

MAINE STATE LEGISLATURE

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



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

DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1853.

Augusta:
WILLIAM T. JOHNSON, PRINTER TO THE STATE.

1853.

THIRTY - SECOND LEGISLATURE.

HOUSE.]

[No. 12.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND
FIFTY-THREE.

AN ACT to repeal the court of county commissioners
and transfer its powers and duties to the supreme
judicial court.

*Be it enacted by the Senate and House of Representa-
tives in Legislature assembled, as follows :*

ARTICLE I.

Of the prudential matters of the county.

SECTION 1. That chapter ninety-nine of the revised
2 statutes, providing for a court of county commission-
3 ers, and all acts and parts of acts respecting the
4 same, be and the same are hereby repealed.

SECT. 2. The justices of the supreme judicial court

2 shall have power and it shall be their duty to provide
3 for the erecting and repairing of court houses, jails
4 and other necessary buildings within and for the use
5 of the respective counties in the state ; to make esti-
6 mates to be laid before the legislature of the sums
7 which may, from time to time, be necessary to be
8 assessed for defraying county charges, and to take
9 the necessary and legal measures for apportioning
10 and assessing the same ; to have the care and super-
11 vision of all county property, and management of the
12 business and concerns of the counties ; and by their
13 order of record, appoint an agent to sell and dis-
14 pose of any real estate or other property belonging
15 to any county ; to lay out, alter or discontinue high-
16 ways or other ways, to award damages occasioned
17 thereby, and do any thing else, which by the laws of
18 this state now in force, is authorized to be done by
19 the county commissioners.

SECT. 3. The justices of the supreme judicial court
2 in each county shall provide suitable fire proof build-
3 ings of brick or stone, for the safe keeping of rec-
4 ords, files, papers and documents pertaining to the
5 offices of the register of deeds, register of probate,
6 and clerk of the judicial courts ; with separate fire

7 proof rooms for said offices with suitable alcoves,
8 cases and boxes.

SECT. 4. The said court shall assess such sums as
2 the legislature may, from time to time, require, on the
3 polls and estate in the counties, to erect and keep in
4 repair a good and sufficient jail in each town, where
5 the supreme judicial court is by law required to be
6 holden, if no other provision is made by law ; and
7 they shall, at their discretion, by their agent or per-
8 sonally, order and direct respecting the building and
9 repairing the same.

SECT. 5. Said court shall also provide, at the ex-
2 pense of the respective counties, sufficient and con-
3 venient apartments in said jails for receiving and
4 lodging prisoners for debt separate from criminals.

SECT. 6. Said court shall, at least once in each
2 year, inquire into the state of the prisons in the vari-
3 ous counties, and take necessary precautions as to
4 the security from escape, infection or other sickness,
5 and as to the condition and accommodation of all
6 the prisoners.

SECT. 7. Said court shall have power to appoint
2 some suitable person as agent in each county, whose
3 duty it shall be to examine the state of the prison in

4 his county, and the condition of the prisoners, and
5 make report to the court at least once every year, to
6 the end that the court may determine whether the re-
7 quirements in the foregoing sections are complied with.

SECT. 8. The county treasurer in each county
2 shall have the general care and custody of the court
3 house, its apartments, jail and all other public buildings
4 of the county, subject to such rules and regulations as
5 said court may prescribe.

SECT. 9. All warrants of distress may be issued by
2 said court in the same manner, enforced and return-
3 able as executions on judgments; and the party, in
4 whose favor they may be issued, may have a like
5 remedy as in all judgments; *provided*, that no war-
6 rant of distress shall be originally granted on any
7 judgment of said court, against any town or planta-
8 tion until twenty days after a certificate of the ren-
9 dition of such judgment shall have been transmitted
10 by the clerk of the court to the assessors of such
11 town or plantation.

SECT. 10. On all judgments rendered, on warrants
2 of distress, by said court against the inhabitants of
3 any town or plantation in their respective counties,
4 any such inhabitant, who shall voluntarily pay or be

5 disposed to pay, his due proportion of the same, or
 6 who shall have been compelled to satisfy the same in
 7 whole or in part, shall be entitled to the like remedies
 8 and processes as is provided in chapter one hundred
 9 and seventeen in relation to judgments on executions.

