133, inclusive, shall be certified by the municipal officers and filed with the tax collector for collection. If the person assessed, within 30 days after written notice of the amount of such assessments and charges, fails, neglects or refuses to pay said municipality the expense thereby incurred, a special tax in the amount of such assessment and charges may be assessed by the municipal assessors upon each and every lot or parcel of land so assessed and buildings upon the same, and such assessment shall be included in the next annual warrant to the tax collector for collection, and shall be collected in the same manner as state, county and municipal taxes are collected. (R. S. c. 84, § 139. 1951, c. 343. 1957, c. 279, § 2.)

Effect of amendment. — The 1957 amendment and enacted the above section in lieu of former section 134 thereof.

Sec. 135. Actions for collection.—If assessments under section 131 are not paid, and said town does not proceed to collect said assessments by a sale of the lots or parcels of land upon which such assessments are made, or does not collect or is in any manner delayed or defeated in collecting such assessments by a sale of the real estate so assessed, then the said town, in the name of said town, may maintain a civil action against the party so assessed for the amount of said assessment, in any court competent to try the same, and in such action may recover the amount of such assessment with 12% interests on the same from the date of said assessments and cost. (R. S. c. 84, § 140. 1961, c. 317, § 273.)

Effect of amendment.—The 1961 amendment deleted “the provisions of” preceding “section 131” near the beginning of this section, substituted “a civil action” for “an

action”, eliminated “as for money paid, laid out and expended” preceding “in any court” and substituted “action” for “suit” near the end of the section.

Sec. 136. Persons paying assessment to have lien on lot and buildings; enforcement.—When any such assessment under section 131 shall be paid by any person against whom such assessment has been made, who is not the owner of such lot or parcel of land, then the person so paying the same shall have a lien upon such lot or parcel of land with the buildings thereon for the amount of said assessment so paid by said person, and incidental charges, which lien may be enforced in a civil action, and by attachment in the way and manner provided for the enforcement of liens upon buildings and lots under chapter 178, which lien shall continue one year after said assessment is paid. (R. S. c. 84, § 141. 1961, c. 317, § 274.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action of assumpsit as for money paid,

laid out and expended” in this section and made other minor changes therein.

Sec. 141. Connecting private drains with public, without permission.—If any person connects a private drain with a public drain or enters it by a side drain without a permit, the municipal officers may forthwith destroy such connection. Such person forfeits to the town where the offense is committed not more than \$200, to be recovered by indictment or civil action. (R. S. c. 84, § 146. 1961, c. 317, § 275.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted “civil action” for

“action of debt” at the end of the present second sentence.

Sec. 146. Private drain repaired, in case of owner’s neglect.—If a private drain becomes so obstructed or out of repair as to injure any street or highway, and the persons using it, after notice by the road commissioner, unreasonably neglect to repair such injury, it shall be repaired by the town and the expense thereof may be recovered to the town in a civil action against any one or more of the persons using such drain. (R. S. c. 84, § 151. 1961, c. 317, § 276.)

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

Sec. 147. Willfully or carelessly injuring public drains.—Whoever willfully or carelessly injures or obstructs such public drain or its outlet, or any street or highway culvert leading into it, is liable to the town where it is located in a civil action for double the amount of injury and damages thereby caused, in addition to all other legal penalties therefor. (R. S. c. 84, § 152. 1961, c. 317, § 277.)

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

Sec. 150-A. Malfunctioning domestic sewage disposal units.—Malfunctioning domestic sewage disposal units, including septic tanks, cesspools, cisterns, dry wells, drainage beds and the like, have become a menace to the health and general welfare of the citizens of this state, and are declared to be a nuisance.

I. Abatement procedure. The municipal officers upon complaint of any person or on their own information shall serve upon the owner or occupant of any premises within that municipality upon which there is a malfunctioning domestic sewage disposal unit, as described in this section, an order to remedy such condition within 10 days of service of the order.

II. Content of order and service. Such order shall be addressed to the owner of the premises, setting forth the date, the fact of the malfunctioning domestic sewage disposal unit and shall contain a notice to remedy the nuisance within 10 days. It shall be signed by the municipal officers and personal service shall be made by one of them or may be served in the same manner as municipal court process. The municipal officer may likewise serve a tenant or occupant in possession.

III. Return of service. A return of service indicating the method used and the person served shall be made and filed. When service is to be made upon a tenant or occupant, the order shall name such person in addition to the name of the true owner.

