

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1845.

AUGUSTA:

WM. T. JOHNSON, PRINTER TO THE STATE.

1845.

TWENTY-FIFTH LEGISLATURE.

No. 32.]

[HOUSE.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND
FORTY-FIVE.

AN ACT relating to appeals from County Commis-
sioners.

*Be it enacted by the Senate and House of Represent-
2 atives in Legislature assembled—as follows :*

3 SECTION 1. In all appeals from the judgment of the
4 county commissioners now pending before the su-
5 preme judicial court in any county in this State, it
6 shall be lawful for said court or any justice thereof to
7 appoint three disinterested persons, whose duty it shall
8 be, after giving such notice as the court shall order,
9 to view the route prayed for in the original petition,
10 and afterwards to give a hearing to the parties and
11 their witnesses, and thereupon at the next term of the
12 court held in said county to report whether in their
13 opinion the judgment of the county commissioners

14 should be affirmed or reversed, in the whole or for
15 any part, which report when accepted by the supreme
16 judicial court shall be final and conclusive upon the
17 subject matter of said petition.

SEC. 2. When the report is accepted as aforesaid,
2 the proceedings shall be remanded to the court of
3 county commissioners, and there recorded at the term
4 held next after the acceptance by the supreme judicial
5 court, and all persons aggrieved by said decision in
6 estimating damages, shall present their petitions for
7 redress as now provided by law upon decisions of
8 county commissioners at that term and not afterwards,
9 and the county commissioners shall proceed upon said
10 decision of the supreme judicial court in the same
11 manner and in all other respects as upon a return of
12 the doings of county commissioners.

SEC. 3. The said committee shall be paid for their
2 travel and attendance the same that is allowed to
3 county commissioners for similar services, out of the
4 county treasury ; and if the original judgment of the
5 county commissioners shall be affirmed in whole or in
6 part, the appellants shall pay all costs that have arisen
7 since the appeal, and the county commissioners shall
8 issue their warrant therefor in the same manner as is
9 now provided for the collection of costs awarded
10 against petitioners.

AMENDMENTS OFFERED BY MR. DUNN OF CUM-
BERLAND.

B.

SEC. -. If in any such case now pending in the
2 supreme judicial court the respondents have been or
3 shall be defaulted, the court shall thereupon adjudge
4 that the prayer of the petition be granted, and shall
5 appoint a surveyor to make the location, alteration or
6 discontinuance as prayed for, who shall make a return
7 thereof to the court and judgment shall be entered
8 accordingly. And the compensation of such surveyor
9 shall be two dollars per day without travel.

C.

SEC. -. The said justices of the supreme judicial
2 court shall have power to take off the default in any
3 of said cases prior to the appointment of commission-
4 ers or of a surveyor, if the justice of the case shall
5 require it.

SEC. -. This act shall take effect from and after its
2 approval by the Governor.

NEW DRAFT.

[Reported from Committee on bills in the third reading.]

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND
FORTY-FIVE.

AN ACT relating to appeals from County Commissioners.

Be it enacted by the Senate and House of Representatives in Legislature assembled—as follows :

SECTION 1. In all cases of appeal from the decision of the court of county commissioners in any county of the State now pending in the supreme judicial court, it shall be the duty of said court or any justice thereof if in his or their opinion the justice of the case requires a view of the route described in the original petition, to appoint three disinterested persons, who after giving such notice as the court may order shall proceed and make such view and give a hearing to the parties interested and their wit-

13 nesses, and after such view report to the court that
14 appointed them whether the judgment of the county
15 commissioners ought to be affirmed or reversed or
16 how the same ought to be altered, which report when
17 accepted by the court shall be final upon the subject
18 matter of said petition.

SEC. 2. After the report is accepted as aforesaid the
2 case shall be remanded to the court of county com-
3 missioners from which the appeal was made together
4 with a copy of the proceedings of the supreme court
5 thereon, and shall there be entered at the term held
6 next after the final action of the supreme court there-
7 on, and then the same action shall be had upon the
8 decision of the supreme court as if it were the judg-
9 ment of the said court of county commissioners.
10 And all persons aggrieved by said decision in estimat-
11 ing damages shall present their petitions to said court
12 of county commissioners at that term and not after-
13 wards; and the same action shall be had upon such
14 petitions as is by law provided in relation to similar
15 petitions arising upon an original judgment of county
16 commissioners.