SECT. 11. The county attorney and clerk of the
 2 courts in each county shall be *ex officio* a board of
 3 commissioners, whose duty it shall be to audit all
 4 claims against the county, whether to be paid by the
 5 county or state, and generally to allow and settle all
 6 accounts of receipts and expenditures of the moneys
 7 of the county; subject to an appeal to the court by
 8 any claimant who shall be dissatisfied with the deci-
 9 sion of said commissioners. And said court, on such
 10 appeal, shall finally settle such claim as though
 11 brought originally before them, and the commission-
 12 ers shall certify the same accordingly to the county
 13 treasurer. And said commissioners, and also the
 14 court, on appeal, shall have power to examine any
 15 claimant, under oath, and hear any evidence touch-
 16 ing such claim, if deemed for the furtherance of
 17 justice. All sums finally allowed shall be certified to
 18 the county treasurer; and the clerk shall keep a book
 19 of records with suitable indexes, which shall contain

20 the names of each and all the claimants with the sums
21 allowed set against their respective names, which
22 shall, at all times, be open to public inspection. And
23 no account shall be allowed unless it specify the items
24 and be signed by the claimant. Said commissioners,
25 before proceeding to the duties of their office, shall
26 be sworn faithfully and impartially to execute said
27 trust. They shall hold their sessions in their respect-
28 ive counties on the last Tuesdays of June and De-
29 cember annually, at the clerk's office, at ten of the
30 clock in the forenoon; and the court may allow a
31 reasonable compensation for their services, not ex-
32 ceeding three dollars per day to each, during the time
33 employed. The court may also require said com-
34 missioners to make county estimates, or perform any
35 other service relative to the prudential matters of the
36 county.

ARTICLE II.

Location, alteration and discontinuance of highways.

SECT. 12. All applications for location, alteration
2 or discontinuance of highways, leading from town to
3 town, shall be made by petition in writing to the
4 supreme judicial court, at one of their regular sessions

5 within and for the county in which such new high-
6 way or alteration or discontinuance shall be wanting.

SECT. 13. No such petition shall be sustained ex-
2 cept upon the following conditions, viz: 1st, said
3 petitioners shall satisfy the court of their ability to
4 pay all the cost and expense which may arise in said
5 petition. 2d, said petition shall be accompanied at
6 their expense with a survey and plan of the road or
7 highway prayed for, together with its length and
8 width, the nature of the ground, its probable expense
9 of making, damages claimed by the owners of the
10 land, its distance from, and bearing upon other roads
11 in its vicinity, with any other information relative to
12 the same which may be deemed necessary to enable
13 the court to judge of its convenience and necessity.

SECT. 14. On compliance with the above requisi-
2 tions, and such other evidence as may be adduced,
3 the court may, if they see fit, appoint an agent, who
4 is a practical surveyor, and disinterested, who shall
5 view the premises, first giving such notice to the
6 towns and all persons interested in the contemplated
7 road, as the court shall order.

SECT. 15. Such agent, before proceeding to the
2 duties assigned him, shall be under oath faithfully and

3 impartially to perform the trust reposed in him, a
4 certificate of which oath shall be endorsed on his
5 commission. Such agent, after giving notice as
6 aforesaid, shall, with the plan of said petitioners, care-
7 fully examine the ground; and if, after examining
8 and viewing the same, and hearing the parties, he
9 should adjudge that the prayer of the petitioners
10 ought to be granted, he shall have power to lay out,
11 alter or discontinue such highway or any part thereof,
12 as the case may be; and shall estimate the damages,
13 if any, which any person may sustain by reason
14 thereof, and shall make a correct return of his doings
15 under his hand, with an accurate plan or description of
16 said highway, so laid out, altered or discontinued, to
17 said court to be held next after such proceedings shall
18 have been had. If, after viewing the ground and
19 hearing the parties, the agent should adjudge that the
20 prayer of the petitioners ought not to be granted, he
21 shall so report to the court at their next term, and
22 the report shall be final and conclusive against the
23 petitioners, and no further proceedings shall be had.

SECT. 16. If the agent shall report in favor of such
2 petition, the said court may hear the same at the
3 term to which the same is made or any succeeding

4 term at their discretion ; and in hearing such testi-
5 mony on both sides, the court may grant or deny the
6 petition. And if they grant the petition, their judg-
7 ment shall be that the location, alteration or discon-
8 tinuance of the highway prayed for, would be of
9 public convenience and necessity, and a record shall
10 be made accordingly.

SECT. 17. In all locations or alteration of high-
2 ways made by such agent he shall cause durable
3 monuments to be erected at the angles thereof.

SECT. 18. The clerk shall keep a true record of
2 all such petitions, and of their proceedings to final
3 judgment, in the same manner as in actions between
4 party and party, and all persons aggrieved by the
5 estimation of damages by the agent, shall present
6 their petitions for redress at the first or second term
7 next after judgment of the court in favor of said
8 petition ; and if no such petition be then presented,
9 the proceedings upon the original petition shall be
10 closed, and so entered of record ; and all claims for
11 further damages shall be forever barred.

