

# MAINE STATE LEGISLATURE

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## CHAPTER 84.

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#### National Forest Funds

**Sec. 1. National forest funds, distribution; use for schools and roads. R. S. c. 5, § 96.** All sums received by this state from the United States on account of the national forests in this state established under the provision of the "Weeks Law," so called, being an act of congress approved March 1, 1911, and amendments thereto, shall be distributed as herein provided.

Said funds shall first be apportioned by the treasurer of state among the several organized towns and unorganized places in which such national forest is or may be situated, in proportion to the area of such national forest in each, as determined by the forest service of the United States department of agriculture.

The several sums so apportioned to each organized town shall be paid over by the treasurer of state, within 60 days after receipt thereof, to the treasurer of such town, and shall be expended for the benefit of the public schools and public roads of such town, in addition to the sums required by law to be raised for such purposes, in such manner as may be determined by appropriations duly made by town meetings in such town.

All sums so apportioned to unorganized places shall be expended for the benefit of public schools and public roads in the counties in which such places are located, in such manner as the governor and council may from time to time determine.

#### Public Parks, Squares, Playgrounds, and Shade Trees

**Sec. 2. Towns and cities may choose park commissioners. R. S. c. 5, § 107.** Cities and towns may choose by ballot, 3 park commissioners, to hold office 1, 2, and 3 years, respectively, and after the first year choose annually a commissioner for 3 years in place of the one whose term expires; they shall have

the care and superintendence of the public parks and direct the expenditure of all moneys appropriated for the improvement of the same.

See §§ 11, 13, 14, 15, 16; c. 32, § 51 et seq., re licenses to work on trees; white pine blister rust, etc.

**Sec. 3. Towns may receive devises and gifts for public parks and playgrounds.** R. S. c. 5, § 108. Any town, as such, may receive, hold, and manage devises, bequests, or gifts for the establishment, increase, or maintenance of public parks and playgrounds in such town; and may accept by vote of the legal voters thereof any land in such town to be used as a public park or playground, or both combined. When any plantation is incorporated into a town, such gifts and the proceeds thereof fully vest in such town.

**Sec. 4. Village corporations may hold land for park purposes.** R. S. c. 5, § 109. Village corporations chartered by the legislature may take and hold lands by devise or gift, in trust for playground or park purposes, and may expend not exceeding 10% of the money apportioned such village corporation, under its charter, for the improvement and care of such land.

**Sec. 5. Land taken for parks, squares, public libraries, and playgrounds.** R. S. c. 5, § 110. 1933, c. 3. Any city or town containing more than 1,000 inhabitants, upon petition in writing signed by at least 30 of its tax-paying 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 land owners from proceeding to restrain the use of such land for other than public park purposes.

See 1941, c. 173, § 2; \*102 Me. 341; 103 Me. 436; \*105 Me. 418, 578; 124 Me. 510.

**Sec. 6. Proceedings by municipal officers.** R. S. c. 5, § 111. Whenever the municipal officers of such city or town are directed to take land as provided in the preceding section, they shall, within 10 days, give written notice of their intention to take such land, describing the same, and the time and place of hearing, by posting the same in 2 public places in the town where the land lies, and in the vicinity thereof, and by publishing the same in a newspaper printed in such city or town, 7 days before the day of such hearing, if any, otherwise, in a newspaper printed in the county where the land lies, 3 weeks successively, the last publication to be 7 days before such hearing. The municipal officers shall meet at the time and place specified in the notice, view the land to be taken, hear all parties interested, and if they decide that the land is suitable for the purpose, they shall take the same and estimate the damages to be paid to each owner, so far as known, and make return of their doings in writing, signed by a majority of them, which return shall describe by metes and bounds the land so taken, and state the purpose for which it is taken, the names of the owners,

so far as known, and the amount of damages awarded to each. The return shall be filed and recorded in the clerk's office of such city or town, and a copy thereof, certified by such clerk, shall be recorded in the registry of deeds for said county.

103 Me. 436; 105 Me. 418, \*578.

**Sec. 7. Appeal from estimate of damages; damages, how paid.** R. S. c. 5, § 112. Any person aggrieved by the estimate of damages may have them determined by written complaint to the superior court in the manner provided respecting damages for the establishment of town ways. When such damages are finally determined, they shall be certified to the clerk of such city or town and paid by the treasurer thereof.

See § 33; 98 Me. 131; \*103 Me. 436; 105 Me. 418, 578; 106 Me. 147.

**Sec. 8. Preservation of trees along public ways; parkways.** R. S. c. 5, § 113. For the purpose of preserving and increasing the growth of trees on land abutting any public way, or located on uplands adjoining any navigable river or other body of water, cities and towns and the municipal officers thereof, acting pursuant to the provisions of sections 5, 6, and 7 may set aside and define such land, located as aforesaid, in width not exceeding 5 rods; and all trees and shrubs growing on said land shall be held as for park purposes, under the exclusive care and control of park commissioners, chosen as provided in section 2, and it shall be unlawful for the owner in fee of said land or any other person to injure, remove, or destroy such trees or shrubs except as hereinafter provided. All proceedings relating to estimating and awarding damages provided in sections 5, 6, and 7 are made applicable to proceedings hereunder; and such proceedings may also be commenced upon petition in writing signed by at least 30 taxpayers owning taxable real estate in said town or city.

See § 12.

**Sec. 9. Land may be cleared for public ways; further award of damages; licenses to owners to make improvements.** R. S. c. 5, § 115. The provisions of section 8 shall not prevent the taking and clearing of so much of said land as may be necessary for public ways, nor abridge the right of the owner, or his tenant, to lay out a private way across the same, or to clear and improve so much thereof as may be necessary for actual building purposes, provided the written consent of the municipal officers to open such way or construct buildings thereon be first obtained; nor except as provided in section 8 shall the provisions thereof and of this section restrict the use and enjoyment of such land by the owner thereof, or authorize any person to enter thereon, excepting municipal officers and park commissioners, and their agents, for the purposes of section 8. Whenever municipal officers refuse to give consent for laying out a private way or for cutting and clearing so much of said land as is necessary for immediate building purposes, when in writing requested to do so, such refusal shall be ground for a further award of damages to the owner as provided in section 8. Park commissioners may grant written license to the owner to do such cutting and clearing on said land as is consistent with the preservation and general improvement of the growth thereon.

See § 12.

**Sec. 10. Failure to elect park commissioners; towns may appropriate money.** R. S. c. 5, § 116. If any city or town, having taken lands as herein provided, fails to elect a board of park commissioners, the municipal officers shall have and exercise all the powers and duties of such commissioners, except as herein-

after provided in section 11 and sections 13 to 20, inclusive. Every city and town, although containing less than 1,000 inhabitants, may appropriate money for the purposes of the 2 preceding sections.

**Sec. 11. Special park commissioners may be appointed.** 1933, c. 197. Notwithstanding the provisions of law relating to park commissioners, cities, towns, and village corporations are authorized, empowered, and directed on petition of a society organized for the purpose of beautifying and improving landscapes, parks, and similar matters to appoint from a list of persons submitted to them by the said society, a park commissioner who shall be charged with the duties and have the powers of park commissioners or other officers whose duty it is to care for such public parks, or to perform any acts relating to the beautification of the landscape and town rights of way. Such park commissioner shall serve without pay until his successor shall have been appointed and qualified and shall expend such money for the purposes herein specified as the city, town, or village corporation may appropriate and such other sums as may be received from other sources, and is authorized to receive such sums as may be donated for such purposes. Whoever violates any of the provisions of this section shall be punished by the penalty provided in section 12. All fines received under the provisions of this section shall be paid over to the park commissioner of the city, town, or village corporation within the city or town where the offense occurred, to be used for the purposes hereinbefore mentioned. The said park commissioner shall annually report to the city, town, or village corporation at such time as other town officers report, a statement of the moneys received and expended by him and such other matters as he deems appropriate.

**Sec. 12. Penalties for violations of §§ 8 and 9.** R. S. c. 5, § 117. 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 an action on the case, 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.

117 Me. 17.

**Sec. 13. Trees within highway limit public shade trees.** R. S. c. 5, § 118. 1933, c. 92, § 1. All trees within or upon the limits of any highway marked as provided in sections 13 to 20, inclusive, are declared to be public shade trees. The tree wardens in the several cities and towns, as soon as may be after they are appointed as hereinafter provided, shall carefully examine the trees along the highways under their jurisdiction and plainly mark such trees as they consider should be controlled by the municipality. The forest commissioner shall furnish to the municipal officers of the several cities and towns, at cost, galvanized iron disks not more than 1 inch in diameter, which disks shall have stamped on them the letter "M." Said disk shall be inserted in each tree, selected as above provided, at a point not less than 3 feet, nor more than 6 feet, from the ground on the side toward the highway. It shall be the duty of the tree warden, if any tree marker shall be destroyed or defaced, to renew or replace the same.

See §§ 18, 20.

**Sec. 14. Park commissioners to have supervision of trees.** R. S. c. 5, § 119. All public shade trees shall be under the care and control of park commissioners in cities and towns which now or hereafter may appoint such commissioners in

accordance with the provisions of sections 2 to 12, inclusive. As to all such trees said park commissioners shall have the powers and duties hereinafter conferred upon tree wardens.

**Sec. 15. Tree wardens, appointment and duties.** R. S. c. 5, § 120. The municipal officers of cities and towns not having elected park commissioners as provided by sections 2 to 12, may at any annual meeting or meetings called for that purpose 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.

**Sec. 16. Comparative powers of owners of soil and tree wardens as to removal of trees.** R. S. c. 5, § 121. Public shade trees may be trimmed, cut down, or removed by the owner of the soil only with the consent of a tree warden or park commissioner, but such trees shall not be trimmed, cut down, or removed in any case by a tree warden or park commissioner except with the consent of such owner. Nothing in this section, however, shall be construed to prevent the trimming, cutting, or removal of trees where such trimming, cutting, or removal is ordered by proper authority to lay out, alter, or widen the location of highways, to lessen the danger of travel on highways, or to suppress tree pests or insects.

**Sec. 17. Appropriation for compensation of tree wardens.** R. S. c. 5, § 122. Cities and towns may appropriate at any annual or special town meeting money not exceeding 50c for each taxable poll in each year to be used in making compensation to tree wardens, and in acquiring, planting, pruning, and protecting shade trees.

**Sec. 18. Penalty for violation.** R. S. c. 5, § 123. Whoever trims, cuts, or otherwise defaces or destroys a public shade tree or injures, defaces, or destroys any tree marker attached in accordance with the provisions of section 13, shall be punished by a fine of not less than \$5, nor more than \$25, to be paid to the city or town in which the offense is committed and expended by said city or town for the purposes specified in sections 13 to 20, inclusive.

See § 20.

**Sec. 19. Free distribution of trees for roadside planting.** R. S. c. 5, § 124. The forest commissioner may provide and distribute free of charge at the state nursery, to the several cities and towns, trees for roadside planting.

**Sec. 20. Failure of municipalities to appoint wardens, provisions of § 18 not applicable.** R. S. c. 5, § 125. When the municipal officers in any year fail to appoint tree wardens in accordance with the provisions of section 15, the provisions of section 18 shall not apply to trees previously marked in accordance with the provisions of section 13.

**Sec. 21. Trees may be planted.** R. S. c. 27, § 74. A sum not exceeding 5% of the amount raised for repair of ways and bridges may be expended by a road commissioner, under the direction of the municipal officers, in planting trees about public burying-grounds, squares, and ways, if the town by vote authorizes it.

See c. 80, § 83, sub-§ VII, re sidewalks.

**Sec. 22. Towns to make annual appropriations for clearing away and beauti-**

lying roadsides; penalty for failure to comply with law. R. S. c. 27, §§ 79, 80. Each city, town, or plantation shall each year set aside 5% of the money raised and appropriated for ways and bridges, to be used in cutting and removing all trees, shrubs, and useless fruit trees, bushes, and weeds, (except shade trees, timber trees, cared-for fruit trees, and ornamental shrubs) growing between the road limit and the wrought part of any highway or town way, until all the trees, shrubs, and worthless fruit trees, bushes, and weeds have been once removed from the limits of such highway or town way, after which the owner of the land adjoining such highway or town way shall each year, before the 1st day of October, remove all bushes, weeds, worthless trees, and grass from the roadside adjoining his cultivated or mowing fields. The city, town, or plantation shall care for all land not included in the above, except wild land.

If any owner of such land fails to cut and remove said bushes, weeds, worthless trees, and grass, on or before the 1st day of October of each year, the mayor of any city, the selectmen of any town, or the assessors of any plantation wherein said land may be located shall cause said bushes, weeds, worthless trees, and grass to be cut and removed. The actual expense of such cutting and removal shall be a lien upon said land so adjoining said highway or town way and shall be assessed and collected as a tax thereon.

135 Me. 290.

### Municipal Forests

Sec. 23. Cities and towns may acquire lands for forestry purposes; forest commissioner to furnish seedlings. R. S. c. 5, § 126. Cities and towns may acquire by purchase, gift, or bequest lands for the purpose of forestation, and may reclaim and plant such lands. The forest commissioner shall, upon application in such form as he may prescribe, furnish said cities and towns, at cost, with seedlings or transplants for the planting of town forest lands, and shall be ready to offer advice as to the planting, management, and protection of said forest lands.

Sec. 24. Two-thirds vote required to authorize purchase of land; purposes of forest. R. S. c. 5, § 127. A town, by a  $\frac{2}{3}$  vote at any annual town meeting, or a city, by a  $\frac{2}{3}$  vote of the city government, may determine to purchase lands which shall be known as the town or city forest, and may appropriate money and accept gifts of money and land therefor. Such forest shall be devoted to the culture of forest trees, or to the preservation of the water supply of such city or town.

Sec. 25. May appoint a forester; his duties. R. S. c. 5, § 128. In each city or town which has a town or city forest as defined hereinbefore, the town or city manager in such towns or cities as are under the manager system, or elsewhere the mayor or selectmen, may appoint a forester whose duty it shall be to make and enforce all necessary regulations and to perform such labor therein as may be necessary for the proper care and maintenance of such land as a forest producing area. Said forester need not be a resident of the town or city in which he is appointed, but he and such deputies as he may appoint shall have the powers of constables and police officers while in said forest.

Sec. 26. Building may be leased or erected. R. S. c. 5, § 129. Any city or town owning such city or town forest area may lease any building thereon and may erect thereon any building for public instruction and recreation.

Sec. 27. Payment of bills; disposition of revenue. R. S. c. 5, § 130. No



expenditures shall be made or bills incurred under the provisions of sections 23 to 28, inclusive, above the amounts appropriated for said specific items, and all expenditures must have the approval of city or town officers appointing said forester. All receipts from said forest or buildings thereon shall go into the general revenue of the town or city owning said forest.

Sec. 28. Lands acquired may be sold or exchanged; exception; highways may be located. R. S. c. 5, § 131. Whenever it shall be deemed of advantage to a city or town to sell or exchange city or town forest lands or any part thereof, or to locate thereon any public highway or foot-path, such city by vote of its city government, and such town by vote of its inhabitants at town meeting, after due notice given, may authorize such sale or exchange or the location of such way or path, and may execute any conveyances or take any other steps necessary to carry the same into effect. Provided, however, that the power of sale or exchange herein granted shall not apply to lands held in trust by such city or town unless in accordance with the terms of such trust.

