

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 2

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

not more than \$1,000 for each offense and shall reimburse any person whose property is damaged as a result of such failure for the amount of such property damage and shall be liable in double damages for any injury resulting to any person from such failure. (1955, c. 127, § 3.)

Sec. 14. Interstate and foreign commerce not affected.—No provision of this chapter or of any order or regulation thereunder shall apply to or be construed to apply to interstate or foreign commerce, except so far as such provision may be effective pursuant to the constitution of the United States under the laws of the United States enacted thereunder. (1955, c. 127, § 3.)

Chapter 51.

Rural Electrification Cooperatives.

Sec. 4. Powers.

Cited in *First Nat. Bank of Boston v. Maine Turnpike Authority*, 153 Me. 131, 136 A. (2d) 699.

Chapter 52.

Aqueducts and Water Companies. Right of Eminent Domain.

Section 28. Water Line Crossing Railroad.

Aqueducts and Water Companies.

Sec. 3. Authority of directors; enforcement of assessments.—The directors shall choose one of their number president and may make such assessments on the proprietors of the shares in such aqueduct or funds as they find necessary. If a proprietor fails to pay such assessment for 30 days after notice, they may maintain a civil action in their corporate name to recover the amount thereof or may sell, at auction, so many of his shares as are sufficient to pay the same, with necessary charges. Notice of the sale of such shares shall be given by advertising in some newspaper printed in the county 3 weeks successively, or by posting notifications thereof, 20 days at least before the sale, in at least 2 public places in each town wherein such aqueduct is, or is proposed to be made. The surplus money, if any, arising from such sale shall be paid to the owner of the share so sold. (R. S. c. 48, § 3. 1961, c. 315, § 129.)

Effect of amendment.—The 1961 amendment divided this section, which formerly consisted of one sentence, into four sentences and substituted “a civil action” for “an action on the case” in the present second sentence.

Sec. 5. Powers of proprietors; manner of voting.—The proprietors have one vote for each share and may vote by proxy. For the breach of their by-laws they may impose penalties not exceeding \$30 for each offense; may purchase and hold real estate necessary for their purpose not exceeding \$30,000 in value; and with the written consent of the municipal officers they, or any person, may dig up or open any road for the purpose of laying their pipes or repairing or extending their aqueduct; but not so as to prevent the convenient passage of teams, carriages and motor vehicles. (R. S. c. 48, § 5. 1957, c. 397, § 33.)

Effect of amendment. — The 1957 amendment added the words “and motor vehicles” at the end of the section and made other minor changes.

Sec. 6. Shares sold for debts of holders; franchise, pipes, fountains, etc., sold for corporate debts; redemption; execution, when revived by motion.—Shares in such corporations are personal estate and may be attached on a writ and sold on execution for the debts of the holders, like shares in other corporations. The franchises, fixtures, pipes, fountains and interests in lands of such corporations are liable to attachment and sale on execution, as personal property, for their corporate debts; but the purchaser thereof at such sale shall not interfere with the possession of the corporation for 2 months after the sale. Within that time, it may redeem such franchise and property by paying the sum for which they were sold with interest; but if not so redeemed, the purchaser shall have the same rights under the franchise and to such property as the corporation had. Any creditor of such corporation, whose execution has been satisfied by an ineffectual sale of such franchise or property, may revive the judgment by motion. (R. S. c. 48, § 6. 1959, c. 317, § 25.)

Effect of amendment.—The 1959 amendment divided the original first sentence into three sentences and substituted the word "motion" for the words "scire facias", formerly appearing at the end of the section.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December

1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Location of Property Taken for Public Uses and Assessment of Damages.

Sec. 11. Rights of parties as to procedure.—All locations made and all damages assessed for the taking of property by the exercise of the right of eminent domain, except for property taken by the United States, the state of Maine, or a county or municipality thereof, or a quasi-municipal corporation, or steam railroad corporations, and excepting property which, when taken, is being or is necessary to be used by the owner thereof in the performance of a public duty, shall be made and assessed and the rights of the parties shall be as follows, notwithstanding anything contained in the act granting such right. (R. S. c. 48, § 11. 1963, c. 414, § 28.)

Effect of amendment.—The 1963 amendment deleted "or street railroad."

Sec. 13. Owners of property taken entitled to damages; security.—For all property taken by the exercise of the right of eminent domain the owners are entitled to damages to be paid by the taker and estimated by the county commissioners, on written application of either party, made within 3 years after such taking; or, if proceedings thus commenced fail for causes not affecting the merits, new ones may be commenced within one year thereafter, and when no estimate is made within such time, the owner may maintain a civil action or have any remedy provided. The guardian of a person incapable of giving a valid conveyance whose property is taken may settle and give a valid release for damages; and persons having any interest in such property have the rights and remedies of owners to the extent of their interest. When requested by the owner, said commissioners shall require the taker to give security for the payment of damages and costs by depositing at its risk, with the clerk, within 30 days, specie, notes or obligations of a state or public corporation, or other security satisfactory to the party requiring it. When entitled to it, so much of any specie so deposited shall be paid to him as will satisfy his judgment. Notes or obligations so deposited shall be delivered to the officer having a warrant of distress, to be by him

sold as personal property is sold on execution, to satisfy the warrant and fees, and any balance shall be paid to the taker of such property. (R. S. c. 48, § 13. 1961, c. 317, § 130.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action of trespass” and deleted “herein” formerly preceding “provided” in the first sentence of this section.