SECT. 19. All damages awarded to any person on
2 account of the laying out, altering or discontinuing

3 of any highway under the provisions of this chapter,
4 shall be paid out of the treasury of the county in
5 which such highway shall be located; and the court
6 shall order the same to be paid accordingly. Tenants
7 for life or years, and persons owning a remainder or
8 reversion, shall be entitled to have their damages
9 allowed to them severally in proportion to their re-
10 spective interests in the property affected; but mort-
11 gagees shall be entitled to the whole damages, which
12 shall be deducted from the mortgage as soon as
13 actually received.

SECT. 20. Any party aggrieved by the damages
2 reported by the agent as aforesaid, may have a jury to
3 determine the matter of his complaint as set forth in
4 his petition as aforesaid, unless he shall agree with
5 the county attorney to have the same determined by
6 referees, to be appointed under direction of the court.

SECT. 21. In case of controversy respecting the
2 interests of any party claiming damages as aforesaid,
3 the jury or referees shall have power to consider and
4 determine such question of interest, so far only as
5 respects the damages of such complainant. Any
6 town or other corporation aggrieved by the estima-

7 tion of the agent, shall be entitled to a similar remedy
8 by a jury or referees, as is provided for individuals
9 claiming damages.

SECT. 22. If two or more persons shall apply, at
2 the same time, for joint or several damages, they may
3 join in the same petition to the court; and if several
4 applications shall be pending, at the same time, before
5 the court for a jury or referees relative to the same
6 highway, the court may, at their discretion, cause all
7 such applications to be considered and determined
8 by the same jury or referees; and the costs shall be
9 taxed either jointly or severally as the court shall
10 determine equitable. The court shall also have like
11 power, in case of adverse petitions relative to the
12 same highway.

SECT. 23. No such petition shall abate by reason
2 of the death of any petitioner; but the executors or
3 administrators or heirs or devisees, if they shall be
4 persons interested, may appear and prosecute such
5 petition, or present a new one in the same manner,
6 with the same effect as the original party might
7 have done, if living.

SECT. 24. If, upon the death of one or more of
2 several petitioners for a jury, the executors, adminis-

3 trators, heirs or devisees of such petitioners, after
4 notice from the court that such petition is pending,
5 shall neglect to appear, or to prosecute, the surviving
6 petitioners may proceed without them.

SECT. 25. The warrant for a jury shall be directed
2 to the sheriff of the county or his deputy, if disinter-
3 ested, or to a coroner, as the court shall order, re-
4 quiring him to summons a jury of twelve men to hear
5 and determine the matter of the complaint set forth
6 in the petition for such jury, and to decide all such
7 matters as shall legally come before them at such
8 hearing.

SECT. 26. The officer, thus authorized, shall make
2 application to the selectmen of two or more towns in
3 said county other than the town where the property
4 affected is situated, who shall draw out of the jury
5 box of their respective towns, so many jurors as such
6 officer shall require, not exceeding nine from any one
7 town. The jurors shall be drawn, summoned and
8 returned as in other cases; excepting that the jurors
9 need not be summoned more than twenty-four hours
10 before the time appointed for their attendance.

SECT. 27. If by accident, or challenge, there shall
2 happen not to be a full jury, the officer who sum-

3 moned the jury, or in his absence, the officer attend-
4 ing the jury, shall return some suitable person to
5 supply the deficiency.

SECT. 28. In all cases of petitions for increase of
2 damages as aforesaid, on account of any highway,
3 when the damages are liable to be assessed on the
4 county, the attorney for the state, in the county
5 where such highway is situated, shall be duly notified
6 of such application, and shall be authorized to act in
7 behalf of the county, as well in agreeing in a refer-
8 ence, as before provided, as in relation to a jury. It
9 shall be required of the officer in his warrant for
10 summoning a jury or of the referees acting by agree-
11 ment, to give reasonable notice to said attorney, and
12 it shall be the duty of such attorney to attend said
13 jury or referees in behalf of his county. The warrant
14 shall also specify the other parties interested, whom
15 said officer shall be required to notify as aforesaid.

SECT. 29. The jury may choose a foreman and
2 shall be attended by some officer, qualified as afore-
3 said to summon jurors for the purpose, and who shall
4 preside and keep order at the view and hearing.
5 The officer shall be sworn for the occasion before
6 some magistrate. Said officer, shall administer an

7 oath to the jurors for the faithful discharge of their
8 duty, and also to all the witnesses examined at the
9 trial, in the usual form.