#### Town and Private Ways. Public Landings. Bridle Paths

Sec. 29. Power of municipal officers respecting town and private ways; notice, how given; duty of officers laying out way. R. S. c. 27, § 16. The municipal officers of a town may on petition therefor, personally or by agency, lay out, alter, or widen town ways and private ways for any inhabitant or for owners of cultivated land therein, if such inhabitant occupies, or such owner has cultivated land in the town which such private way will connect with a town way or highway. They shall give written notice of their intentions, to be posted for 7 days, in 2 public places in the town and in the vicinity of the way, describing it in such notice, and they shall determine whether it shall be a town way or a private way; and if a private way, whether it shall be subject to gates and bars.

See c. 32, § 22, re ways in state park, etc.

Notice. \*3 Me. 439; 10 Me. 341; 11 Me. 113; 13 Me. 254; 18 Me. 185; 35 Me. 246; 43 Me. 576; 59 Me. 368; 518; 83 Me. 250.

Authority of municipal officers. 10 Me. 340; 11 Me. 113; 14 Me. 343; 18 Me. 185; 45 Me. 244; 46 Me. 427; 51 Me. 571; 57 Me. 45; 59 Me. 452; 62 Me. 328; 64 Me. 581; 84 Me. 701; 98 Me. 131; 102 Me. 161.

Legality of proceedings. 2 Me. 60; 10 Me. 25; 12 Me. 275; 25 Me. 71; 26 Me. 178; 32 Me. 568; 61 Me. 439; 83 Me. 123; 88 Me. 31; 89 Me. 251; 91 Me. 449; 109 Me. 416; 136 Me. 447; 137 Me. 48; 138 Me. 348.

Sec. 30. Winter roads. R. S. c. 27, § 17. The municipal officers may lay out a way as aforesaid for the hauling of merchandise, hay, wood, or lumber, to be used only when the ground is so covered with snow that such hauling shall not break the soil. When so laid out, they shall state in their return the purposes for which it is laid, and that it shall be used only in the winter season, and shall order the persons for whose accommodation it is laid to pay into the town treasury an amount equal to the damages of such location for the benefit of the owner of the land over which it is laid and the expenses of such location, and it shall not be accepted by the town until such amount is so paid. No town shall be liable for damage to any person traveling on such way.

Sec. 31. After municipal officers have laid out, town may accept. R. S. c. 27, § 18. A written return of the proceedings of the municipal officers under the provisions of sections 29 and 30, containing the bounds and admeasurements of the way and the damages allowed to each person for land taken, shall be made and filed with the town clerk in all cases. The way is not established

until it has been accepted in a town meeting legally called, after the return has been filed, by a warrant containing an article for the purpose.

Return of selectmen. 12 Me. 35, \*275; 13 Me. 254; 18 Me. 186, 346; 26 Me. 178; 30 Me. 26; 40 Me. 301; 67 Me. 286.

Bounds and measurements. 14 Me. 343; 25 Me. 304; 30 Me. 25; 40 Me. 301.

Acceptance. 10 Me. 344; 11 Me. 113; 12 Me. 36; 16 Me. 302; 18 Me. 185; 21 Me. 174; 23 Me. 124; 26 Me. 180; 35 Me. 246; 40 Me. 301; 48 Me. 457; 59 Me. 518; 64 Me. 579; 67 Me. 286; 89 Me. 251; 98 Me. 131; 105 Me. 575; 131 Me. 165; 137 Me. 48.

**Sec. 32. Towns may discontinue ways.** R. S. c. 27, § 19. A town, at a meeting called by warrant containing an article for the purpose, may discontinue a town or private way; and the municipal officers shall estimate the damages suffered by any person thereby.

37 Me. 55, 71; 45 Me. 607; 69 Me. 440; 83 Me. 118.

**Sec. 33. Damages for ways, how estimated and paid; appeal.** R. S. c. 27, § 20. 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 section 39 of chapter 79, by written complaint to the superior court, returnable at the term thereof next to be held within the county where the land lies, after 60 days from the date of the establishment, alteration, or discontinuance of such way by the town at its town meeting. The complaint shall be served at least 30 days before said term by delivering in hand an attested copy to the clerk of the town where the land lies, 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 in term time or vacation, stating in his said application the facts of his case, and said justice, after due notice and hearing, may grant to such petitioner permission to take his said appeal to such term of said court 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.

See §§ 44, 45, 80; 11 Me. 265, 424; 12 Me. 212; 17 Me. 201; 19 Me. 316, 343; 21 Me. 391; 26 Me. 179; 28 Me. 123; 30 Me. 272; 32 Me. 568; \*48 Me. 283; 57 Me. 342; 59 Me. 518; 60 Me. 537; 67 Me. 460; 83 Me. 535; 95 Me. 50; 103 Me. 436; 105 Me. 416; 106 Me. 147; 131 Me. 475; 136 Me. 447.

**Sec. 34. Towns may lay out bridle paths and bridle trails; provisions as to assessment of damages same as in case of town ways.** R. S. c. 27, § 21. Bridle paths and trails may be laid out, altered, or discontinued by any town or city within such town or city on petition therefor in the same manner as is provided by law for the laying out, altering, or discontinuing of town ways in a town, or city streets in a city, except that no cultivated or improved land shall be taken without the consent of the owner, and a 2/3 vote shall be required for the acceptance of such paths and trails by any town. All provisions now in force as to assessment of damages and appeal therefrom in cases of laying out, altering, and discontinuing town ways in towns or city streets shall apply to laying

out, altering, and discontinuing bridle paths and trails except that the petitioners shall have no right of appeal.

See § 29 et seq.

**Sec. 35.** Bridle paths and trails to be subject to such regulations as towns may establish. R. S. c. 27, § 22. Bridle paths and trails, when laid out and accepted under the provisions of section 34, shall be subject to such regulations as to use as may be established by the city or town laying them out.

**Sec. 36.** No obligation to keep bridle paths open in winter; bridges to be in safe condition; signs to be erected. R. S. c. 27, § 23. Cities and towns maintaining bridle paths and trails mentioned in sections 34 and 35 shall not be under any obligation to keep them in repair or to break them out in winter; providing that if any city or town shall erect a bridge on such bridle path or trail, it shall be under the same obligation to keep such bridge in a safe condition for the use of horses and riders, as it is now under to keep highway bridges in repair for the purposes for which they are used. Such city or town shall erect at the entrance of such bridle paths and trails suitable signs, signifying that they are bridle paths or trails, only, and not for use of vehicles, and that persons may use them at their own risk.

**Sec. 37.** Towns may lay out public landings. R. S. c. 27, § 24. Towns may lay out public or common landings and may alter or discontinue said landings whether laid out under the provisions of this chapter or now or hereafter established by dedication or otherwise. All procedure shall be in substance the same as is provided by law in the case of town ways.

See § 29 et seq.; c. 128, § 7, re certain nuisances.

**Sec. 38.** Towns and cities may lay out land for public parking places; provision as to assessment of damages. 1941, c. 149, § 2. Towns and cities may lay out land within their corporate limits for use as public parking places for motor and other vehicles and may alter or discontinue such use. All procedure including assessment of damages and appeal therefrom shall be the same as is provided by general law for laying out, altering, and discontinuing town and city ways.

See § 29 et seq.

**Sec. 39.** Town or private way, neglect or refusal of municipal officers to lay out or alter; proceedings. R. S. c. 27, § 25. When the municipal officers unreasonably neglect or refuse to lay out or alter a town way, or a private way on petition of an inhabitant, or of an owner of land therein for a way leading from such land under improvement to a town or highway, the petitioner may, within 1 year thereafter, present a petition stating the facts to the commissioners of the county at a regular session, who shall give notice thereof to all interested and act thereon as is provided respecting highways. When the decision of the municipal officers is in favor of such laying out or alteration, any owner or tenant of the land over or across which such way has been located shall have the same right of petition. When the decision of the commissioners is returned and placed on file, such owner or tenant or other party interested has the same right to appeal to the superior court as is provided in sections 56 to 59, inclusive, of chapter 79; and also to have his damages estimated as provided in section 39 of chapter 79.

136 Me. 447 .

**Sec. 40.** When such way may be opened. R. S. c. 27, § 26. No such way described in section 39 shall be opened or used until after 60 days from its

acceptance by the town, and if within that time notice of such appeal or petition is filed with the town clerk, such way shall not be opened or used until finally located by the appellate tribunal.

91 Me. 51; \*105 Me. 580.

**Sec. 41. Towns unreasonably refusing to accept, or to discontinue. R. S. c. 27, § 27.** When a town unreasonably refuses to discontinue a town or private way or to accept one laid out or altered by the selectmen, the parties aggrieved may, within the time and in the manner provided in section 39, present a petition to the county commissioners, who shall in like manner proceed and act thereon, and cause their proceedings to be recorded by their own and by the town clerk; and the rights of all parties may be preserved and determined as provided in the 2 preceding sections.

8 Me. 271; 10 Me. 26; 12 Me. 211, 275; 18 Me. 185; 21 Me. 380; 25 Me. 71; 30 Me. 26; 31 Me. 271, 580; 36 Me. 76; 40 Me. 301; 41 Me. 605; 42 Me. 480; 51 Me. 571; 57 Me. 341; \*59 Me. 514; 60 Me. 330, 537; 63 Me. 102; \*64 Me. 581; \*68 Me. 538; 70 Me. 324; 73 Me. 57; 78 Me. 106; 83 Me. 246, 430; 84 Me. 53; 87 Me. 223, 229; 88 Me. 31, 140; 102 Me. 482.

**Sec. 42. Town ways acted on by county commissioners cannot be acted on by towns for fixed time. R. S. c. 27, § 28.** When a town way has been laid out, graded, or altered by the commissioners, their proceedings cannot be affected by any action of the town, within 5 years; and when one has been discontinued by them, it cannot be again laid out by the town, within 2 years. The commissioners have the same power to alter or discontinue such ways, for 5 years, as they have respecting highways.

91 Me. 47.

**Sec. 43. County commissioners may fix amount of grading; may order half the expenses to be paid by the county. R. S. c. 27, § 29.** The county commissioners, in laying out new ways, or altering or grading ways already laid out, may direct the amount of such grading, which shall be stated in their return; and they may order a portion of the expense of such altering or grading, not exceeding 50% thereof, to be paid to the town in which the altering or grading has been done, from the county treasury.

**Sec. 44. Towns may reinstate town ways discontinued by county commissioners; damages. R. S. c. 27, § 30.** When a town has accepted a town way, and said town way is subsequently discontinued by the county commissioners on appeal, before such road has been opened for travel, such town may, at its annual meeting, held within 3 years thereafter, by a majority of the voters present and voting, reinstate and lay out such town way, under an article for such purpose in the warrant. The damages shall be assessed, and the owners of the land over which said way passes shall be notified thereof by the municipal officers, within 20 days after said meeting; and any person aggrieved by the estimate of damages may have them determined in the manner provided in section 33 in case of town ways laid out on petition. A town way so reestablished and laid out shall not be discontinued for 5 years thereafter.

136 Me. 136.

**Sec. 45. Municipal officers may vacate locations of streets in certain cases; proceedings; damages, by whom paid, and how determined; action on report of municipal officers to be recorded; fee. R. S. c. 27, § 34. 1931, c. 30.** When land has been plotted and a plan thereof made, whether recorded or not, showing the proposed location of streets thereon, and lots have been sold by reference to said plan, the municipal officers of the town or city where such land is situ-

ated may, on petition of owners of the fee in such of said proposed streets as are named in the petition, vacate in whole or in part the proposed location of any or all such streets as have not been accepted and located as public ways. The proceedings shall be the same as in case of the location of town ways. All damages thereby occasioned shall be paid by the petitioners, and parties aggrieved by the estimate of damages may have them determined in the manner provided respecting damages caused by the location of town ways and with the same right of appeal. The action on the report of the municipal officers of such town or city shall be filed within 10 days after the action on such report is taken, in the office of the town or city clerk and made a part of the record. Such clerk shall furnish an attested copy of such action on the report to anyone upon payment of a fee of 75c therefor, which attested copy may be recorded in the registry of deeds of the district or county where the land of said proposed streets is located, and such attested copy need not be acknowledged for the purpose of such record. The fee at the registry of deeds for such record shall be the same as fees for recording therein miscellaneous instruments.

**Sec. 46. Land not to be taken from a railroad for any way without notice and hearing.** R. S. c. 27, § 35. No private way, town way, city street, or highway taking land of any railroad corporation shall be located, unless a notice of the time and place of the hearing upon said location has been served upon the president, any vice-president, any director, the treasurer or any assistant treasurer, the general manager, or the clerk of said corporation at least 7 days before the time for such hearing. In case such corporation has no such officer within the state, service shall be made upon its duly authorized agent or attorney within the state. Service in like manner shall also be made upon any corporation which operates a railroad of another corporation under lease or other agreement.

84 Me. 100; 86 Me. 391.

**Sec. 47. Location of ways crossing railroad tracks; by public utilities commission on petition of municipal officers or state highway commission; power to refuse or prescribe terms, to apportion expense; appeal; proceedings on appeal.** R. S. c. 27, § 36. 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 used for station purposes, 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 used for station purposes. 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 used for station purposes 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 and entered at the next succeeding term of the superior court, to be held in the county where the crossing is located, more than 30 days after the date of the filing of the report; and 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 14 days at least before the sitting of the appellate court it shall 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 at such term of court shall make such order or decree thereon as law and justice may require. Exceptions may be taken to such order or decree. The final adjudication shall be recorded as provided in section 49 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.

See c. 41, §§ 63, 64, re railroad crossings; c. 43, § 26, re street railroad crossings; 78 Me. 67; \*79 Me. 391; 83 Me. 277; 85 Me. 142; \* 87 Me. 251; 89 Me. 561; 91 Me. 137; 92 Me. 59; 97 Me. 163; 105 Me. 116.

**Sec. 48. Maintenance of ways already laid out.** R. S. c. 27, § 37. 1943 c. 181. In case of ways already laid out under the provisions of section 47, which cross over or under any railroad track or tracks, and not at grade, the allocation of the expense of rebuilding, reconstructing, and maintaining so much thereof as is within the limits of such railroad shall be determined, as provided by the preceding section, 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.

See c. 43, § 26.

**Sec. 49. Adjudications to be recorded.** R. S. c. 27, § 38. Adjudications of the public utilities commission relating to ways shall be recorded in the office in which the location of the way must be recorded.

See c. 43, § 26.