SEC. 3. The committee appointed under the first
2 section hereof, shall receive for their travel and at-
3 tendance the same that is allowed to county commis-
4 sioners for similar services, to be paid out of the

5 county treasury ; and if the original judgment of the
6 county commissioners shall have been affirmed by the
7 supreme court, the appellants shall pay all costs that
8 shall have arisen subsequent to such appeal, to be
9 recovered by warrant from the county commissioners'
10 court, in the manner provided by law for the collec-
11 tion of costs awarded against petitioners.

SEC. 4. If in any case of appeal from the court of
2 county commissioners now pending in the supreme
3 court, the appellants have been or shall be defaulted,
4 the court shall thereupon give judgment, that the
5 judgment of the county commissioners be affirmed,
6 and thereupon the case shall be remanded to the court
7 from which the appeal was taken, and there entered
8 and proceeded upon as upon an original judgment of
9 said court, and the appellant shall be liable for the
10 costs subsequent to the appeal to be collected in the
11 manner provided in the third section thereof. *Pro-*
12 *vided however,* that the court before which the appeal
13 is pending, shall have the same power to take off the
14 default and proceed as if no default had been entered
15 as they have to take off defaults in civil actions de-
16 pending before them.

SEC. 5. This act shall take effect and be in force
2 from and after its approval by the governor.

AMENDMENT OFFERED BY MR. FESSENDEN, OF
PORTLAND.

Amend by inserting the following between the 4th and 5th sections—

SEC. -. Any person aggrieved by the decision of
2 any court of county commissioners, on an application
3 to lay out, alter, or discontinue any highway, or at
4 any order of assessment, made by said commissioners,
5 of the expenses thereof, may appeal to the district
6 court in the county where said unincorporated place
7 may lie, under the restrictions and limitations herein-
8 after contained; *provided*, that after one appeal shall
9 have been determined in said court, no appeal shall
10 be allowed from any subsequent decision of said com-
11 missioners involving, substantially, the same question,
12 in the same case.

SEC. -. Such appeal shall be claimed within twenty
2 days after the adjudication of the county commission-
3 ers shall be entered of record, and not afterwards;
4 and the appellant shall recognize, with sufficient sure-
5 ties, for the prosecution of his appeal, and for the
6 payment of all costs adjudged against him thereon;
7 and thereupon all further proceedings in said county
8 commissioners' court shall stay until a final decision
9 upon said appeal shall be made in said district court.

SEC. —. If such appeal shall not be entered, or if
2 after entry the appellant shall not appear and prose-
3 cute the same, said district court shall on application
4 or complaint of any party interested, affirm the de-
5 cision of said county commissioners, and award costs
6 against said appellant; and the whole subject shall be
7 remanded, as is hereinafter provided.

SEC. —. If said appeal shall be duly entered and
2 prosecuted said district court shall proceed to try and
3 determine the question at issue arising on the decisi-
4 on appealed from, either by a jury, by a committee
5 appointed by said court, or in such other manner as
6 the court may judge most expedient and appropriate;
7 and said court shall make such an adjudication there-
8 on as justice requires.

SEC. —. Having made a final adjudication upon the
2 question at issue, said court shall remand the whole
3 subject to said court of county commissioners, with
4 its decision and decree thereon; and said court of
5 county commissioners shall proceed to carry into effect
6 any such order, decision, or decree, according to the
7 terms thereof.

SEC. —. Such appeal shall be entered at the term of
2 the district court to be holden next after said appeal
3 is claimed and allowed, and not afterwards; and the
4 court may order such notice thereon as it may deem

5 necessary. And it may also make any decree with
6 regard to costs in favor of or against any party that
7 it may judge reasonable.

SEC. -. An execution for costs allowed by the dis-
2 trict court upon any such appeal shall be issued by
3 the clerk of said court, who shall include therein the
4 costs of remanding the same to the court of county
5 commissioners, unless otherwise ordered. And after
6 the whole subject has been remanded as aforesaid,
7 the said court of county commissioners shall proceed
8 therewith, under the decree of said district court, to
9 final adjudication and decree thereon, under the stat-
10 utes constituting and regulating the proceedings of
11 said district court.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
March 27, 1845. }

ORDERED, That 350 copies of this bill and the proposed amendments be printed for the use of the Legislature.

SAMUEL BELCHER, *Clerk.*