SECT. 30. The jury shall view the premises, and
2 also hear and determine all such legal evidence, as
3 may be laid before them, with the observations of the
4 parties or their counsel, thereon. All the jurors shall
5 sign the verdict, which may be agreed upon, and the
6 same shall be enclosed in a sealed wrapper, with an
7 endorsement expressing what it contains; and shall
8 be delivered so endorsed to the officer having charge
9 of the jury. The verdict shall be returned at the ses-
10 sion of the court, next following the order for sum-
11 moning the jury. The officer shall make return of
12 his doings with the verdict and specify his own
13 travel and attendance, and that of each juror. If the
14 jury do not agree on a verdict, the court may issue a
15 new warrant, at their next session, on motion of the
16 original petitioner.

SECT. 31. The verdict of the jury or the report of
2 the referees duly returned to the court, and accepted
3 and recorded, shall be conclusive on the parties;
4 and the proceedings on the original petition shall
5 be considered completed. The party prevailing,

6 whether the claimant for damages or the county,
7 town or other corporation interested, shall recover
8 their costs incurred on the occasion, against the
9 other, the county being one party.

SECT. 32. There shall be allowed to owners of
2 land, over which such road was laid out, twelve
3 months from the session of the court, when the pro-
4 ceedings on said original petition are closed, to take
5 off their wood, timber or trees; also to the county or
6 town liable for damages, which may then appear of
7 record to be due by reason of laying out, altering or
8 discontinuing such road, a term of time not exceeding
9 two years to pay the same; and to the county, town
10 or plantation, through which any such road is laid
11 out, a time, not exceeding three years, within which
12 to open or make the same.

SECT. 33. If on inspection of any report or verdict
2 duly returned relating to any highway, intended to
3 be laid out, altered or discontinued, the court shall be
4 of opinion that the same ought not to be done, sub-
5 ject to such highway damages as are awarded, it
6 shall be the duty of the court, instead of accepting
7 such report or verdict in full, to cause to be entered
8 upon the record of the proceedings under the origi-

9 nal petition, a judgment, that the prayer of the said
10 original petition for such road, to be laid out, altered
11 or discontinued, shall not be granted for the reason
12 aforesaid ; and no damage shall be allowed, but the
13 county or town liable therefor shall pay the costs and
14 expenses awarded in the same manner as if the report
15 or verdict had been accepted in regard to damages.

SECT. 34. Whenever any highway shall be discon-
2 tinued, before the time limited for the payment of
3 damages awarded to the owners of land over which
4 such highway passes, the court may revoke their
5 order for the payment of damages, and estimate and
6 order payment of the damages actually sustained ;
7 *provided*, that the parties interested shall have a right
8 to have their damages thus proposed to be varied, to
9 be estimated anew, by a jury or referees as herein
10 provided in other cases of damages claimed.

SECT. 35. No person entitled to damages by reason
2 of the laying out, alteration or discontinuance of any
3 highway, shall receive an order for the same on the
4 county treasurer until the proceedings under the orig-
5 inal petition shall have been completed, and the road
6 established. The court may then order the damages
7 to be paid out of the county treasury.

SECT. 36. Petitions for laying out, altering or dis-
 2 continuing any highway, extending into or through
 3 two or more counties, may be presented as aforesaid
 4 to the court at any regular session thereof for either
 5 county ; and the agent appointed by said court shall
 6 have the same power, and the proceedings shall in all
 7 respects be the same as if confined to one county.
 8 *Provided*, however, that the court may order such
 9 notice, whether in newspapers or otherwise, as they
 10 may deem proper.

SECT. 37. Whenever the court shall decide in favor
 2 of the petition concerning highways agreeably to the
 3 foregoing sections, they shall render judgment that
 4 such laying out, alteration or discontinuance, as the
 5 case may be, is of common convenience and necessity,
 6 and also order all the costs and expenses to be paid
 7 out of the county treasury. If the court should deny
 8 the prayer of the petitioners, judgment shall be ren-
 9 dered accordingly, and that the petitioners pay all
 10 the costs and expenses arising from the petition. *Pro-*
 11 *vided*, however, that in no case shall any travel and
 12 attendance be allowed either to the petitioners or the
 13 attorney for the county.