### Abolishment of Grade Crossings

**Sec. 50. Petition by municipal officers; proceedings thereon; power to abolish or alter; land may be taken and damages awarded; expenses and damages to be apportioned or shared by agreement; temporary ways; investigation of financial condition of railroad companies; state highway commission may petition.** R. S. c. 27, § 39. 1931, c. 266, § 1. 1933, c. 70. Any railroad company, the state highway commission, or the municipal officers of a city or town in which a public way crosses or is crossed by a railroad, whether such crossing be at grade or otherwise, may file a petition in writing with the public utilities commission alleging that safety either to the traveling public or in the operation of the railroad requires the abolishment of or an alteration in 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, alteration, change, or removal, if any, shall be made to insure safety as aforesaid and by whom such abolishment, alteration, change, or removal shall be made. To facilitate such abolishment, 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 purpose 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 52. The commission shall apportion such expenses and damages between the state, the town in which the crossing is located, and the corporation operating the railroad which crosses such public way, and shall order 40% thereof to be paid by the state, 10% thereof to be paid by the town in which such crossing is located, and the remainder thereof shall be paid by the corporation operating the railroad; provided, however, that as to the state highways the commission shall apportion such expenses and damages between the state and the corporation operating the railroad on a basis of 50% to the state, to be paid by the state from the state highway department funds and 50% to such corporation. 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 shall not exceed the 10% 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 is a part of such elimination or alteration and 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, and of crossings where the highway is carried over the railroad, as it may deem necessary, and may determine whether such expense shall be borne by such railroad corporation, by the city or town 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 city or town, 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; provided, however, that 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 appropria-

tion 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 52 of chapter 79 as have municipal officers of a city or town under the foregoing provisions of this section; and 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.

**Sec. 51. Proceedings when public way crosses tracks of more than 1 railroad.** R. S. c. 27, § 40. Whenever the public utilities commission, upon an application or petition brought under the provisions of the preceding section finds that a public way crosses or is crossed by tracks of more than 1 railroad and the tracks of such railroads are so near together that public convenience requires the work of abolishment, alteration, change, or removal to be done under and in compliance with 1 order, they shall give notice to all the corporations operating such railroads to appear before them and be heard upon the application; and after such notice and hearing said commission shall determine what abolishment, 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 as hereinbefore provided between such corporations in such manner as said commission shall deem just and proper.

**Sec. 52. Orders of commissioner to be in writing; appeal.** R. S. c. 27, § 41. The order of the public utilities commission relating to any matter upon which they may act under the authority of the 2 preceding sections shall be communicated in writing to the petitioners and to all persons to whom notice of the hearing on such petition was given; and any person aggrieved by such order, who was a party to such proceedings, may appeal from such order to the superior court within and for the county in which such way or crossing is located in the manner now provided by law for appeals from the findings of the public utilities commission. Any person aggrieved by the decision or judgment of the public utilities commission in relation to damages for land taken for the purposes of the 2 preceding sections may appeal from said decision in the manner provided in section 37 of chapter 41.

**Sec. 53. Amount to be paid by state limited; appropriations limited.** R. S. c. 27, § 42. 1931, c. 266, § 2. The amount to be paid in any year by the state under the provisions of the 3 preceding sections, except as herein provided, shall not exceed \$15,000 for work in connection with state aid and 3rd class highways, and said amount shall be appropriated annually; the said appropriation shall be cumulative and any part of said sum of \$15,000 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 \$100,000 during any period of 3 consecutive calendar years, except that railroad corporations operating narrow-gauge railroads or standard gauge railroads of less than 50 miles of main track may not be required to expend more than \$50,000 during any period of 6 consecutive calendar years; provided if any two or more railroad corporations are each using the facilities of any railroad terminal company, any sums expended by said terminal company under the provisions of the



3 preceding sections shall for the purposes hereof be regarded as expended by said railroad corporations and in the proportions in which said railroad corporations are at the time of such decree bound to pay the said terminal company for the use of its facilities.

Sec. 54. Sections 50-53 do not apply to railroads of less than standard gauge; exceptions. R. S. c. 27, § 43. The 4 preceding sections shall not apply to railroads of less than standard gauge or to street railroads, excepting, however, that in all cases where a street railroad has a right of way in a public way crossing a railroad, the commission shall apportion to such street railroad an equitable share of the damages and expenses of alteration which shall be paid by said street railroad, and the balance of such expenses and damages shall be apportioned as provided in section 50; and in all cases where a street railroad acquires the right to lay its tracks over a crossing which has been altered under the provisions of sections 50 or 51, the public utilities commission shall fix the amount which such railroad shall pay to the state before it shall exercise its right to lay its tracks over such crossing; and in either case the commission shall make such order for the apportionment of the expense of future maintenance of such crossing as they shall deem equitable.

#### Assessments upon Abutters on City Streets

Sec. 55. Assessment of damages upon abutters. R. S. c. 27, § 44. Whenever the city government lays out any new street or public way, or widens or otherwise alters or discontinues any street or way in a city, and decides that any persons or corporations are entitled to damage therefor, and estimates the amount thereof to each in the manner provided by law, it may apportion the damages so estimated and allowed, or such part thereof as to it seems just, upon the lots adjacent to and bounded on such street or way, other than those for which damages are allowed, in such proportions as in its opinion such lots are benefited or made more valuable by such laying out or widening, alteration, or discontinuance, not exceeding in case of any lot the amount of such benefit; but the whole assessment shall not exceed the damages so allowed. Before such assessment is made, notice shall be given to all persons interested of a hearing before said city government, at a time and place specified, which notice shall be published in some newspaper in said city at least 1 week before said hearing.

\*70 Me. 527; \*84 Me. 217; 106 Me. 531; \*111 Me. 392.

Sec. 56. Owners to be notified of assessment. R. S. c. 27, § 45. After said assessment provided for in section 55 has been made upon such lots or parcels and the amount fixed on each, the same shall be recorded by the city clerk, and notice shall be given within 10 days after the assessment by delivering to each owner of said assessed lots resident in said city a certified copy of such recorded assessment, or by leaving it at his last and usual place of abode, and by publishing the same 3 weeks successively in some newspaper published in said city, the first publication to be within said 10 days, and said clerk within 10 days shall deposit in the post-office of said city, postage paid, a certified copy of such assessment directed to each owner or proprietor residing out of said city whose place of residence is known to said clerk, and the certificate of said clerk shall be sufficient evidence of these facts, and in the registry of deeds shall be the evidence of title in allowing or assessing damages and improvements, so far as notice is concerned.

\*111 Me. 392.

**Sec. 57. Arbitration when amount of assessment is not satisfactory; board of arbitration, nominated.** R. S. c. 27, § 46. Any person not satisfied with the amount for which he is assessed under the provisions of section 55 may, within 10 days after service of the notice provided for by the preceding section in either manner therein provided, by request in writing given to the city clerk, have the assessment upon his lot or parcel of land determined by arbitration. The municipal officers shall nominate 6 persons who are residents of said city, two of whom selected by the applicant with a third resident person selected by said 2 persons shall fix the sum to be paid by him, and the report of such referees, made to the clerk of said city and recorded by him, shall be final and binding upon all parties. Said reference shall be had and their report made to said city clerk within 30 days from the time of hearing before the municipal officers as provided in section 55.

III Me. 392.

**Sec. 58. Assessments to create a lien on land assessed, also on buildings thereon.** R. S. c. 27, § 47. All assessments made under the provisions of section 55 shall create a lien upon each and every lot or parcel of land so assessed and the buildings upon the same, which lien shall take effect when the municipal officers file with the town clerk the completed assessment and shall continue 1 year thereafter, and within 10 days after they are made, the clerk of said city shall make out a list of all such assessments, the amount of each, and the name of the person against whom the same is assessed, and he shall certify the list and deliver it to the treasurer of said city; if said assessments are not paid within 3 months from the date thereof, the treasurer shall sell, at public auction, such of said lots or parcels of land upon which such assessments remain unpaid, or so much thereof as is necessary to pay such assessments and all costs and incidental charges; he shall advertise and sell the same within 1 year from the time said assessments are made, as real estate is advertised and sold for taxes under the provisions of chapter 81, and upon such sale, shall make, execute, and deliver his deed to the purchaser, which shall be good and effectual to pass the title of such real estate; the sum for which such sale shall be made shall be the amount of the assessment and all costs and incidental expenses. Any person to whom the right of law belongs may at any time within 1 year from the date of said sale redeem such real estate by paying to the purchaser or his assigns the sum for which the same was sold, with interest thereon at the rate of 20% a year, and the costs of reconveyance.

See § 139; III Me. 392.

**Sec. 59. Action may be maintained by city; amount recovered.** R. S. c. 27, § 48. If said assessments under the provisions of section 55 are not paid, and said city 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 city, in the name of said city, may maintain an action against the party so assessed for the amount of said assessment, as for money paid, laid out, and expended, in any court competent to try the same, and in such action may recover the amount of such assessment, with 12% interest on the same from the date of said assessment, and costs.

106 Me. 531; III Me. 392.

**Sec. 60. Assessment of abutters for improvement of streets; 2/3 of cost may be assessed.** R. S. c. 27, § 49. Whenever a majority of the abutters in number and value upon any street or road in the thickly settled portion of any city or

town shall in writing petition the city government or municipal officers of the town to improve said street or road by grading, parking, curbing, graveling, macadamizing, paving, or in any other way making a permanent street of the same, or any part thereof, and to provide for the making and reconstructing of such street improvements, and such improvements are made,  $\frac{2}{3}$  of the cost thereof may be assessed on the property adjacent to and bounded on said street or road in the manner, and with the same right of appeal, provided in the 5 preceding sections, which are made applicable to such assessments.

**Sec. 61. Municipal officers to notify county commissioners when location of certain highways is changed.** 1943, c. 306, § 1. Whenever the location of any state aid or 3rd class highway 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.

See c. 79, § 68, re county commissioners to notify state highway commission when location of certain highways is changed.

### Liability for Repair of Ways, and for Injuries

**Sec. 62. Ways to be kept open and in repair.** R. S. c. 27, § 65. Highways, town ways, and streets legally established shall be opened and kept in repair so as to be safe and convenient for travelers with horses, teams, and carriages. In default thereof, those liable may be indicted, convicted, and a reasonable fine imposed therefor.

See § 95.

Ways not established by statute provisions. 2 Me. 60; 3 Me. 273; 4 Me. 272; 5 Me. 368; 11 Me. 280; 18 Me. 68, 412; 21 Me. 174; 25 Me. 299; 35 Me. \*104, 169; 37 Me. 70; \*40 Me. 155; \*42 Me. 23; 46 Me. 427; 47 Me. 344; 48 Me. 457; 51 Me. 260; 54 Me. 364; \*56 Me. 348; 73 Me. 54.

Ways presumed to be legally established. 34 Me. 245; 37 Me. \*55, 507; 39 Me. 300. Liability for repair. 5 Me. 256; 15 Me. 407; \*16 Me. 189; 18 Me. 287; 35 Me. 104; 36 Me. 397; 37 Me. 251; 38 Me. 221; 46 Me. 485; \*51 Me. 128, 131, 533; \*57 Me. 533, 536; 62 Me. 105, 470, 472; 63 Me. 477, 550-1; 64 Me. 60; 65 Me. \*37, 286, 515, 550; 68 Me. 153, 360; 69 Me. 117; \*82 Me. 276; 84 Me. 23; 85 Me. 281; \*98 Me. 484; 99 Me. 526; 104 Me. 211; \*105 Me. 575.

Traveler and negligence. 62 Me. 470, 472; \*67 Me. 168; 70 Me. 306; 133 Me. 439; 135 Me. 314.

Generally. 12 Me. 301; 58 Me. 57; 68 Me. 499; 121 Me. 1; 134 Me. 162.

**Sec. 63. Proceedings before county commissioners against town neglecting to repair ways.** R. S. c. 27, § 66. When a town liable to maintain a way unreasonably neglects to keep it in repair, as provided in section 62, after one of the municipal officers has had 5 days' actual notice or knowledge of the defective condition, any three or more responsible persons may petition the county commissioners for the county, setting forth such facts, who, if satisfied that such petitioners are responsible for the costs of the proceedings, shall fix a time and place near such defective way, for a hearing on such petition, and cause such notice thereof to be given to the town and petitioners as they may prescribe. At the time appointed, the commissioners shall view the way alleged to be out of repair and hear the parties interested, and if they adjudge the way to be unsafe and inconvenient for travelers, horses, teams, and carriages, they shall prescribe what repairs shall be made, fix the time in which the town shall make them, give notice thereof to the municipal officers, and award the costs of the proceedings against the town. If they adjudge the way to be safe and convenient, they shall dismiss the petition and award the costs against the peti-

tioners. If they find that the way was defective at the time of presentation of the petition, but has been repaired before the hearing, they may award the costs against the town, if in their judgment justice requires it.

\*90 Me. 483; 98 Me. 109, 131; 99 Me. 526.

**Sec. 64. Petition, its presentation.** R. S. c. 27, § 67. The petition provided for in section 63 may be presented to the county commissioners at any of their sessions, or in vacation to their chairman, who shall procure the concurrence of his associates in fixing the time and place in the order of notice, and cause the petition to be entered at their next session. They shall make full return of their proceedings on the petition and cause the same to be recorded as of their next regular term after the proceedings are closed.

98 Me. 131; 99 Me. 526.

**Sec. 65. Proceedings when towns neglect to make repairs ordered; warrant of distress.** R. S. c. 27, § 68. If the town neglects to make the repairs prescribed by the commissioners under the provisions of section 63, within the time fixed therefor in such notice to the town, they may cause it to be done by an agent, not one of themselves. Such agent shall cause the repairs to be made forthwith, and shall render to the commissioners his account of disbursements and services in making the same. His account shall not be allowed without such notice to the town as the commissioners deem reasonable. When the account is allowed, the town becomes liable therefor, with the agent's expenses in procuring the allowance of his account, and interest after such allowance, and said commissioners shall render judgment therefor against the town in favor of the agent. If a town neglects to pay such judgment for 30 days after demand, a warrant of distress shall be issued by the commissioners to collect the same.

98 Me. 131; 99 Me. 526.

**Sec. 66. Ways on line between towns, how divided; liability of towns.** R. S. c. 27, § 69. When a way is established on a line between towns, their municipal officers shall divide it crosswise, and assign to each town its portion thereof by metes and bounds, which, within 1 year thereafter, being accepted by each town at a legal meeting, shall render each town liable in the same manner as if the way were wholly within the town; when a division of it is not so made, the selectmen of either town may petition the county commissioners, who shall give notice by causing a copy of such application with their order thereon appointing a time and place of hearing to be served upon the clerk of each town 30 days, or by causing it to be published in some newspaper printed in the county for 3 weeks, previous to the time appointed; and after hearing the parties, they may make such division.

52 Me. 214; 74 Me. 201.

**Sec. 67. Ways laid out between towns, how divided, for repair.** R. S. c. 27, § 70. A highway may be laid out on the line between towns, part of its width being in each, and the commissioners may then make such division of it and enter the same of record, and each town shall be liable in all respects as if the way assigned to it were wholly in the town.

52 Me. 214.

**Sec. 68. Bridge in highway crossing town line.** R. S. c. 27, § 71. Whenever a highway located after the 1st day of January, 1906 crosses any river which divides towns, the expense of constructing, maintaining, and repairing any bridge across such river shall be borne by such towns in proportion to their last

state valuation prior to such location; provided, however, that the provisions of this section shall not apply to bridges built or rebuilt under the provisions of sections 84 to 88, 90, 91, 94, and 96 to 98, inclusive, of chapter 20.