IV. Abatement. In the event that the nuisance is not abated within the 10-day period, the municipal officers, or their agents, may enter the premises and cause the malfunctioning to be adequately remedied. Any actual and direct expenses incurred by a municipality in the abatement of such nuisances may be recovered from the owner by a civil complaint. (1961, c. 306.)

Ditches on Salt Marshes.

Sec. 153. Width and depth of ditches; complainant to recover of delinquent owners expense of making.—Said fence-viewers shall determine the width and depth of the ditch, neither to exceed 3 feet, and the time to be allowed for making it, not exceeding 60 days; notice thereof shall be given to the delinquent proprietor and if he neglects to make or repair his portion of such ditch, it may be done by the complainant, to be adjudged sufficient by two or more fence-viewers who shall make a certificate thereof and of its value and their fees. If such a delinquent owner or proprietor neglects payment of said value and fees for one month after demand, the complainant may recover of him double the amount thereof with interest at the rate of 1% a month in a civil action. (R. S. c. 84, § 158. 1961, c. 317, § 278.)

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

Improvement of Marshes, Meadows and Swamps.

Sec. 156. Application to superior court; notice.—The proprietors, or a majority of them in interest, may apply by complaint to the superior court in the county where the lands or any part of them lie, setting forth the proposed improvements and the reasons therefor. The court shall cause notice of the complaint to be given in such manner as it may judge proper to any proprietors who have not joined in the complaint, that they may appear and answer thereto. (R. S. c. 84, § 161. 1961, c. 317, § 279.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, substituted “complaint” for “petition” in three places, and made other minor changes therein.

Sec. 158. Commissioners to make improvements.—The commissioners shall, according to the tenor of the complaint and order of court, cause dams or dikes to be erected on the premises at such places and in such manner as they direct, may order the land to be flowed thereby for such periods of each year as they deem most beneficial, and cause ditches to be opened on the premises and obstructions in any rivers or streams leading therefrom to be removed. They shall meet from time to time as may be necessary to cause the works to be completed according to their directions. (R. S. c. 84, § 163. 1961, c. 317, § 280.)

Effect of amendment.—The 1961 amendments and substituted “complaint” for “petition” in the present first sentence.

Sec. 168. Appeal from actions of commissioners.—Any person, whether a party to the proceedings or otherwise interested therein or affected thereby, aggrieved by the doings of the commissioners, may appeal to the court at any time after their appointment and within 60 days after the return is made. (R. S. c. 84, § 173. 1959, c. 317, § 64.)

Effect of amendment.—The 1959 amendment substituted the words “within 60 days after the return is made” for the words “before the end of the term follow-

ing that at which the return is made” at the end of the section.

Effective date of 1959 amendment.—See note to § 95.

Sec. 170. Notice required before entering upon premises of a third party; appeal.—The commissioners, before proceeding to open floodgates, or to make other passages for water through or around any dam, or to erect a dam on the land of any person not a party to the proceedings, shall give him reasonable notice in writing of their intention, to enable him to appear before them and object thereto. If he appeals from their determination and gives notice in writing of his appeal to the commissioners or any of them, they shall suspend all proceedings upon his land until the appeal is determined, provided the appeal is filed in court within 7 days from the time of claiming the same. (R. S. c. 84, § 175. 1961, c. 317, § 281.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, substituted “filed in court within” for “entered at the court held next after

the expiration of” in the present second sentence and made other minor changes in the section.

Sec. 171. Appeal to law court.—An appeal may be taken to the law court as in other actions. (R. S. c. 84, § 176. 1959, c. 317, § 65.)

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

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

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

Sec. 172. After completion of improvements, repairs made at expense of occupying proprietors.—After dams, dikes and removal of obstructions have been completed in pursuance of sections 155 to 171, repairs thereon may be made on complaint to the court and the proceedings shall be similar to those required for the construction of the original improvements, but such repairs shall be made at the expense of such proprietors only as occupy their lands, take crops therefrom and are actually benefited by such improvements. (R. S. c. 84, § 177. 1963, c. 414, § 110.)

Effect of amendment.—The 1963 amendment deleted “the provisions of” preceding

“sections 155 to 171” and substituted “complaint” for “petition.”

Fences.

Sec. 186. Double compensation for building fence.—When the complainant has completed such fence and, after notice given, it has been adjudged sufficient by 2 or more of the fence-viewers, and the value thereof, with the fence-viewers' fees, certified under their hands, he may demand of the occupant or owner of the land where the fence was deficient double the value and fees thus ascertained. In case of neglect or refusal for one month after demand, he may recover the same by a civil action, with interest at the rate of 1% a month, and if the delinquent owner or occupant repairs or rebuilds such fence without paying the fees of the fence-viewers, certified by them, double the amount thereof may be recovered by the complainant as provided. (R. S. c. 84, § 191. 1961, c. 317, § 282.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, substituted "a civil action" for "an action on the case" in the present second sentence and deleted "herein" preceding "provided" at the end of the section.