SECT. 38. In all such cases, in the taxation of costs

2 and rendition of judgment, the county shall be
3 deemed and considered as one party and the petition-
4 ers the other. And it shall be the duty of the party
5 prevailing to tax each and every item of cost and
6 expense in a bill as in all civil actions betwixt party
7 and party, subject to the restriction in the preceding
8 section; and the same shall be filed with the other
9 papers in the case. Before any such bills of cost
10 shall be allowed by the court, they shall be examined
11 and certified by the county attorney, whether to be
12 paid by the county or the petitioners. Such bills of
13 cost shall conform to the fee bill as much as possible,
14 and may include such compensation to the agent as
15 the court may deem proper.

SECT. 39. In all petitions to the court relative to
2 matters of the county, on which an order of notice is
3 granted, the petitioners shall pay to the county all the
4 costs and expenses arising on the petition, if the same
5 should be denied.

ARTICLE III.

*Of the location, alteration and discontinuance of town and
private ways.*

SECT. 40. If any person shall be aggrieved by the
2 determination of the selectmen, as to the allowance

3 of damages by reason of the laying out, altering or
4 discontinuing of a town way or private way as pro-
5 vided in chapter twenty-five, section thirty-one of
6 the revised statutes, he may, upon application to said
7 court, have his rights ascertained by a jury ; or, if he
8 agree with the agent of the town, or party liable to
9 pay, by referees, to be appointed by the court in like
10 manner as is provided in this chapter in respect to
11 highways.

SECT. 41. If the selectmen of any town, shall un-
2 reasonably refuse or neglect to lay out or alter any
3 such town way or private way, when requested in
4 writing, by one or more of the inhabitants thereof,
5 or proprietors of land therein, if leading from land
6 under his possession and improvement, to any high-
7 way or town way, the court, at any session within one
8 year, on application of any of the persons so re-
9 questing, by petition, in writing, may cause the said
10 town or private way to be laid out or altered by an
11 agent as in application for highways ; and he shall
12 ascertain the place and course of the way, and esti-
13 mate the damages, sustained by any person by reason
14 thereof, and the same, with the costs of the proceed-
15 ing, shall be paid by the parties who would have been

16 liable for damages, if no appeal had been made from
17 the selectmen's decision ; and the court may issue a
18 warrant of distress therefor, saving to the parties the
19 like remedy by referees or jury, if they are dissatis-
20 fied with the determination of the court.

SECT. 42. The court may also, upon the applica-
2 tion in writing of any inhabitant, or proprietor of
3 land in any town, aggrieved by the refusal of such
4 town to discontinue any town way, or private way,
5 and after due notice and hearing of all parties inter-
6 ested, order such way to be discontinued ; saving, to
7 parties interested, the same rights and remedies, as
8 are provided in the preceding section of this act.

SECT. 43. If any town shall unreasonably refuse, or
2 delay to approve and allow any town way or private
3 way, laid out or altered by the selectmen thereof, and
4 to put the same on record, any person aggrieved by
5 such refusal or delay, if such way lead from land,
6 under his possession and improvement, to any high-
7 way, or town way, may, within one year thereafter,
8 apply, by petition in writing, to the court. The court
9 may, unless sufficient cause shall be shown against such
10 application, allow and approve of the way, as laid out
11 or altered by the selectmen, and direct the said laying

12 out, or alteration and acceptance, to be recorded by
13 the clerk of said town; which shall have the like
14 effect, as if accepted by the town and recorded.

SECT. 44. When any town way shall have been
2 laid out or altered by the court, it shall not, within
3 five years thereafter, be discontinued or altered by
4 the town. When any such way shall have been dis-
5 continued by the court, the town shall not, within two
6 years thereafter, lay out the same again.

SECT. 45. All applications to the court, for all in-
2 quiry of damages for the laying out, altering or dis-
3 continuing any town or private way, shall be made
4 and filed in the office of the clerk of said court
5 within twelve months next after the allowance and
6 establishing of said way, and not afterwards; *pro-*
7 *vided*, it shall appear by the report of the selectmen,
8 who laid out or altered said way, that notice was duly
9 duly given to the parties, as provided in section
10 of this act; or if such town or private way
11 was laid out, altered or discontinued by the court,
12 that it shall appear by their records, that the agent
13 appointed by the court gave notice to said parties in
14 the manner provided, as to highways, in section
15 of this act.

SECT. 46. If no such notice thus appears to have
2 been given by said selectmen or court, such applica-
3 tion may be made and filed at any time, within one
4 year after the expiration of said twelve months.

SECT. 47. In all applications for inquiry of dam-
2 ages, relating to town ways and private ways, the
3 applicants may join, or sever, in the same manner,
4 and the committee or jury shall consider and deter-
5 mine the right and interest of the applicants, in the
6 real estate alleged to be damaged, as is herein pro-
7 vided in the case of highways.