**Sec. 69. Snow to be removed or trodden down; sudden injuries to be repaired; damage may be recovered of town.** R. S. c. 27, § 72. 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 special action on the case.

96 Me. 133; 110 Me. 553; 112 Me. 173; 134 Me. 162.

**Sec. 70. Mail routes, apparatus for opening; fences may be taken down to prevent drifting; to be replaced.** R. S. c. 27, § 73. There shall be furnished and kept in repair in each section of the town, through which there is a mail route, some effectual apparatus for opening ways obstructed by snow, to be used to break and keep open the way to the width of 10 feet, and the municipal officers of towns, or any road commissioner under their direction, may take down fences upon the line of public highways when they deem it necessary to prevent the drifting of snow therein; but they shall in due season be replaced, in as good condition as when taken down, without expense to the owner.

**Sec. 71. Materials may be taken from lands not enclosed or planted.** R. S. c. 27, § 75. A road commissioner may remove any obstacle which obstructs or is likely to obstruct a way or render its passage dangerous. He may dig for stone, gravel, or other material suitable for making or repairing ways in land not enclosed or planted, and remove the same to the ways. If the land from which such materials were taken is not within the limits of the way, the owner of it shall be paid therefor in money by the town, to be recovered after demand and refusal by the road commissioner, in an action as on an implied promise.

11 Me. 274; 13 Me. 254; 16 Me. 190; 25 Me. 128; 32 Me. 328; \*38 Me. 221; 43 Me. 332; 51 Me. 359; 66 Me. 235; 68 Me. 361, 499; \*78 Me. 30; \*89 Me. 262; 105 Me. 575.

**Sec. 72. Municipal officers may take land for highway purposes; county commissioners may ascertain damages.** R. S. c. 27, § 76. The municipal officers of any city, town, or plantation may purchase, take over, and hold for any city, town, or plantation, for public use, such materials and land as may be necessary to provide a change of location or alignment of any highway, or to secure materials, including clay, gravel, sand, and rock, with the necessary ways and access thereto, for the improvement, construction, and maintenance of highways. If the municipal officers of any city, town, or plantation are unable to purchase such materials, or land with the necessary ways and access thereto, at what they deem a reasonable valuation, the county commissioners of the county wherein such material or land is located shall, on petition of the municipal officers or interested parties, ascertain and determine the damages in the same manner as provided by statute for land taken for highway purposes, and all parties aggrieved by the estimate of damages shall have like remedy as provided by statute for appraisal of damages for land taken by towns for highway purposes.

133 Me. 435.

**Sec. 73. Duties of road commissioners; penalty.** R. S. c. 27, § 77. Road

commissioners shall go over the roads in their towns, or cause it to be done, in April, May, June, August, September, October, and November in each year, remove the loose obstructions to the public travel and, whenever so directed by the selectmen, remove all shrubbery and bushes growing within the limits of highways, not planted or cultivated therein for the purpose of profit or ornamentation, having care for the proper preservation of shade trees, and repair such defects as may occur from time to time, rendering travel dangerous, or they shall give notice of such defects to the municipal officers, under a penalty of \$5 for neglect of such duty.

**Sec. 74. Repair of roads by road machines after August 10th; state aid may be withheld, for violation. R. S. c. 27, § 78.** Whenever a road commissioner, officer, or employee of any city or town improves any highway with a road machine or any similar device after the 10th day of August in any year, except by light smoothing or maintenance work, a surface of gravel to the average depth of 6 inches shall be immediately placed on the section of the highway so improved. Whenever a road commissioner, official, or employee of any city or town violates the provisions of this section, the state highway commission shall cause to be withheld all moneys due such city or town for such year, for highway purposes under the provisions of chapter 20. This section shall not apply to such highways as are improved under the direction of the state highway commission.

**Sec. 75. Towns not to place materials on land beside the roads without clearing away of same; owner may remove at expense of town. R. S. c. 27, § 81.** If any city, town, or plantation in the construction or repair of its highways places any stone, sod, or other material upon land within the limit of any highway which the owner has cleared from stone and smoothed so that it is tillable land and so used, said city, town, or plantation shall within 30 days remove the same from such land. Failing to do this, the owner of said land may remove such stone, sod, or other material therefrom and be paid the same price per hour for such removal as is paid by said city, town, or plantation for labor in the construction and repair of its roads.

**Sec. 76. Watercourses not to be so made as to do injury; remedy. R. S. c. 27, § 82.** No road commissioner, without written permission from the municipal officers, shall cause a watercourse to be so constructed by the side of a way as to incommode any person's house or other building, or to obstruct any one in the prosecution of his business. Any person so aggrieved may complain to the municipal officers, who shall view the watercourse and may cause it to be altered as they direct.

See § 156; 32 Me. 327; 63 Me. 477; 86 Me. 380; 89 Me. 427; 113 Me. 67.

**Sec. 77. Drainage of public way not to be obstructed. R. S. c. 27, § 83.** No person by himself, his agents, or servants, other than a person having legal supervision of a public way, shall cultivate, in connection with the improvement of lands adjacent thereto, any portion of the wrought part of any public way, in such manner as to change the drainage thereof or obstruct said way; nor shall any person, by himself, his agents, or servants, other than a person having legal supervision of a public way, deposit within or along any ditch or drain in a public way any material that shall obstruct the flow of water in such ditch or drain or otherwise obstruct said way; provided, however, that with the written consent and in accordance with specifications of the legal authorities having supervision of such ditch or drain, any person may, to provide egress and regress

to and from lands occupied by him, lawfully construct and maintain a bridge across such ditch or drain.

**Sec. 78. Penalty; jurisdiction of proceedings.** R. S. c. 27, § 84. 1933, c. 118, §§ 1, 5. Whoever wilfully violates any provision of the preceding section shall be punished, for the first offense, by a fine of not less than \$5, nor more than \$10, and costs, and for each subsequent offense, by a fine of not less than \$10, nor more than \$25, and costs, and shall be further liable for double the amount of the actual damage, to be recovered in an action on the case by the city, town, or plantation, or, in behalf of any unorganized place, by the county where the offense is committed. All fines recovered under the provisions of this section 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 the provisions of this section, trial justices within their county shall have, upon complaint, jurisdiction concurrent with municipal courts and the superior court.

**Sec. 79. Municipal officers and county commissioners to enter complaint.** R. S. c. 27, § 85. Every municipal officer of a city, town, or plantation or, for an unorganized place, every county commissioner, when his attention is directed to any violation of the provisions of section 77, within his jurisdiction, shall enter complaint against the offender and prosecute the same to final judgment.

**Sec. 80. Damages by raising or lowering streets, how determined.** R. S. c. 27, § 86. 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 33. Said complaint shall be filed at the term of the superior court, next to be held within the county where the land is situated, after 60 days from the date of assessment.

\*43 Me. 332; 65 Me. 592; 79 Me. 368; 82 Me. 535; \*86 Me. 369; 101 Me. 539; 102 Me. 398; \*105 Me. 303; \*113 Me. 67; 114 Me. 454; 126 Me. 205; \*128 Me. 328; 131 Me. 165.

**Sec. 81. When appropriation insufficient, procedure.** R. S. c. 27, § 87. When the amount appropriated is not sufficient to repair the ways, a road commissioner may, with the written consent of the selectmen, employ inhabitants of the town to labor on such ways, to an amount not exceeding 15% of the amount so appropriated and in addition thereto.

\*3 Me. 446; 13 Me. 294; \*30 Me. 159; 34 Me. 406; 51 Me. 352; 55 Me. 437; 84 Me. 22.

**Sec. 82. Towns may raise and assess moneys for bridges and ways.** R. S. c. 27, § 88. Towns shall annually raise money to be expended on town ways and highways, and for the repair of bridges, and the same shall be assessed and collected, as other town taxes, and expended for said purposes by a road commissioner or commissioners.

72 Me. 517.

**Sec. 83. When and how money shall be expended.** R. S. c. 27, § 89. Sixty-five per cent of the highway taxes assessed by a town shall be expended upon the

highways prior to the 15th day of July, and the balance at such time as the road commissioner deems for the best good of the public.

**Sec. 84. Powers and duties of road commissioner.** R. S. c. 27, § 90. The road commissioner, under the direction of the selectmen, shall have charge of the repairs of all highways and bridges within the towns, and shall have authority to employ the necessary men and teams and purchase timber, plank, and other material for the repair of highways and bridges. He shall give bond to the satisfaction of the selectmen, and be responsible to them for the expenditure of money and discharge of his duties generally. His compensation shall be such sum as the towns shall annually vote therefor, which sum shall, in no case, be less than \$1.50 a day for every day of actual service; and he shall render to the selectmen monthly statements of his expenditures, and receive no money from the treasury except on the order of the selectmen.

See c. 80, §§ 20, 21, 22, re election of road commissioner, vacancy; 95 Me. 482; 102 Me. 25.

**Sec. 85. Commissioner to keep account of expenditures.** R. S. c. 27, § 91. The road commissioner shall keep accurate accounts, showing in detail all moneys paid out by him, to whom and for what purpose; he shall settle his accounts on or before the 20th day of February, annually, and the same shall be reported in the annual town report in detail.

**Sec. 86. Wide wheels and watering-troughs, abatement therefor; public drinking-troughs and fountains.** R. S. c. 27, § 92. A town at its annual meeting may authorize its assessors to abate not exceeding \$3 of the tax of any person, upon proof that he has owned and used on the ways during that year cart wheels having felloes not less than 6 inches wide. The said assessors shall abate \$5 from the tax of any inhabitant, who shall construct, and during the year keep in repair a watering-trough beside the highway, well supplied with water, the surface of which shall be 2 feet or more above the level of the ground and easily accessible for horses and carriages, if the assessors think such watering-trough for the public convenience; if more than 1 person in the same locality claims to furnish it, the municipal officers shall decide where it shall be located. Such officers may establish and maintain such public drinking-troughs, wells, and fountains within the public highways, squares, and commons of their respective towns, as in their judgment the public necessity and convenience require; and towns may raise and appropriate money to defray the expense thereof.

See c. 80, § 83, sub-§§ VII, VIII; \*57 Me. 539; 67 Me. 138.

**Sec. 87. Ways may be opened or repaired by contract.** R. S. c. 27, § 93. Towns may authorize their road commissioners or other persons to make contracts for opening or repairing their ways.

102 Me. 437; 105 Me. 576.

**Sec. 88. Persons injured by defect in highways may recover damages; limitation; when previous notice must have been given; county commissioners or town officers must be notified in writing within 14 days; damages for loss of life; view may be ordered at trial.** R. S. c. 27, § 94. 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 special action on the case, to be commenced within 1 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 \$2,000 in case of a town; and 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; and any person who sustains injury or damage, as aforesaid, 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 an action on the case, 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.

See § 00: c. 20, § 16, re liability of state when cause of action relates to state or state aid highways.

When and how ways should be constructed. \*18 Me. 288; 26 Me. 240; 33 Me. 460; 39 Me. 115; \*46 Me. 485.

Defective ways. 11 Me. 273; 14 Me. 200, 203; \*16 Me. 189; 17 Me. 201; \*18 Me. 287; 26 Me. 230; 32 Me. 49; 35 Me. 104; 36 Me. 308; 37 Me. 251; 39 Me. 115; 42 Me. \*253, 526; 46 Me. 485; 51 Me. 186, \*314, 533; \*55 Me. 48; 56 Me. 17; 62 Me. 470; 64 Me. 60, 62; 65 Me. 285; 66 Me. \*348, 402; 68 Me. 366; 69 Me. 73; 72 Me. \*250, 510; 74 Me. 536; 76 Me. 427; 82 Me. 437; 87 Me. 265; 90 Me. 487; \*91 Me. 566; 94 Me. 165; 95 Me. 374; \*98 Me. 484; \*104 Me. 211.

Damage. 14 Me. 205; 16 Me. 191; 20 Me. 248; 29 Me. 311; 31 Me. 301; 32 Me. 273; \*538; 33 Me. 272; 41 Me. 533; 50 Me. 223; 51 Me. 440; \*61 Me. 203; 82 Me. 438.

Defect sole cause of damage. 18 Me. 288; 20 Me. 50; 32 Me. \*50, 576; 38 Me. 206, 445; 42 Me. 335, 347; 43 Me. 496; \*51 Me. 127; 61 Me. 572; 64 Me. 53; \*65 Me. 550; 66 Me. 402; 68 Me. 154; 69 Me. 73; 74 Me. 533; 97 Me. 519.

Due care. 11 Me. 337; 14 Me. 200; 18 Me. 288, 381; 21 Me. 31; \*26 Me. 240; 31 Me. 301; 32 Me. 54, 576; 38 Me. 207, 445; 42 Me. 336; \*43 Me. 496; \*50 Me. 224; 64 Me. 544; 65 Me. 285; 70 Me. 306; 72 Me. 541; 77 Me. 44; 78 Me. 200; 81 Me. 188; 82 Me. 438; 84 Me. 334; 97 Me. 519; 109 Me. 467; 122 Me. 1.

Right of action to those only who use highway legitimately. \*42 Me. 254; 62 Me. 470; 65 Me. 37; \*67 Me. 167; 82 Me. 433; \*115 Me. 134; \*116 Me. 275; 120 Me. 142.

Notice of defects. 7 Me. 445; 21 Me. 31; 23 Me. 558; 32 Me. 272; 42 Me. 203; \*51 Me. 533; 56 Me. 17; 68 Me. 360, 513; 69 Me. 74; 70 Me. 123; \*72 Me. 252; 74 Me. 147, 533; \*75 Me. 559; 77 Me. 384; \*80 Me. 598; 82 Me. 65, 75, 437; 84 Me. 147; 87 Me. 188, 231, 528; 88 Me. 207, 467; 90 Me. 131, 213; \*487; 93 Me. 361; 94 Me. 268; 96 Me. 320; 98 Me. 305; 104 Me. 208, 498; 105 Me. 148; 108 Me. 543; 109 Me. 370; \*120 Me. 174; 121 Me. 1.

Notice of claim. 64 Me. 134; \*66 Me. 333, 454, 549; 68 Me. 513; 69 Me. 196; 70 Me. 124; \*73 Me. 486; 75 Me. 81, 115; 83 Me. 428; 84 Me. 278, 577; 87 Me. 231; 88 Me. 474; 94 Me. \*234; \*99 Me. 239; 104 Me. 498; \*105 Me. 145; 106 Me. 225; 110 Me. 538; \*113 Me. 509; \*117 Me. 541.

Evidence. 15 Me. 27; 31 Me. 301; 33 Me. 460; 35 Me. 104; 37 Me. 251; 39 Me. 301; 109 Me. 469.

Generally. 12 Me. 301; 57 Me. 376; 63 Me. 477, 550; 65 Me. 37, 38; 67 Me. 167; 69 Me. 280; 76 Me. 532; 83 Me. 416; 134 Me. 122, 162; 135 Me. 314.

Sec. 89. Repair within 6 years, proof of way. R. S. c. 27, § 95. When on trial of any such action or indictment as provided for in section 88, it appears that the defendant county or town has, within 6 years before the injury, made repairs on the way or bridge, it shall not deny the location of such way or bridge.