Sec. 187. Division of partition fences; record of assignments by fence-viewers; fees.—When the occupants or owners of adjacent lands disagree respecting their rights in partition fences and their obligation to maintain them, on application of either party, two or more fence-viewers of the town where the lands lie, after reasonable notice to each party, may in writing under their hands assign to each his share thereof and limit the time in which each shall build or repair his part of the fence, not exceeding 30 days. Such assignment and all other assignments of proprietors of partition fences herein provided for, recorded in the town clerk's office, shall be binding upon the parties and they shall thereafter maintain their part of said fence. If such fence has been built and maintained by the parties in unequal proportions and the fence-viewers adjudge it to be good and sufficient, they may after notice in writing under their hands, award to the party who built and maintained the larger portion the value of such excess, to be recovered in a civil action against the other party if not paid within 6 months after demand. Parties to assignments shall pay the fees of the fence-viewers certified under their hands in equal proportions, and if either party neglects to pay his proportion within 1 month after demand, the party applying to the fence-viewers may pay the same and recover of said delinquent party, in a civil action, on the case, double the amount of his said proportion thereof. (R. S. c. 84, § 192. 1961, c. 317, § 283.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action on the case" in each of the last two sentences of this section and made other minor changes in such sentences.

Sec. 193. Liability of owner beginning to improve land lying in common.—When any land which has been unenclosed is afterwards enclosed or used for pasturing, its occupant or owner shall pay for $\frac{1}{2}$ of each partition fence on the line between his land and the enclosure of any other occupant or owner and its value shall be ascertained in writing; if the parties do not agree, by 2 or more of the fence-viewers of the town where such fence stands. After the value is so ascertained, on notice to such occupant or owner, if he neglects or refuses for 30 days after demand to pay it, the proprietor of the fence may have a civil action for such value and the cost of ascertaining it. (R. S. c. 84, § 198. 1961, c. 317, § 284.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted "a civil action" for "an action on the case" in the present second sentence.

Sec. 198. Compensation; recovery. — Each fence-viewer shall be paid by the person employing him at the rate of \$3 a day for the time employed. If the party liable neglects to pay the same for 30 days after demand, each fence-

viewer may recover double the amount in a civil action. (R. S. c. 84, § 203. 1961, c. 317, § 285.)

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

Chapter 97.

Fire Departments and Fire Prevention.

Sections 1-9A. Fire Wards and Engineers.

Fire Wards and Engineers.

Sec. 9. Compensation for building demolished.—If the pulling down or demolishing of any building, except that in which the fire originated, is the means of stopping the fire, or if the fire is stopped before it comes to the same, then the owner of such building is entitled to recover a reasonable compensation therefor from the town in a civil action. (R. S. c. 85, § 9. 1961, c. 317, § 286.)

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

Sec. 9-A. Liability of drivers of fire apparatus.—In the event a fire department vehicle going to or from a call, or going to or from any call or duty assigned to it, is involved in a collision with any other vehicle, object or person, and there is any liability on the part of the operator of the said fire department vehicle, responsibility of payment for any damage or loss occasioned by such liability shall be on the municipality owning or using the fire department vehicle. (1963, c. 324; c. 414, § 3-F.)

Editor's note.—Chapter 324, P. L. 1963, 92-A of c. 22. It was reallocated by c. 414, which added this section, designated it § P. L. 1963.

Municipal Inspection of Buildings.

Sec. 20. Repealed by Public Laws 1963, c. 402, § 122.

Editor's note.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Investigation of Fire Hazards and Causes of Fire.

Sec. 22. Insurance commissioner upon complaint may inspect buildings; combustible or other dangerous matter removed; exitways.—The insurance commissioner, his deputy or the fire inspector, upon the complaint of any person or whenever he or they shall deem it necessary, may inspect or cause to be inspected all buildings and premises within their jurisdiction. Whenever any of said officers shall find any building or other structure which, for want of repairs or by reason of age or dilapidated condition or from any other cause is especially liable to fire, or which is so situated as to endanger other property or the safety of the public, or whenever such officer shall find in or around any building combustible or explosive matter or inflammable or other conditions dangerous to the safety of such buildings, or whenever such officer shall find any building which has been gutted by fire, or whenever such officer shall find that debris remains from a building which has been destroyed by fire