SECT. 48. In addition to the remedies, herein be-
2 fore provided, for the recovery of the damages for
3 the laying out, altering, or discontinuing of any high-
4 way, town way, or private way, the persons entitled
5 to such damages, may recover the same, when duly
6 ascertained, as provided in this act, together with all
7 costs in his favor, in an action of debt against the
8 parties liable ; *provided*, that demand for the payment
9 of the same shall have been made on the treasurer of
10 any county or town, liable to pay the same, thirty
11 days, at least, before the suit be brought.

SECT. 49. If any town, liable to open or make, or
2 alter any highway, town way or private way duly ac-

3 cepted and ordered by the court, shall neglect so to
4 do, within the time limited by the provisions contained
5 in this chapter, the court, on application therefor,
6 shall appoint an agent to cause the said road to be
7 opened and made passable, or altered, as the case may
8 be, by contract or otherwise; and when the same
9 shall be agreed to be made passable or altered, by
10 contract, the agent, making the contract, shall file a
11 certified copy thereof in the clerk's office of the court
12 from which he received his appointment; and the
13 court shall forthwith certify to the assessors of the
14 town or plantation interested, the amount he has con-
15 tracted to give and the time within which said contract
16 is to be completed. The court may examine into
17 the doings of said agent, whenever they shall see
18 cause, and may remove him, and substitute another
19 at discretion; and no account of such agent shall be
20 allowed, without due notice given to the town inter-
21 ested; and, after the completion of the service of the
22 agent and the final allowance of his accounts, the
23 town shall be liable to pay all sums expended by the
24 agent with the incidental expenses of his agency and
25 the settling of his accounts, adjudged by the court to
26 be reasonable, and the amounts due on any contracts

27 by him made ; and if such town shall neglect to pay
28 the same, for thirty days, the court shall issue a war-
29 rant of distress therefor against such town.

SECT. 50. Whenever any county road, or town or
2 private way shall be discontinued, in whole or in part
3 by the court, the court shall fix a time at which such
4 discontinuance shall take effect.

SECT. 51. Any highway, or town or private way
2 laid out by the agent as in the preceding sections, and
3 accepted by the court, and not opened within six
4 years from the time allowed by the court, agreeably
5 to the provisions of this chapter, shall be deemed to
6 be discontinued.

SECT. 52. Plantations, which are or may be em-
2 powered and required to assess taxes upon themselves,
3 shall have the same powers, and be under like obliga-
4 tions relative to roads, as contained in the preceding
5 sections as to towns.

ARTICLE IV.

*Of the location, building and repairing of highways in
unincorporated places.*

SECT. 53. The court in their respective counties,
2 on application duly made to them pursuant to the
3 provisions of this chapter for the laying out, altering

4 or discontinuing any highway, in or through any
5 tract, township or plantation, other than towns or
6 such plantations as are described in the section last
7 preceding, or on petition for any order thereof to
8 amend and repair any such highway already laid out,
9 shall have authority so to lay out, alter, or discon-
10 tinue, or amend and repair the same, or cause the
11 same to be done ; and the same shall be done at the
12 expense of the proprietors of said tract, township or
13 plantation, or of the county, or party at the expense
14 of each, as the court shall order. All the proprietors
15 of such tracts of land, townships or plantations last
16 mentioned, shall be held to pay their proportion, ac-
17 cording to their interest, of all costs and expenses of
18 making and repairing the ways aforesaid, through
19 any part of the tracts, townships or plantations last
20 mentioned ; *provided, nevertheless*, that all lands re-
21 served for the use of the first settled minister, minis-
22 try, schools or for the future appropriation of the leg-
23 islature, in said tracts, townships and plantations last
24 mentioned, shall be exempted from all taxes on
25 account of highways.

SECT. 54. On any application or petition, as men-
2 tioned in the section last preceding, the court shall

3 cause notice thereof to be given, by publishing the
4 substance of such application, with the order of court
5 thereon, three weeks successively, in the newspaper
6 published by the printer to the state, and such other
7 paper as they shall order, that the proprietors of said
8 lands may appear before said court, at such time as
9 they shall appoint by said order, to shew cause why
10 such highway should not be laid out, altered, discon-
11 tinued, or amended and repaired, as the case may
12 be.