5 Me. 368; 12 Me. 237; \*51 Me. 187; 54 Me. 94; 58 Me. 349; 66 Me. 349.

**Sec. 90. No liability if load exceeds 6 tons.** R. S. c. 27, § 96. No town is liable for such an injury described in section 88 when the weight of the load, exclusive of the carriage, exceeds 6 tons. Proof of its weight must be made by the plaintiff.

See c. 19, § 87, re special permits.

**Sec. 91. Slippery sidewalk no cause of action.** R. S. c. 27, § 97. No town is liable to an action for damages to any person on foot, on account of snow or ice, on any sidewalk or cross-walk, nor on account of the slippery condition of any sidewalk or cross-walk.

134 Me. 162.

**Sec. 92. Railroad company may be notified of suit against town for defective crossing.** R. S. c. 27, § 98. In an 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 suit and take upon itself the defense of the same.

**Sec. 93. Liability of railroad company.** R. S. c. 27, § 99. In such trial described in section 92 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 shall be liable to the defendants in said suit in an action of debt for all damage and costs paid by them.

See c. 20, § 16, re defects in state and state aid highways; 66 Me. 486.

**Sec. 94. Notice to company.** R. S. c. 27, § 100. The notice required in section 92 shall be by copy of the writ served upon the company at least 30 days before the sitting of the court in which it is returnable, or by such notice as the court may order after entry.

**Sec. 95. One indictment only at a term.** R. S. c. 27, § 101. One indictment only for neglect to open ways or to keep them in repair shall be presented against a town at the same term of court; but it may contain as many counts as are necessary to describe all portions of ways alleged to be defective. The word "highway" used therein includes town ways, causeways, and bridges.

See c. 9, § 21, sub-§ VI; c. 19, § 1; 18 Me. 69; 59 Me. 452.

**Sec. 96. Agents appointed to expend fines; their duties.** R. S. c. 27, § 102. All fines imposed under the provisions of sections 92 to 95, inclusive, shall be appropriated to the repair of such ways. The court imposing them shall appoint one or more agents to superintend their collection and application. Within 3 months after collection, they shall make return of their doings to the clerk of the court, to remain on file for the inspection of those interested, and subject, on their motion, to be audited and corrected by the court. If an agent is guilty of gross neglect of duty, or fraudulently misapplies or retains the fine, he forfeits to the town double its amount, to be recovered by indictment.

65 Me. 212.

**Sec. 97. Clerk of court to certify fines to assessors; how collected and paid.** R. S. c. 27, § 103. When a fine is imposed on a town under the provisions of sections 92 to 95, inclusive, the clerk of the court shall certify it forthwith to the assessors; who shall assess the amount thereof, as other town taxes, certify the same to said clerk, and cause the amount to be collected by their collector, who shall pay the same to such agent at such time as the court orders. If not paid by that time, the clerk, on application of such agent, shall issue a

warrant for its collection, as the treasurer of state may do for the collection of a state tax.

See c. 81, § 51; 65 Me. 211.

**Sec. 98. If way is not repaired in 4 months, fine to be collected.** R. S. c. 27, § 104. If the assessors neglect to make such assessment provided for in section 97 and to certify it to the clerk, and the defective way is not repaired to the acceptance of such agent within 4 months after notice of the fine, the court may issue a warrant to collect of the town the fine and costs, or the unpaid part thereof.

**Sec. 99. When gates, bars, and fences on ways may be removed.** R. S. c. 27, § 105. Any person may take down and remove gates, bars, or fences upon or across any highway or town way, unless they are there to prevent the spread of infectious disease, or were placed there by license of the county commissioners or municipal officers of the town. To those granting such license, a person aggrieved by such removal may apply and, on proof that such erections were made by their license, they may order them to be replaced by the person who removed them.

12 Me. 38; 59 Me. 144.

**Sec. 100. Road commissioner or municipal officer may remove logs, lumber, or other obstructions; proceedings for sale; prosecutions for nuisance.** R. S. c. 27, § 106. When logs, lumber, or other obstructions, without necessity, are left on such ways described in section 99, any road commissioner or municipal officer may remove them; and he shall not be liable for loss or damage thereof, unless occasioned by design or gross negligence. When no one appears to pay the expense and trouble of removal, he may sell at public auction so much thereof as is sufficient for the purpose, with charges of sale, posting notice of the time and place of sale in 2 public places in the town 7 days prior thereto. The person through whose neglect or wilful default they were left may be prosecuted as for a nuisance.

See c. 128, §§ 1, 2, re nuisances; 12 Me. 38; 35 Me. 253; 46 Me. 485; 47 Me. 162; 51 Me. 262; 54 Me. 47; 68 Me. 361.

**Sec. 101. Persons convicted of nuisance to pay, if materials are not sufficient.** R. S. c. 27, § 107. When any thing has been adjudged to be a nuisance and to be abated, under the provisions of section 100, and the materials of which it is composed do not, on sale as aforesaid, produce sufficient to pay the charges of prosecution, removal, and sale the court may order the deficiency to be raised by levy on the personal property of the person convicted of causing such nuisance.

**Sec. 102. When buildings and fences on a street or way become bounds; estoppel created by writing under seal.** R. S. c. 27, § 108. When buildings or fences have existed more than 20 years fronting upon any way, street, lane, or land appropriated to public use, the bounds of which cannot be made certain by records or monuments, such buildings or fences shall be deemed the true bounds thereof. When the bounds can be so made certain, no time less than 40 years will justify their continuance thereon, and on indictment and conviction they may be removed. Persons owning lands beside a highway or town way, on which are buildings or fences that encroach within the limits of said way, may, by a writing under seal by them signed and acknowledged and recorded in the registry of deeds for the county or registry district in which the land lies, admit to the municipal officers of the town in which said way exists the true bounds or limits

of said way and the extent of their wrongful occupancy thereof. Thereafter such persons, and all claiming title under or through them, shall be estopped from asserting any right to the continuance of such buildings or fences within said limits, for the full term of 40 years from the date of such deed.

See c. 128, § 12, re fences and buildings fronting on public ways may not be nuisances; 59 Me. 144; \*73 Me. 359; 79 Me. 273; 82 Me. 395; \*83 Me. 511; 85 Me. 422; 90 Me. 136, 234; 94 Me. 527; 110 Me. 364; 118 Me. 356; 121 Me. 44; 131 Me. 1; 137 Me. 183.

**Sec. 103. Towns required to maintain guide-posts at crossings of ways. R. S. c. 27, § 109.** 1933, c. 118, § 1. Towns shall erect and maintain at all crossings of highways, and where one public highway enters another, substantial guide-posts 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, 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, and a figure of a hand with the forefinger pointing thereto. If erected on state or state aid highways, such guide-posts and guide-boards 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. Trial justices within their county shall have jurisdiction concurrent with municipal courts and the superior court; and of all fines provided for by this section, and recovered on complaint, one-half shall go to the prosecutor and one-half to the county where the town committing the offense is situated.

See § 109; c. 20, § 8, re powers of state highway commission; c. 118, § 21, re malicious injuries to monuments, guide-boards, etc.; 72 Me. 287; 100 Me. 402.

**Sec. 104. Penalty for neglect by town or plantation officers. R. S. c. 27, § 110.** 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 an action on the case 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.

See § 109; 72 Me. 287.

**Sec. 105. Excavations near ways, how to be made; responsibilities. R. S. c. 27, § 111.** 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 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 on the case, for all damages occasioned by the repair of the way, or paid to persons injured by defects therein, caused by such excavation.

See § 133; 54 Me. 47; \*57 Me. 377.

**Sec. 106. Ice bridges may be made; penalty for injuring. R. S. c. 27, § 112.** Ice bridges may be constructed and maintained by persons for their own and the public use across any river or body of water, when its ordinary navigation is obstructed by ice. Whoever wilfully destroys such bridge to prevent its use, forfeits not less than \$5, nor more than \$20, to be recovered by complaint, one-half to the complainant, and one-half to the state. No person shall take down or injure any fence or occupy any land for the construction or use of such a bridge without consent of the owner first obtained.

18 Me. 435.

**Sec. 107. Removal of trees at or near railroad crossings.** R. S. c. 27, § 113. Whenever the state highway commission deems that trees, bushes, or other encroachments within the limits of a public way obstruct the view at railroad crossings, or where one public way enters another, and thereby renders such way dangerous to travelers, it shall cause the removal of such obstructions.

See c. 42, §§ 88-91, re railroad crossings.

**Sec. 108. Placing of turf in streets, etc., regulated.** R. S. c. 27, § 114. Placing turf in the traveled part of any highway, street, or town way by any municipality, its employees, or contractors is prohibited, unless said turf is cut fine or covered up. Upon violation of the provisions of this section the state highway commission shall cause payment of state money for highways to such municipality to be withheld until such turf is removed at the expense of the municipality and the way restored to the satisfaction of the state highway commission.

**Sec. 109. Advertising signs regulated.** R. S. c. 27, § 115. No advertising signs shall be erected or maintained within 500 feet of crossings of highways or within 500 feet of where one public way enters another within the limits of such ways. The state highway commission shall cause any signs so erected to be removed at the expense of the person erecting or maintaining the same, to be recovered in an action on the case. Such person shall also be subject to a fine of not more than \$50 to be paid to the treasurer of state, and credited to the highway fund. The state highway commission shall cause the provisions of sections 103 and 104 to be enforced on all state and state aid roads.

See c. 118, § 35, re advertising signs in, on, or above any public highway.

**Sec. 110. Contracts for construction of bridges, how awarded.** R. S. c. 27, § 116. 1935, c. 103, § 2. Whenever any bridge within the state is to be constructed or repaired, at a cost of \$1,000 or more, and the cost of such construction or repairs is to be paid wholly or in part by the state, the contract for the same shall be awarded as follows: the state highway commission, county commissioners, or municipal officers within the county where said new construction or repairs are to be made shall advertise for sealed proposals not less than 2 weeks in such papers as the state highway commission may direct, the last advertisement to be at least 1 week before the time named therein for the closing of such bids. Sealed proposals submitted in accordance with said advertisement shall be addressed to the state highway commission or county commissioners having the construction in charge and shall remain sealed until opened in the presence of said commission or commissioners at such times as the state highway commission may direct.

Whenever, in the judgment of the state highway commission, county commissioners, or municipal officers, aforesaid, concrete may be used in repairing or building of bridges or the substructure thereof, Maine granite shall be set up as an alternate competitive construction material, and said officials shall require alternate bids to be presented, one based on the use of concrete and the other on use of granite on all or such part of the project as may be deemed feasible from an engineering standpoint.

**Sec. 111. Bond for performance of contract.** R. S. c. 27, § 117. No contract shall be awarded unless its faithful performance shall be secured to the state by a bond in penal sum of not less than 20% of the amount of the contract.

### Excavations in City Streets

**Sec. 112. Opening of streets in cities, regulated.** R. S. c. 27, § 118. Whenever the paving or repairing of any street or public highway shall have been ordered by the city government, the commissioner of public works or such officer as the city government may appoint shall duly serve upon owners of property abutting on such street or highway, and upon all corporations, persons, firms, and bridge or water districts occupying such street or highway, a notice directing such owners, corporations, persons, firms, and bridge or water districts to make such sewer, water, and conduit connections or other work, as may be designated, within 60 days from date of such notice. At the expiration of the time fixed, and after such street has been paved or repaired, no permit shall be granted to open such street for a period of 5 years except as hereinafter provided.

See c. 20, § 10; 1943, c. 19, § 4.

**Sec. 113. Permits for digging or making excavations in case of emergency.** R. S. c. 27, § 119. 1943, c. 19, § 3. If the owners, corporations, persons, firms, or bridge or water districts comply with the notice given under the provisions of the preceding section, the commissioner of public works, or such officer as the city government may appoint, may, in the case of an emergency, grant and renew permits for digging or making excavations in the driveways of any of the public highways of the city for the laying of gas, water, steam, oil, gasoline, petroleum, or any other liquid, or ammonia pipes or conduits, or for any other lawful purpose. Every permit shall specify the time prescribed by resolution or ordinance or, when no time is prescribed, the commissioner of public works or such officer as the city government may appoint shall specify a time during which said excavation may remain open, the place where such excavation may be made, and the number of square yards of surface which may be disturbed.

See § 119.

**Sec. 114. Penalty.** R. S. c. 27, § 120. Any person or persons, firm, corporation, or bridge or water district, who shall dig or make an excavation in the driveway of any public highway without first obtaining such permit as provided for in the preceding section or who having obtained such permit shall disturb a greater area of surface than specified in such permit, shall be punished by a fine of \$25 for each offense.

See § 119.

**Sec. 115. A record of all permits to be kept; fees for excavation permits.** R. S. c. 27, § 121. The commissioner of public works, or such officer as the city government may appoint, shall keep a record of all permits granted by him, and before any permit is granted, work done by the city employees excepted, the applicant shall pay to the city treasurer for every permit for making an excavation within the driveways of any public highway paved with broken stone, concrete, bitulithic, granite block, brick, wood block, sheet asphalt, or other pavements the following fees: for sheet asphalt, wood block, brick, and granite block, all on concrete base, \$6 per square yard; for granite block on gravel base, bitulithic, and concrete, \$3.50 per square yard; and for broken stone and all other pavements, \$2.50 per square yard. All such fees paid to the city treasurer shall be regularly accounted for by him in his report to the city government, and shall constitute a special fund for the repaving of said cuts; when such cuts are repaired by the street department, the cost thereof shall be charged to said fund.

See § 119.

**Sec. 116. Unlawful to leave trench or excavation open, except by permission; method of filling trenches; penalty; paving to be protected on either side of opening.** R. S. c. 27, §§ 122, 123. It shall be unlawful for any person or persons, firm, corporation, or bridge or water district, having the right of opening or making excavations within the driveways of public highways in the city, to leave open at any time any trench or excavation of a greater length than 200 feet, except by permission of the officer granting such permit; and such person or persons, firm, corporation, or bridge or water district shall fully and completely fill up such trench to the surface of the bed upon which the pavement is to be relaid, before making any further trench or excavation; such filling shall be puddled or rammed as the nature of the soil may require, and shall be done and completed within the time designated in the permit for completing such trench or excavation; any person or persons, firm, corporation, or bridge or water district, failing to comply with the requirements, or infringing on the prohibitions of this section, shall be punished by a fine of \$50 for each offense; provided that these requirements, prohibitions, and penalties shall not apply to excavations in grading, building, or repairing any of the public highways under the supervision of the city authorities. Such person or persons, firm, corporation, or bridge or water district shall protect the paving on either side of the opening by the use of sheet piling or such other means as will prevent the escape of sand from underneath it; and in determining the number of square yards of paving disturbed, there shall be included such area of paving adjoining the trench actually opened as will, in the opinion of the commissioner of public works or such officer as the city government may appoint, be required to be taken up and relaid by reason of such failure to properly protect the same.

See § 119.