SECT. 55. After notice as aforesaid, and a due
2 hearing of the parties, the said court, if they shall see
3 cause, may proceed to lay out, alter, or discontinue
4 said highway by their agent, in the manner prescribed
5 by law, or to order the same to be amended or re-
6 paired, at the expense of the proprietors or otherwise,
7 as before provided in section . The propor-
8 tion of the expenses, payable by said proprietors, shall
9 be assessed and raised as hereinafter provided.

SECT. 56. Whenever any highway shall be laid out
2 by the agent of the court, through any unincorporated
3 tract of land, the said court shall decide, whether, in
4 their opinion, such tract, or any part thereof, will be
5 thereby enhanced in value. Said court may, upon a

6 plan of said tract, whether consisting of one or more
7 townships, make as many divisions as they may think
8 equitable, conforming, as near as convenient, to
9 known divisions, or separate ownerships; and they
10 may assess upon each division which they shall con-
11 sider to be enhanced in value, towards the expense of
12 making and opening such road, such sum as in their
13 judgment shall be proportionate to the value, and the
14 benefits likely to result to it from the establishment
15 of such road.

SECT. 57. Said court shall, thereupon, cause an
2 assessment to be made on such tracts of land, town-
3 ship or plantation, or divisions thereof as aforesaid, if
4 they see cause, at such rates per acre as they shall
5 judge necessary for making or opening such highway,
6 and defraying the necessary expenses attending the
7 same.

SECT. 58. Said court, in the different counties, on
2 or before the fifteenth day of May, in each year, shall
3 assess upon all unincorporated townships, or parts of
4 such townships, a sum of money, sufficient to keep in
5 repair the county highways which are, or may be laid
6 out and opened in such townships, or parts of town-
7 ships, and also all roads which have been, or may be
8 laid out and made therein by this state, or by this

9 state and the commonwealth of Massachusetts, or
10 roads therein the repairs and protection of which this
11 state has assumed, or may assume.

SECT. 59. As soon as may be after such assess-
2 ment shall have been made, said court shall publish a
3 notice of the amount so assessed, specifying how
4 much is assessed on such townships, or parts of
5 townships, respectively, and the road on which
6 such assessment is to be expended, in some news-
7 paper published in the county, if any, and in that
8 published by the printer to the state; and the clerk
9 shall certify, in writing, the same facts to the treas-
10 urer of the county where the money is to be
11 expended.

SECT. 60. Said court may appoint suitable
2 agents, or an agent, to expend such assessment, in
3 such proportions, on said tracts, and in such manner,
4 as they shall think best; and such agent shall give
5 bond, with sufficient sureties to their satisfaction,
6 faithfully to expend the money and render an account
7 thereof, on demand. The owner of any township, or
8 part of any township, so assessed, shall have the priv-
9 ilege of expending his tax, under the direction of
10 such agent, at any time before the fifteenth day of
11 September, next after such assessment; *provided*, he

12 give notice in writing of his intention, to the agent,
13 on or before the first day of June of the same year ;
14 and any expenditure, so made, certified by such
15 agent to the county treasurer, shall be received, as
16 payment of so much of his said tax.

SECT. 61. The proprietors of said tracts, townships,
2 or plantations, or divisions thereof, whether holding
3 several rights, or in common, shall be severally as-
4 sessed their respective proportions in every tax which
5 may be ordered, for making and opening, or for
6 altering or repairing the highways therein ; *provided*,
7 such proprietors furnish the court with an accurate
8 description of their several rights or their several
9 interests therein ; and any one proprietor, who shall
10 give a description of his interest in said tract, shall be
11 separately assessed.

SECT. 62. The money, so assessed upon, and
2 raised by the court as aforesaid, on said unincorpo-
3 rated tracts of land, shall be applied and expended by
4 a committee to be appointed for that purpose by the
5 court, in like manner as is provided in section 49 of
6 this chapter.

ARTICLE V.

Of the making and repairing of highways, &c.

SECT. 63. Whenever any highway or town way
2 shall be, or has been laid out, on the dividing line
3 between any two towns, as provided in chapter 25,
4 section 58 of the revised statutes, if the selectmen of
5 said adjacent towns cannot agree on such division,
6 or if either said towns shall neglect or refuse, for the
7 term of one year, to accept of such division, the
8 selectmen of either of said towns may apply in writ-
9 ing to the court, who shall thereupon have power to
10 appoint an agent to make a just and equitable divis-
11 ion thereof, and assign to each of said towns by
12 metes and bounds their respective parts thereof, first
13 giving such notice to all persons interested as the
14 court may order. The agent shall make report to
15 the next court, accompanied by a plan, which, with
16 the other papers, being put on file and accepted by
17 the court, the division shall be established.