**Sec. 117. Work of repairing or filling trenches to be skilfully done; penalty.** R. S. c. 27, § 124. If the work or any part thereof mentioned in the preceding sections of repairing or filling the trenches or excavations aforesaid shall be unskilfully or improperly done, the commissioner of public works, or such officer as the city government may appoint, may forthwith cause the same to be skilfully and properly done, and shall keep an account of the expense thereof; and in such case such person or persons, firm, corporation, or bridge or water district, in default as aforesaid, shall forfeit and pay a penalty equal to the whole of said expense incurred by said commissioner of public works or such officer as the city government may appoint, with an addition of 50%; and thereafter, that is to say, upon the completion of the work and the determination of the costs thereof, the said commissioner of public works or such officer as the city government may appoint shall issue no further or new permit to any person or persons, firm, corporation, or bridge or water district, so in default, until he shall receive in addition to the fees herein above provided, the amount of the penalty as by this section provided and determined.

**Sec. 118. Relaying of pavements.** R. S. c. 27, § 125. When any excavation shall be made in any paved public highway and the trench shall have been filled as required by the 2 preceding sections, the commissioner of public works or such officer as the city government may appoint shall relay the pavement; the cost thereof, including materials, labor, and inspection, shall be paid out of any moneys in the city treasury standing to the credit of the regular fund for this purpose.

**Sec. 119. Map or sketch of location to be filed.** R. S. c. 27, § 126. The party

applying for a permit for said excavation under the provisions of sections 112 to 119, inclusive, must file a map or sketch with the commissioner of public works or such officer as the city government may appoint, showing the location and size of cuts to be made.

**Sec. 120. Duty of commissioner of public works.** R. S. c. 27, § 127. When any excavation shall be made in any paved public highway and said pavement is repaired by a contractor or the commissioner of public works or such officer as the city government may appoint, the commissioner of public works or such officer as the city government may appoint, where said pavements are laid on a concrete base, shall have the concrete cut back on each side of the ditch a distance of 8 inches, and in issuing the permits for cutting the pavements, this extra width shall be charged to the person applying for the same.

See c. 20, § 10, re enforcement of provisions of §§ 112-120 by the state highway commission wherever state or state aid highways are affected.

### Repair of Private Ways Owned in Common

**Sec. 121. Owners of private ways and bridges may call meetings; procedure.** R. S. c. 27, § 128. When four or more persons are owners and occupants of a private way or bridge, any three of them may make written application to a justice of the peace to call a meeting, who may issue his warrant setting forth the time, place, and purpose thereof, a copy of which shall be posted at some public place in the town 7 days before such time. When so assembled they may choose a clerk and a surveyor, to be sworn, and they may determine what repairs are necessary, and the materials to be furnished or amount of money to be paid by each owner therefor and the manner of calling future meetings.

**Sec. 122. Surveyor's duties; penalty for neglect of owners to pay.** R. S. c. 27, § 129. 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 an action on the case.

**Sec. 123. Owners may contract for repair, and cause money to be assessed and collected.** R. S. c. 27, § 130. The owners, at such meeting held under the provisions of section 121, may authorize a contract to be made for making and keeping such way or bridge in repair, by the year or for a less time; may raise money for that purpose, and choose assessors to assess it on such owners and occupants in proportion to their interests, who shall deliver their assessment with a warrant for its collection to the surveyor. Such warrant shall be in substance such as is prescribed for collection of town taxes. The surveyor shall collect the same as town taxes are collected; and be liable for neglect of duty, as town collectors are for similar neglects.

See c. 81, § 75, re warrant for collection of state taxes.

**Sec. 124. Penalties and process.** R. S. c. 27, § 131. Money recovered under the provisions of the 2 preceding sections is for the use of such owners. In any process for its recovery, a description of them in general terms as proprietors and occupants of the way or bridge, clearly describing it therein, is sufficient.



Such process is not abated by the death of any owner, or by the transfer of his interest.

See § 156; c. 46, § 17, re granting of permits by municipal officers for opening streets; c. 46, §§ 18, 20, re erection of poles and wires therein; c. 46, § 31, re damages occasion thereby; c. 50, § 32, re raising of money for roads by owners of unincorporated tracts of land; c. 79, §§ 101-104, re jurisdiction of county commissioners to free toll-bridges; c. 118, § 34, re penalty for advertising upon rocks or other natural objects in highway; c. 118, § 21, re penalty for injuring guide-boards; c. 166, §§ 39-44, re protection of ways from overflow.

### Closing of Ways in Winter

**Sec. 125.** Roads may be closed by county commissioners for part of winter months; procedure; notices; effect of order. R. S. c. 27, § 132. The municipal officers of any city, town, or plantation or any 7 legal voters in any such city, town, or plantation may, at any time between the 1st day of July and the 1st day of December of any year, petition the county commissioners of the county in which such city, town, or plantation is located, setting forth that any road or roads in such city, town, or plantation are so located with reference to population, use, and travel thereon, that it is unnecessary to keep said road or roads broken out and open for travel during the months of December, January, February, March, and April, or any part of such months, and praying said commissioners, after notice and hearing on such petition, to decide whether such road or roads shall be kept open or closed during such period or part thereof, and for how many years not to exceed 10, such closing order, if made as prayed for, shall be operative.

The commissioners, upon receipt of such petition, shall fix a time and place in said city, town, or plantation for a public hearing thereon and shall give notice thereof by causing attested copies of such petition and order of notice thereon to be posted in 2 public places in such city, town, or plantation and published in some newspaper printed in the county at least 7 days before the time of such hearing. The commissioners, at the time and place fixed by such notice, shall hear and consider such evidence as may be offered as to the necessity of closing such road or roads to travel or directing that such road or roads be not broken out during such period, or any part thereof, and if satisfied of the necessity thereof, they may make such orders relating thereto as in their judgment the facts warrant.

Any road or roads closed or in regard to which the commissioners have made an order as to their use shall be marked by notices posted at both ends thereof, showing in substance such order or regulation, which notices shall be signed by the commissioners.

The order of the commissioners, after proceedings under the provisions of this section, shall relieve such city, town, or plantation of any obligation to keep said road or roads open or broken out during the period fixed by such order; but the order of said commissioners shall not prevent any city, town, or plantation from keeping said roads open if said city, town, or plantation shall at any time desire to do so.

Said commissioners shall retain jurisdiction of said cause and upon a petition, by the municipal officers of said city, town, or plantation or of any 7 legal voters thereof, praying for a modification or annulment of any orders promulgated by the county commissioners, filed with said commissioners, at any time, subsequent to 1 year from the date of any such order, the commissioners shall give a similar notice to that provided in the 2nd paragraph of this section and

fix a time for hearing thereon, within 20 days following such filing. After hearing, the commissioners may annul, alter, or modify their original orders.

### Prevention of Abuse of Ways

**Sec. 126. Prevention of abuse of highways by motor driven and horse drawn vehicles during certain seasons of the year.** R. S. c. 27, § 133. The state highway commission on state highways and the municipal officers of the several cities, towns, and plantations on all other highways within their respective municipalities are authorized to promulgate such reasonable rules and regulations as in their judgment may be necessary to insure the proper use and prevent abuse of all highways by motor driven and animal drawn vehicles during such season of the year as said highways require such special protection. All rules and regulations so promulgated shall be kept on file by said municipal officers and they shall cause attested copies of the same to be posted in two or more public places in their respective municipalities. Such rules and regulations shall also be published one or more times in such newspaper or newspapers as they may determine.

**Sec. 127. Penalty for violation and disposition of money collected as damages.** R. S. c. 27, § 134. Any person violating any rule or regulation laid down by the state highway commission or municipal officers under the provisions of the foregoing section shall be punished by a fine of not more than \$100 for each offense, and in addition thereto shall be liable for all damages to the highway occasioned thereby, to be recovered by an action on the case prosecuted in the cases of state highways by the state highway commission in the name of the state, and in case of any other highways by the municipal officers of the city, town, or plantation in which said highway is located. All such sums so recovered as damages to said state highways shall be credited to the fund for maintenance of state highways, and sums recovered as damages for injuries to any other highways shall be transmitted by the municipal officers to the treasurer of the city, town, or plantation and credited to the fund for maintenance of highways.

### Street Sprinkling

**Sec. 128. Appropriation for street sprinkling.** R. S. c. 5, § 132. A city may annually appropriate money for sprinkling all or a part of its public ways, or portions thereof, at its expense in whole or in part, and may determine that certain other public ways or portions thereof shall be sprinkled at the expense in whole or in part of the abutters thereon.

117 Me. 17.

**Sec. 129. Municipal officers to determine assessment on abutters for sprinkling of streets; proceedings.** R. S. c. 5, § 133. If a city, town, or village corporation determines that streets, or certain streets, or portions of streets shall be sprinkled in whole or in part at the expense of the abutters thereon, such expense for sprinkling for a municipal year, and the proportions thereof to be borne by abutters, shall be determined by the municipal officers who after such notice as they may order shall view the abutting estates, and after hearing, determine the amount to be assessed on estates abutting on such streets in proportion to the benefit secured to such abutting estates by such sprinkling. Provided, however, that if street railroads are operated upon such public ways or portions thereof as said city, town, or village corporation may determine to sprinkle at the expense of the abutters, said railroads shall be assessed on the amount of space included

between the outer rails and 1 foot beyond on each side extended such distance as such railroads operate on said way or portion thereof to be sprinkled, at the same proportionate rate as said space bears to the amount assessed in the whole space included within said limits of said public way; and provided, further, that the provisions of this section as to sprinkling streets shall not apply to suburban districts, but only to thickly populated portions of a city, town, or village corporation, nor to tracks laid along the side of streets or ways; and the amount assessed against a street railroad for such sprinkling in any street shall not exceed  $\frac{1}{3}$  of the cost of such sprinkling along the line of said railroad. Instead of paying an assessment as above provided, a street railroad may sprinkle its tracks at its own expense.

The amount of such assessment upon each estate and upon said railroad shall be determined by the municipal officers or, if said municipal officers so designate, by the board of public works, board of street commissioners, superintendent of streets, or other officers, and said municipal officers or other officers or officer as aforesaid as soon as may be after the 1st day of April of each municipal year shall cause a list of such streets or portions thereof to be made, specifying each abutting estate, the length of track of street railroads on such streets to be sprinkled, and the amount determined to be assessed as aforesaid, against each abutting estate and said railroad and certify and commit said list to the assessors of taxes.

**Sec. 130. Tax to be assessed; lien.** R. S. c. 5, § 134. The assessors shall assess the tax provided for in the preceding section and shall include such assessment in the tax list and warrant committed by them to the collector of taxes for that municipal year, and it shall be included in the annual tax bill, or if the estate so assessed is otherwise exempt from taxation, it shall be rendered as a tax bill. Such assessment shall be a lien upon the estate, and shall be levied, collected, reassessed, paid, apportioned, or bear interest and become payable in the same manner as, and shall be a part of, the tax for that year on such estate; but the assessors shall make no abatement thereof except upon the recommendation of the board of officers by whom the list was certified to them.

138 Me. 117.

#### Street Sliding

**Sec. 131. Street sliding may be restricted; penalty.** R. S. c. 5, § 76. Municipal officers may designate public streets, roads, or sidewalks whereon no person shall slide with any vehicle under a penalty of not more than \$5 and the forfeiture of the vehicle, to be recovered on complaint to the use of the town where the offense is committed.

**Sec. 132. Record of such restriction to be made.** R. S. c. 5, § 77. When streets, roads, or sidewalks have been so designated under section 131, the municipal officers shall cause such designation to be recorded in the records of the town, and their action shall be in force until modified or annulled by like authority. Police officers and constables shall enforce the provisions of the preceding section.

#### Sewers and Drains

**Sec. 133. Highways not to be opened without consent.** R. S. c. 25, § 1. Whoever digs up the ground in a highway or street to lay or repair any drain or common sewer without the written consent of the municipal officers forfeits for each offense \$4 to the town.

See §§ 105, 149, 150; 92 Me. 493.

**Sec. 134. Construction of drains, authorized by vote of the town; expense and control thereof; notice; damages.** R. S. c. 25, §§ 2, 3. The municipal officers of a town, or a committee duly chosen by the town, may, at the expense of the town, construct public drains or sewers along or across any public way therein; and through any lands of persons or corporations, when they deem it necessary for public convenience or health; but neither the municipal officers of the town, nor such committee, shall construct any public sewer therein until the same shall be authorized by vote of said town, and an appropriation made for the purpose; and when constructed such sewers shall be under the control of the municipal officers.

Before the land is so taken, notice shall be given, and damages assessed and paid therefor as is provided for the location of town ways.

See §§ 29, 32, 33, 149, 150; c. 79, § 39; \*51 Me. 524; 56 Me. 410; 67 Me. 53; \*74 Me. 272; \*82 Me. 355; 83 Me. 582; 86 Me. 538; \*95 Me. 310, 315; \*99 Me. 79; \*100 Me. 262; 101 Me. 313; 103 Me. 123; 110 Me. 201; \*111 Me. 122; 129 Me. 447.

**Sec. 135. Proceedings when public sewer or drain crosses right of way of railroad.** R. S. c. 25, § 4. Whenever a public drain or sewer is located and about to be constructed under the general provisions of law across the right of way of any railroad, unless the municipal officers or committee of the city or town which located the drain or sewer shall agree with the corporation operating such railroad as to the place, manner, and conditions of the crossing, the public utilities commission, upon petition of either party, after notice and hearing, shall determine the place, manner, and conditions of such crossing; all the work within the limits of such railroad location shall be done under the supervision of the officers of the corporation operating said railroad and to the satisfaction of the commission, and the expense thereof shall be borne by the city or town in which said drain or sewer is located; provided, however, that any additional expense in the construction of that part of the sewer or drain within the limits of the right of way of said railroad occasioned by the determination of said commission shall be borne by said railroad company or by the city or town in which said drain or sewer is located, or shall be apportioned between such company and the city or town as may be determined by said commission. Said commission shall make report of their decision in the same manner as in the case of highways located across railroads and subject to the same right of appeal.

See §§ 149, 150.

**Sec. 136. Expense of construction of drains, etc., how estimated and assessed.** R. S. c. 25, § 5. When any town has constructed and completed a public drain or common sewer, the municipal officers shall determine what lots or parcels of land are benefited by such drain or sewer, and shall estimate and assess upon such lots and parcels of land, and against the owner thereof, or person in possession, or against whom the taxes thereon shall be assessed, whether said person to whom the assessment is so made shall be the owner, tenant, lessee, or agent, and whether the same is occupied or not, such sum not exceeding such benefit as they may deem just and equitable towards defraying the expenses of constructing and completing such drain or sewer, the whole of such assessments not to exceed  $\frac{1}{2}$  the cost of such drain or sewer, and such drain or sewer shall forever thereafter be maintained and kept in repair by such town. The municipal officers shall file with the clerk of the town the location of such drain or sewer, with a profile description of the same, and a statement of the amount assessed upon each lot or parcel of land so assessed, and the name of the owner of such lots or parcels of land or person against whom said assessment shall be made, and the clerk of such town shall record the same in a book kept for that

purpose, and within 10 days after filing such notice, each person so assessed shall be notified of such assessment by having an authentic copy of said assessment, with an order of notice signed by the clerk of said town, stating the time and place for a hearing upon the subject matter of said assessments, given to each person so assessed or left at his usual place of abode in said town; if he has no place of abode in said town, then such notice shall be given or left at the abode of his tenant or lessee if he has one in said town; if he has no such tenant or lessee in said town, then by posting the same notice in some conspicuous place in the vicinity of the lot or parcel of land so assessed, at least 30 days before said hearing, or such notice may be given by publishing the same 3 weeks successively in any newspaper published in said town, the 1st publication to be at least 30 days before said hearing; a return made upon a copy of such notice by any constable in said town or the production of the paper containing such notice shall be conclusive evidence that said notice has been given, and upon such hearing the municipal officers shall have power to revise, increase, or diminish any of such assessments, and all such revisions, increase, or diminution shall be in writing and recorded by such clerk.

84 Me. 212; 86 Me. 379; \*110 Me. 195; 113 Me. 208.

**Sec. 137.** After hearing, assessment may be determined by arbitration, if any person is dissatisfied. R. S. c. 25, § 6. Any person not satisfied with the amount for which he is assessed under the provisions of the preceding section may, within 10 days after such hearing, by request in writing given to such clerk, have the assessment upon his lot or parcel of land determined by arbitration. The municipal officers shall nominate 6 persons who are residents of said town, two of whom selected by the applicant with a third resident person selected by said 2 persons shall fix the sum to be paid by him, and the report of such referees made to the clerk of said town and recorded by him shall be final and binding upon all parties. Said reference shall be had and their report made to said clerk within 30 days from the time of hearing before the municipal officers as provided in section 136.

110 Me. 194; 113 Me. 208.

**Sec. 138.** Conditions upon which private drains may be entered into public drains. R. S. c. 25, § 7. Any person may enter his private drain into any public drain or common sewer while the same is under construction and before the same is completed and before the assessments are made, on obtaining a permit in writing from the municipal officers or the sewer board having the construction of the same in charge; but after the same is completed and the assessments made, no person shall enter his private drain into the same until he has paid his assessment and obtained a permit in writing from the town treasurer, by authority of the municipal officers. All permits given to enter any such drain or sewer shall be recorded by the clerk of said town before the same are issued.

**Sec. 139.** Lien on lots for payment of assessments; sale for non-payment; redemption. R. S. c. 25, §§ 8, 9. All assessments made under the provisions of section 136 shall create a lien upon each and every lot or parcel of land so assessed and the buildings upon the same, which lien shall take effect when the municipal officers file with the town clerk the completed assessment and shall continue 1 year thereafter; and within 10 days after the date of hearing on said assessment the town clerk shall make out a list of all such assessments, the amount of each, and the name of the person against whom the same is assessed, and he shall certify the list and deliver it to the treasurer of said town; if said assessments are not paid within 3 months from the date thereof, the treasurer

shall sell, at public auction, such of said lots or parcels of land upon which such assessments remain unpaid, or so much thereof as is necessary to pay such assessments and all costs and incidental charges; he shall advertise and sell the same within 1 year from the time said assessments are made, as real estate is advertised and sold for taxes under the provisions of chapter 81, and upon such sale, shall make, execute, and deliver his deed to the purchaser, which shall be good and effectual to pass the title of such real estate; the sum for which such sale shall be made shall be the amount of the assessment and all costs and incidental expenses.

Any person to whom the right by law belongs may, at any time within 1 year from the date of said sale, redeem such real estate by paying to the purchaser or his assigns the sum for which the same was sold, with interest thereon at the rate of 20% a year, and the costs of reconveyance.

See c. 81, §§ 140-147, re sale of land for taxes in incorporated places.

**Sec. 140. Actions for collection. R. S. c. 25, § 10.** If assessments under the provisions of section 136 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 an action against the party so assessed for the amount of said assessment, as for money paid, laid out, and expended, in any court competent to try the same, and in such suit may recover the amount of such assessment with 12% interest on the same from the date of said assessments and costs.

\*84 Me. 215; \*110 Me. 193; \*113 Me. 208.

**Sec. 141. Persons paying assessment to have lien on lot and buildings; enforcement. R. S. c. 25, § 11.** When any such assessment under the provisions of section 136 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 an action of assumpsit as for money paid, laid out, and expended, and by attachment in the way and manner provided for the enforcement of liens upon buildings and lots, under the provisions of chapter 164, which lien shall continue 1 year after said assessment is paid.

**Sec. 142. Application of §§ 136-141. R. S. c. 25, § 12.** The provisions of the 6 preceding sections shall not apply to any city or town until they shall have been accepted by the inhabitants of such town or the city government of such city at a meeting legally called therefor.

**Sec. 143. Private drains, application for permits; regulations. R. S. c. 25, § 13.** Abutters upon the line of a public drain existing in any city or town which has not accepted the provisions of the 7 preceding sections, and abutters upon the line of a public drain constructed prior to such acceptance, and the owners of contiguous private drains may enter and connect with such public drain on written application to the municipal officers distinctly describing the land to which it applies and paying therefor what they determine. They shall then give the applicants written permits so to enter, which shall be available to the owner of the land so described, his heirs, and assigns, and shall run with the land without any other or subsequent charge or payment. Said officers shall establish such

other regulations and conditions for entering public drains as they deem expedient.

95 Me. 310; 97 Me. 510.

**Sec. 144. Amount to be paid for permits, how adjusted.** R. S. c. 25, § 14. If any person is dissatisfied with the sum which he is required to pay to enter a public drain, and, within 10 days after notice thereof, requests in writing to have it determined by arbitration, said municipal officers shall nominate 6 persons, any two of whom selected by the applicant with a third person selected by himself may fix the sum to be paid; and by paying it and the fees of the arbitrators, the applicant shall be entitled to a permit.

**Sec. 145. Drains heretofore laid.** R. S. c. 25, § 15. All drains, heretofore made at the expense of a town, shall be maintained, managed, controlled, and entered the same as if made under the provisions of sections 133 to 156, inclusive, subject to the rights of private persons therein.

\*74 Me. 272.

**Sec. 146. Penalty for connecting private drains with public, without permission.** R. S. c. 25, § 16. 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; and such person forfeits to the town where the offense is committed, not more than \$200, to be recovered by indictment or action of debt.

**Sec. 147. Penalty for violation of permit, and for nuisances.** R. S. c. 25, § 17. If any person wilfully or negligently violates any condition or regulation prescribed in his permit, said officers may forthwith disconnect his drain from the public drain and declare his permit forfeited; and such person, his heirs, and assigns shall not be allowed to enter it again without a new permit. Whoever by the construction or use of a private drain commits a nuisance is liable therefor notwithstanding anything herein contained.

57 Me. 438.

**Sec. 148. Drains to be kept in repair; penalty for neglect.** R. S. c. 25, § 18. After a public drain has been constructed and any person has paid for connecting with it, it shall be constantly maintained and kept in repair by the town so as to afford sufficient and suitable flow for all drainage entitled to pass through it; but its course may be altered or other sufficient and suitable drains may be substituted therefor. If such town does not so maintain and keep it in repair, any person entitled to drainage through it may have an action against the town for his damages thereby sustained.

56 Me. 410; \*66 Me. 155; 82 Me. 359; 95 Me. 310; 97 Me. 510; 99 Me. 143; \*100 Me. 263; 101 Me. 312; 103 Me. 121; \*111 Me. 121.

**Sec. 149. Proceedings to be recorded; prosecutions.** R. S. c. 25, § 19. All proceedings of municipal officers under the provisions of sections 133 to 148, inclusive, shall be at their legal meetings. A suitable record shall be made of all such permits, exhibiting the persons and lands to which they apply. Said officers have exclusive direction, on behalf of their town, of all prosecutions under the provisions of this chapter.

95 Me. 310.

**Sec. 150. Payment for permit in 60 days; fees of arbitrators.** R. S. c. 25, § 20. If any person, after the sum to be paid by him for a permit under the provisions of sections 133 to 149, inclusive, has been determined by arbitration,

neglects to pay it within 60 days after notice thereof with the fees of the arbitrators, he shall have no benefit of such determination or of his permit. The municipal officers may determine the fees of the arbitrators, which shall be paid in advance, if required; and their award shall be returned by them to the town clerk and recorded with the proceedings of said officers in establishing such drains.

**Sec. 151. Private drain, how repaired, in case of owner's neglect. R. S. c. 25, § 21.** 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 an action on the case against any one or more of the persons using such drain.

51 Me. 524.

**Sec. 152. Wilfully or carelessly injuring public drains. R. S. c. 25, § 22.** Whoever wilfully 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 an action on the case for double the amount of injury and damages thereby caused, in addition to all other legal penalties therefor.

**Sec. 153. All who enter a private drain must pay their proportion. R. S. c. 25, § 23.** When a person, at his own expense, lays a common drain or sewer, all who join or enter it shall pay him their proportion of such expense; and the expense of opening and repairing shall be paid by all benefited, to be determined in each case by the municipal officers, subject to appeal to the county commissioners.

134 Me. 134.

**Sec. 154. Payment in 10 days after notice. R. S. c. 25, § 24.** The municipal officers shall notify each person of the amount which he is to pay under the provisions of the preceding section, and to whom; and if not paid in 10 days, he shall pay double the amount with cost.

**Sec. 155. Notice to be given before opening for repairs. R. S. c. 25, § 25.** Before such drain is opened for repairs under the provisions of section 153, all persons interested shall have 7 days' notice thereof, given as the municipal officers direct; and if anyone objects and said officers think his objection reasonable, he shall not be liable to any expense therefor; if not thought reasonable, or if no objection is made within 3 days, they may give written permission to proceed.

### Highway Ditches and Drains

**Sec. 156. Towns may construct ditches and drains to drain highways; control; liability for damages; procedure. R. S. c. 25, §§ 26, 27.** The municipal officers of a town may at the expense of the town construct ditches and drains to carry water away from any highway or road therein, and over or through any lands of persons or corporations when they deem it necessary for public convenience or for the proper care of such highway or road, provided that no such ditch or drain shall pass under or within 20 feet of any dwelling-house without the consent of the owner thereof. Such ditches or drains shall be under the control of said municipal officers and wilful interference therewith shall be punished as is provided by statute for obstruction in a traveled road. If such town does not maintain and keep in repair such ditches and drains, the owner or



occupant of the lands through or over which they pass may have his action against the town for damages thereby sustained.

Before land is so taken, notice shall be given and damages assessed and paid therefor as is provided for the location of town ways.

See §§ 29, 33, 76; c. 20, § 7; c. 124, § 23; \*112 Me. 321.

#### Ditches on Salt Marshes

**Sec. 157. Ditches subject to jurisdiction of fence-viewers.** R. S. c. 32, § 17. The owners or occupants of salt marsh in any town, enclosed by ditches for drainage and partition, shall maintain such ditches between their own and the adjoining enclosures while they continue to improve them, in proportion to the benefits accruing to each by such drainage, in the judgment of the fence-viewers in such town, who shall have jurisdiction thereof the same as they have of fences; and all the duties, obligations, and liabilities of adjoining owners or occupants of such marsh as to making, repairing, and maintaining such ditches, and the powers, duties, penalties, and fees of fence-viewers in relation thereto shall be the same as prescribed in sections 188 to 203, inclusive, in relation to partition fences.

See c. 80, § 12, re appointment of fence-viewers.

**Sec. 158. Width and depth of ditches; complainant to recover of delinquent owners expense of making.** R. S. c. 32, § 18. 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 1 month after demand, the complainant may recover of him double the amount thereof with interest at the rate of 1% a month, in an action on the case.

**Sec. 159. Provisions respecting improved lands; exemption from maintenance of ditches, while lands lie common.** R. S. c. 32, § 19. When a ditch between improved lands of different owners is divided by fence-viewers or by the written agreement of the parties recorded in the town clerk's office where the land lies, the owners shall make and maintain it accordingly; but if any person lays his lands common, determines not to improve any part of them adjoining such ditch, and gives 6 months' notice to all occupants of adjoining lands, he shall not be required to maintain such ditch while his lands so lie common and unimproved.

#### Improvement of Marshes, Meadows, and Swamps

**Sec. 160. Improvement of lands owned by several proprietors.** R. S. c. 32, § 20. When any meadow, swamp, marsh, beach, or other low land is held by several proprietors, and it becomes necessary or useful to drain or flow the same, or to remove obstructions in rivers or streams leading therefrom, such improvements may be effected under the direction of commissioners in the manner hereinafter provided.

**Sec. 161. Application to superior court; notice.** R. S. c. 32, § 21. The proprietors, or a majority of them in interest, may apply by petition to the superior court sitting in the county where the lands or any part of them lie, setting forth

the proposed improvements and the reasons therefor, and the court shall cause notice of the petition to be given in such manner as it may judge proper, to any proprietors who have not joined in the petition, that they may appear and answer thereto.

**Sec. 162. Appointment of commissioners.** R. S. c. 32, § 22. If upon hearing, it appears that the proposed improvements will be for the general advantage of the proprietors, the court may appoint 3 suitable persons as commissioners, who shall be sworn to the faithful discharge of their duties; view the premises, notify parties concerned, hear them as to the best manner of making the improvements, and prescribe the measures to be adopted for that purpose.

**Sec. 163. Commissioners to make improvements.** R. S. c. 32, § 23. The commissioners shall, according to the tenor of the petition 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; and they shall meet from time to time, as may be necessary, to cause the works to be completed according to their directions.

**Sec. 164. May employ workmen, unless proprietors do the work.** R. S. c. 32, § 24. The commissioners may employ suitable persons to erect the dams or dikes or to perform the other work, under their direction, for such reasonable wages as they may agree upon; unless the proprietors do the same in such time and manner as the commissioners direct.

**Sec. 165. Expenses to be apportioned among proprietors.** R. S. c. 32, § 25. The commissioners shall apportion the whole charge and expense of the improvements and of executing the commission among the proprietors of the lands, having regard to the quantity, quality, and situation of each proprietor's part thereof, and the benefit that he will derive from the improvements, and shall assess the same upon the proprietors.

**Sec. 166. Collector may be appointed; duties and powers.** R. S. c. 32, § 26. The commissioners may appoint a collector of the moneys assessed, and shall give him a warrant to collect, pay over, and account for the same to such person as they appoint. The collector shall have the same power, and proceed in like manner in collecting the assessment, as is provided for collecting town taxes.

See c. 81, §§ 68-131, re collection of taxes in incorporated places.

**Sec. 167. Liability of collectors.** R. S. c. 32, § 27. If the collector neglects for 20 days after being thereto required by the commissioners to account for and pay over the money collected, the commissioners may recover of him the whole amount committed to him for collection, which, after deducting the expense of recovery, shall be applied and accounted for by the commissioners as if it had been collected and paid over by the collector, pursuant to his warrant.

**Sec. 168. Pay of collector and commissioners, how fixed.** R. S. c. 32, § 28. The collector shall be allowed such compensation for his services as may be agreed upon between him and the commissioners; and the commissioners shall be allowed such compensation as may be ordered by the court.

**Sec. 169. Commissioners to make return to court.** R. S. c. 32, § 29. The commissioners shall, as soon as may be after the completion of the business, make a return to court of their doings under the commission, including an

account of all money assessed and collected by their order, and of the disbursement thereof.