SECT. 64. The court may, if they see cause, lay
2 out a highway in like manner as other highways, on
3 the dividing line between two towns, a part of the
4 width thereof in each of said towns; and at the same

5 time, may, without special notice therefor, make such
6 division and assignment, as is provided in the preced-
7 ing section.

SECT. 65. All such divisions and assignments made
2 by the court, through their agent as aforesaid, and
3 duly entered on their records, said towns shall be
4 holden to open and make or repair their respective
5 parts of said ways in the same manner and subject to
6 the same liabilities, as in case of county or town ways
7 laid out wholly in such town.

SECT. 66. In all applications to the court to make
2 division of the road according to section sixty-three,
3 said towns shall pay all costs and expenses, including
4 the clerk's fees and compensation of the agent, to
5 the county ; and the bill being taxed by the clerk and
6 allowed by the court, shall be paid equally by said
7 towns, that is, each town shall pay one half. And if
8 such costs and expenses should not be paid within
9 twenty days after establishing such division line, the
10 clerk shall issue an execution therefor in the name of
11 the county against said towns, as on judgments in civil
12 actions.

SECT. 67. The court in the respective counties, on
2 or before the fifteenth day of July in each year, shall

3 assess upon all unincorporated townships, or parts of
4 such townships, a sum of money sufficient to keep in
5 repair the county highways which are or may be laid
6 out and opened in such townships or parts of town-
7 ships, and also all roads which have been, or may be,
8 laid out and made therein by this state and the Com-
9 monwealth of Massachusetts, or roads therein the re-
10 pairs and protection of which this state has assumed
11 or may assume ; *provided*, that in all cases, the same
12 notice shall be published of the time and place for said
13 assessment of taxes for the repair of roads in places
14 not included within the limits of any incorporated
15 city, town or plantation within this state, as is re-
16 quired for the location of such roads.

SECT. 68. “An act relating to appeals from
2 county commissioners,” approved March 14, 1842,
3 and all other acts and parts of acts relating to appeals
4 from the county commissioners, be and the same are
5 hereby repealed.

ARTICLE VI.

General provisions.

SECT. 69. The supreme judicial court shall have
2 the same power and jurisdiction relative to the fol-
3 lowing subjects, as the county commissioners now

4 have and exercise, to wit: the fisheries and fishward-
5 ens, the granting of licenses to pedlers; the abate-
6 ment and assessment of taxes; ferries and the grant-
7 ing of licenses to ferrymen, and the regulation of
8 tolls; granting of licenses to auctioneers, when
9 selectmen or assessors unreasonably refuse; the ex-
10 amination and approval of sheriffs, coroners, regis-
11 ters of deeds and county treasurers' bonds once a
12 year; the appointment of jailer in certain cases; to
13 count and declare the votes for county treasurer and
14 register of deeds; the escape of prisoners through
15 insufficiency of the jail; the approval of by-laws of
16 proprietors of lands in common; the division of
17 counties into jury districts; in relation to railroad
18 corporations as contained in revised statutes chapter
19 eighty-one, the proceedings in which to conform as
20 far as possible to highways generally, as regulated by
21 the preceding sections; and generally, the supreme
22 judicial court to have and exercise jurisdiction over
23 all matters and things acted and adjudicated upon by
24 the county commissioners, subject to the modifica-
25 tions contained in this bill; it being intended to
26 transfer all the powers and duties of the county com-
27 missioners to said court.

SECT. 70. In all appeals from the assessors for the
2 abatement of taxes, the prevailing party shall recover
3 their costs, and be entitled to execution as in all ac-
4 tions between party and party.

SECT. 71. Petitioners to the court for licenses, ap-
2 pointments, or for any other object, where there is no
3 adverse party, shall, in all cases, pay the clerk's fees
4 and all other expenses arising on such petitions.
5 And the clerk, before receiving any petition, may
6 require his fees and other charges to be paid; and in
7 no case, except as provided in the foregoing sections,
8 in petitions for roads, shall the county be chargeable
9 with any costs or expenses.

SECT. 72. The time appropriated for hearing and
2 deciding by the court the matters presented to them
3 by this act, shall be after the dismissal of the jurors
4 and the disposition of the civil docket, each term.
5 And the court may make and adopt such rules for
6 the regulation of this portion of their duties, as they
7 may deem most convenient to the public.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, Feb. 16, 1853.

ORDERED, That 350 copies of the foregoing Bill, reported by the Committee on the Judiciary, be printed for the use of the Legislature.

A. B. FARWELL, *Clerk.*