**Sec. 170. Commissioners to determine the amount to be paid by life tenant and by landlord.** R. S. c. 32, § 30. When it appears to the commissioners that part of the land is held by a tenant for life, or years, they shall determine how much of the sum apportioned on that part of the premises shall be paid by such tenant, and how much by the landlord or reversioner; and shall assess the same accordingly, unless the parties concerned agree to an apportionment; and every such tenant, landlord, and reversioner shall be considered a proprietor.

**Sec. 171. Possessor of mortgaged property, considered proprietor.** R. S. c. 32, § 31. If any part of the land is mortgaged, the mortgagor or mortgagee, in possession, shall be considered the proprietor; and all sums paid by the mortgagee by order of the commissioners shall be allowed to him, as like sums paid by him for improvements.

**Sec. 172. Commissioners may enter premises of third parties, open flood-gates, and build temporary dams; damages.** R. S. c. 32, §§ 32, 33. When the commissioners find it necessary or expedient to reduce or raise the water for the purpose of obtaining a view of the premises or for more convenient or expeditious removal of obstructions, they may open the flood-gates of a mill, or make other needful passages through or around the dam thereof, or erect a temporary dam on the land of any person not a party to the proceedings, and may maintain such dam or passages for the water so long as may be necessary for the purposes aforesaid.

All damages thus occasioned shall be estimated and determined by the commissioners, unless agreed upon between them and the parties concerned; and shall be paid by the commissioners out of the money to be assessed and collected by them as before provided.

**Sec. 173. Appeal.** R. S. c. 32, § 34. 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 before the end of the term following that at which the return is made.

**Sec. 174. Court may affirm, reverse, or alter commissioners' order; jury.** R. S. c. 32, § 35. The court, upon such appeal, may affirm, reverse, or alter any adjudication or order of the commissioners, and make such order therein as law and justice require. All questions of fact arising upon the hearing of the appeal shall, on motion of either party, be tried by a jury in such manner as the court directs.

**Sec. 175. Notice required before entering upon premises of a third party; appeal.** R. S. c. 32, § 36. The commissioners, before proceeding to open flood-gates, 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 seasonable notice in writing of their intention, to enable him to appear before them and object thereto; and 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 that the appeal is entered at the court held next after the expiration of 7 days from the time of claiming the same.

**Sec. 176. Exceptions.** R. S. c. 32, § 37. Any person aggrieved by any opinion, direction, or judgment of the court in any matter of law may allege exceptions thereto, which shall be reduced to writing; and when found to be true and not deemed frivolous, shall be signed by the presiding justice and thereupon the questions of law arising therein shall be determined as in other actions.

**Sec. 177. After completion of improvements, repairs made at expense of occupying proprietors.** R. S. c. 32, § 38. After dams, dikes, and removal of obstructions have been completed in pursuance of the provisions of sections 160 to 176, inclusive, repairs thereon may be made on petition 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.

**Sec. 178. Proprietors of low lands may hold meetings, and make rules for maintenance of dikes.** R. S. c. 32, § 39. In addition to the foregoing provisions for repairing dikes and dams contained in sections 160 to 177, inclusive, the proprietors of any meadow, swamp, marsh, beach, or other low lands, after the completion of the dams, dikes, and removal of obstructions, as hereinbefore provided, may hold regular meetings when they adjudge proper, and make such rules for the maintenance and preservation of such dikes and dams as their common interest require.

**Sec. 179. Meetings, how called.** R. S. c. 32, § 40. Upon written application of any three or more of said proprietors to any justice of the peace, he shall issue his warrant to one of the applicants requiring him to call a meeting of the proprietors, expressing in said warrant the time, place, and purposes thereof.

**Sec. 180. Notice of meetings.** R. S. c. 32, § 41. Notice of said meeting shall be served at least 14 days previous to the time appointed therefor, when all the proprietors reside in the town where the land lies, by reading the warrant to each proprietor, or giving him a copy in hand, or by leaving a copy at his usual place of abode; and in case one or more of the proprietors reside without the town or plantation, notice of such meeting shall be given them by publishing a copy of such warrant in some newspaper printed in the county, or in the state paper 3 weeks successively, the last publication to be at least 14 days before the time appointed for said meeting.

**Sec. 181. Votes of each proprietor.** R. S. c. 32, § 42. At such meeting and all other meetings of said proprietors, each shall have 1 vote for every acre owned by him and 1 vote for a fraction of an acre greater than one-half. Absent proprietors may vote by written proxy.

**Sec. 182. Officers; election and qualification.** R. S. c. 32, § 43. At such meeting said proprietors may by ballot elect a clerk, 3 or 5 assessors, a collector, and such other officers and committees as may be deemed needful, and may adopt such needful by-laws and standing regulations as are not inconsistent with law; and may determine the manner of calling and notifying future meetings. The clerk, assessors, and collector shall each be sworn. The clerk may be sworn by the moderator presiding at the meeting of his election. Officers elected at the annual or other meetings shall continue in office until others are chosen and qualified in their stead.

**Sec. 183. Record of proprietors.** R. S. c. 32, § 44. At or immediately after

the first meeting, the clerk shall enter in a suitable book the names of the several proprietors and the number of acres owned by each, and any subsequent transfer of interest shall also be entered by him within 3 months after it is made, if known to him.

**Sec. 184. Committee may be chosen to ascertain needed repairs.** R. S. c. 32, § 45. At any meeting called for the purpose, a committee of not less than three may be chosen to investigate the condition of such dikes and dams, to ascertain what repairs are needful, and report at an adjourned meeting, at which meeting the same or any other committee chosen therefor may be authorized to make needful repairs, and report the expense thereof at an adjourned or other meeting.

**Sec. 185. Proprietors may raise money and assess same.** R. S. c. 32, § 46. At any meeting called for that purpose, said proprietors may raise money for defraying common charges and for the payment of cost and expenses of such repairs as may have been incurred under the provisions of the preceding section, which shall be assessed upon the proprietors by the assessors in proportion to their several interests, and which they shall commit to the collector for collection by an appropriate warrant for its collection, directing him to pay it over to the clerk or other proper officer designated by vote of the proprietors, and the collector shall have the same power and shall collect the same as collectors of towns are authorized to collect town taxes.

**Sec. 186. Proprietor, declining to use land, exempt from payment of taxes.** R. S. c. 32, § 47. If any proprietor declines to cultivate, use, or take profit from his portion of such lands, and gives written notice of his intentions to do so to the clerk of the proprietors, he shall not be regarded as liable to pay any tax or assessment on account of his portion thereof while he neglects to cultivate, use, and take profit therefrom, nor shall he be entitled to vote at the meetings of said proprietors.

**Sec. 187. Discontinuance of association.** R. S. c. 32, § 48. A  $\frac{2}{3}$  part in interest of the proprietors entitled to vote at any legal meeting called for that purpose may discontinue their association, but not to take effect until 6 months after the vote for that purpose.

#### Fences

**Sec. 188. Legal fences.** R. S. c. 32, § 1. All fences 4 feet high and in good repair, consisting of rails, timber, stone walls, iron, or wire, and brooks, rivers, ponds, creeks, ditches, and hedges, or other things which in the judgment of the fence-viewers having jurisdiction thereof are equivalent thereto, are legal and sufficient fences; provided, however, that no barbed wire fence shall be accounted legal and sufficient, unless it is protected by an upper rail or board of wood, and no division fence built after the 26th day of March, 1897, within 30 rods of any dwelling-house in the construction of which barbed wire is used, shall be accounted legal and sufficient, except by mutual written consent of the adjoining owners.

See c. 128, §§ 6, 7, re fences as nuisances; \*82 Me. 126; \*98 Me. 513; 112 Me. 342.

**Sec. 189. Maintenance.** R. S. c. 32, § 2. The occupants of lands enclosed with fences shall maintain partition fences between their own and the adjoining enclosures, in equal shares, while both parties continue to improve them.

60 Me. 560; 112 Me. 342.

**Sec. 190. If either neglects, proceedings of fence-viewers on application.** R. S. c. 32, § 3. If any party neglects or refuses to repair or rebuild any such fence, which he is legally required to maintain, the aggrieved party may complain to two or more fence-viewers of the town where the land is situated, who, after due notice to such delinquent, shall proceed to survey it, and if they determine that it is insufficient, they shall signify it in writing to the delinquent occupant and direct him to repair or rebuild it within such time as they judge reasonable, not exceeding 30 days. If the fence is not repaired or rebuilt accordingly, the complainant may make or repair it.

8 Me. 83; 13 Me. 376; 22 Me. 546; 29 Me. 367; 33 Me. 65; 35 Me. 27; 48 Me. 375; 53 Me. 100; 107 Me. 171; 112 Me. 342.

**Sec. 191. Complainant may recover double compensation for building fence, in certain cases.** R. S. c. 32, § 4. When the complainant has completed such fence and, after notice given, it has been adjudged sufficient by two 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 1 month after demand, he may recover the same by an action on the case, 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 herein provided.

22 Me. 547; 29 Me. 366; 50 Me. 86; 58 Me. 452; 78 Me. 244; 87 Me. 116; 107 Me. 171; 112 Me. 342.

**Sec. 192. Proceedings for division of partition fences; record of assignments by fence-viewers; fees.** R. S. c. 32, § 5. 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 as aforesaid, 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 an action on the case against the other party, if not paid within 6 months after demand. Parties to assignments under the provisions hereof 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 an action on the case, double the amount of his said proportion thereof.

\*5 Me. 359; 8 Me. 83; 29 Me. 367; 33 Me. 65; \*34 Me. 334; 35 Me. 28; 48 Me. 375; 53 Me. 100; 58 Me. 452; 60 Me. 557, 559; 68 Me. 535; 78 Me. 243; 87 Me. 116; 107 Me. 172; 112 Me. 342.

**Sec. 193. Each party to build part assigned; if not, remedy for either party.** R. S. c. 32, § 6. If any party refuses or neglects to build and maintain the part thus assigned to him, it may be done by the aggrieved party who is entitled to double the value and expenses, to be ascertained and recovered as provided in section 191, and shall have a lien therefor on the land owned or occupied by the

party neglecting or refusing to build or maintain the partition fence assigned to him by the fence-viewers, to be enforced by attachment made within 1 year from the day of division by them.

58 Me. 452; 68 Me. 535; 78 Me. 242; 87 Me. 116; 96 Me. 484.

**Sec. 194. Repair.** R. S. c. 32, § 7. All division fences shall be kept in good repair throughout the year, unless the occupants of adjacent lands otherwise agree.

**Sec. 195. Fences may vary from the dividing line in certain cases.** R. S. c. 32, § 8. When in the opinion of the fence-viewers having jurisdiction of the case it is, by reason of natural impediments, impracticable or unreasonably expensive to build a fence on the true line between adjacent lands, and the occupants disagree respecting its position, on application of either party as provided in section 192, and after notice to both parties, and a view of the premises, they may determine by a certificate under their hands communicated to each party on which side of the true line, and at what distance, or whether partly on one side and partly on the other, and at what distances, the fence shall be built and maintained, and in what proportion by each party; and either party may have the same remedy against the other, as if the fence were on the true line.

**Sec. 196. Assignment of parts before fence is built.** R. S. c. 32, § 9. When adjacent lands have been occupied in common without a partition fence and either party desires to occupy his in severalty, or when it is necessary to make a fence running into the water and the parties liable to build and maintain it disagree, either party may apply to the fence-viewers of the town, who shall proceed as in section 192; except that the fence-viewers may allow longer than 30 days for building the fence, having regard to the season of the year. In other respects the remedy shall be as there provided.

**Sec. 197. Occupant ceasing to improve, not to remove his fence if the other will buy.** R. S. c. 32, § 10. When one party ceases to improve his land or lays open his enclosure, he shall not take away any part of his partition fence adjoining the next enclosure improved, if the owner or occupant thereof will pay therefor what two or more fence-viewers, on due notice to both parties, determine to be its reasonable value.

60 Me. 560.

**Sec. 198. Liability of owner beginning to improve land lying in common.** R. S. c. 32, § 11. When any land which has been unenclosed is afterwards enclosed or used for pasturing, its occupant or owner shall pay for one-half 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 two or more of the fence-viewers of the town where such fence stands; and 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 an action on the case for such value and the cost of ascertaining it.

60 Me. 560.

**Sec. 199. If fence is on town line, how divided.** R. S. c. 32, § 12. If the line on which a partition fence is to be made or to be divided is the boundary between two or more towns, or partly in one town and partly in another, a fence-viewer shall be taken from each town.

**Sec. 200. Division of fences, when binding; owners of land lying common**

giving 6 months' notice, not required to build; verbal agreements for division, to be enforced. R. S. c. 32, § 13. When a fence between owners of improved lands is divided either by fence-viewers or by the written agreement of the parties recorded in the town clerk's office where the land lies, the owners shall erect and support it accordingly; but if any person lays his lands common, and determines not to improve any part of them adjoining such fence, and gives 6 months' notice to all occupants of adjoining lands, he shall not be required to maintain such fence while his land so lies common and unimproved; but all partition fences divided by parol agreement and actually built in pursuance of such agreement, including fences so built heretofore, shall be deemed legal fences as if divided by fence-viewers or written agreement, and the adjoining owners shall support their respective portions of fence under such agreement, until otherwise ordered by the fence-viewers on application to them by either party. When a party has constructed his part of a fence in pursuance of a parol or written agreement or assignment of fence-viewers, no assignment shall thereafter be made by fence-viewers depriving him of the full value of such fence or any part thereof.

60 Me. 560.

Sec. 201. Foregoing provisions not applicable to house-lots, nor to agreements. R. S. c. 32, § 14. Nothing herein extends to house-lots, the contents of which do not exceed half an acre; but if the owner of such lot improves it, the owner of the adjacent land shall make and maintain one-half of the fence between them, whether he improves or not; nor do the provisions of sections 188 to 203, inclusive, make void any written agreement respecting partition fences.

2 Me. 73.

Sec. 202. Neglect of duty by fence-viewers. R. S. c. 32, § 15. Any fence-viewer who, when requested, unreasonably neglects to view any fence or to perform any other duties herein required of him forfeits \$3 to any person suing therefor within 40 days after such neglect, and is liable for all damages to the party injured.

Sec. 203. Compensation; recovery. R. S. c. 32, § 16. 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 an action on the case.

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## CHAPTER 85.

### FIRE DEPARTMENTS AND FIRE PREVENTION.

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| Sections 1-9   | Election of Fire Wards and Fire Engineers; Their Authority and Duty. |
| Sections 10-20 | Municipal Inspection of Buildings.                                   |
| Sections 21-31 | Investigation of Fire Hazards and Causes of Fire.                    |
| Sections 32-59 | Fire Prevention.   |
| Sections 60-69 | Licensing of Steam Engineers and Firemen.                            |

#### Election of Fire Wards and Fire Engineers; Their Authority and Duty

Sec. 1. Election of fire wards; penalty for omitting to notify acceptance. R. S. c. 35, § 6. Each town, at its annual meeting, may elect as many fire wards as it deems necessary; and each person so chosen shall be notified in