Sec. 17. Appeal.—Any person aggrieved by the decision or judgment of the county commissioners in relation to damages for property taken may appeal to the superior court in the county where the property is situated, within 30 days from the date when the report of the commissioners is made, which court shall determine the same by a committee of reference if the parties so agree or by the verdict of its jury; and shall render judgment and issue execution. If the owner appeals and the damage finally recovered is not more than the award of the county commissioners, the taker shall recover costs from the time of appeal, otherwise the owner shall recover costs. If the taker appeals and the damage finally recovered is not less than the award of the county commissioners, the owner shall recover costs from the time of appeal, otherwise the taker shall recover costs. The appellant shall, when such appeal is taken, include in the complaint a statement setting forth substantially the facts of the case and shall give written notice of such appeal with a copy of the complaint to the opposite party. An appeal may be taken to the law court as in other actions. (R. S. c. 48, § 17. 1959, c. 317, §§ 26, 27.)

Effect of amendments. — This section was amended twice by P. L. 1959, c. 317. Section 26 of P. L. 1959, c. 317, rewrote the first sentence of this section. Section 27 rewrote the last two sentences.

Effective date of 1959 amendment.—See note to § 6.

Sec. 19. Damages remaining unpaid; proceedings.—When the damages remain unpaid for more than 30 days after they are due and demanded or the security is not deposited, the person whose property is taken may file in the superior court a complaint praying for an injunction against the use or occupation of his property taken. If proceedings for an estimation of damages are not commenced within 3 years, and the owner of the property files a complaint therefor, the court may estimate the damages, decree their payment and issue an execution therefor. The court, after summary notice to the taker and upon proof of the facts, may, without any bond filed, issue an injunction prohibiting such use and occupation until all damages and costs are paid. If payment has not been made within 90 days a permanent injunction may be issued; and all rights acquired by taking the property cease, and the owner may maintain an action for its recovery and protection. (R. S. c. 48, § 19. 1961, c. 317, § 131.)

Effect of amendment.—The 1961 amendment rewrote this section.

Sec. 20. Service of injunction.—Service of an injunction issued against any person, whether a party to the action or not, may be made upon him and he shall be liable to all the penalties and consequences provided for a breach of it. The court may order persons violating such injunction, after service, or using the property, to show cause at a time fixed, why a decree should not be entered and execution issued against them individually and their goods and estate for the damages, interest, costs and for additional damages and costs for breach of the injunction. Upon service and return of such order, the court may enter such decree as is just and equitable against such persons and issue execution accordingly or may proceed against them for breach of injunction. (R. S. c. 48, § 20. 1961, c. 317, § 132.)

Effect of amendment.—The 1961 amendment substituted “action” for “bill” in the first sentence of this section and substituted “for breach of injunction” for “as for breach of injunction in other chancery cases” in the last sentence thereof.

Sec. 22. Proceedings to cure defect in taking under eminent domain.—Whenever any taking or attempted taking under power of eminent domain shall, in any action now pending or hereafter commenced, have been adjudged defective either from formal errors in proceedings or through failure to provide, in an act expressly conferring the right of eminent domain, for any act or proceeding necessary to carry out such taking, which failure shall be deemed a substantial error by a court of last resort in this state and judgment of title in the plaintiff shall be given, judgment of ouster or writ of possession shall be stayed until the corporation vested with the power of eminent domain shall have had opportunity to retake pursuant to the act conferring the power, if the error is formal, and until remedial legislation shall have been obtained at a session of the legislature next after the rendition of judgment when the error is substantial, and a new taking had pursuant to the amended act; but the new taking shall be had within 90 days from the rendition of said judgment when the error is merely formal, and within 6 months from the adjournment of the legislature next after the rendition of judgment when the error is substantial. Nothing herein contained shall preclude or stay any civil action for damages, and the owner of the land may maintain a civil action for damages the same as if in possession. (R. S. c. 48, § 22. 1961, c. 317, § 133.)

Effect of amendment.—The 1961 amendment substituted “civil action” for “action at law” and “a civil action for damages” for “an action for damages” in the last sentence of this section.

Condemnation Proceedings by Water Districts.

Sec. 23. Necessity of taking determined.—The owner of property which is the subject of appropriation for public purposes by any water district may, upon hearing, have the necessity of the particular appropriation determined by the public utilities commission. (R. S. c. 48, § 23. 1955, c. 258, § 1.)

Effect of amendment.—The 1955 amendment added the words “by the public utilities commission” at the end of this section.

Sec. 24. Proceedings.—The owner of such property may, within 30 days after the beginning of condemnation proceedings, file in the office of the clerk of the public utilities commission, a petition to the commission for a decision as to the necessity of the appropriation. A copy of the petition and order of notice thereon, attested by the clerk, shall be served upon the defendant. (R. S. c. 48, § 24. 1955, c. 258, § 2. 1961, c. 317, § 134.)

Effect of amendments.—The 1955 amendment rewrote this section, which formerly provided for a petition to the superior court and for the appointment by a justice of the superior court of three disinterested commissioners to determine the necessity of the appropriation. The 1961 amendment substituted “defendant” for “respondent” at the end of the second sentence of this section.

Sec. 25. Proceedings before commissioners.—The commissioners shall fix a time for hearing, within the county where the property is situated, and give written notice thereof to the owner and to the district seeking to acquire said property. At the hearing all parties in interest shall be heard either in person or by attorney, and witnesses may be summoned by either party and attendance compelled as before other judicial tribunals; the burden of proof to show the necessity of the particular taking shall rest upon the party seeking to acquire the property. The decision of a majority of the commissioners shall be final as to questions of fact. (R. S. c. 48, § 25. 1955, c. 258, § 3.)

Effect of amendment.—The 1955 amendment inserted the words “within the county where the property is situated” near the beginning of the section and deleted the former last sentence, which related to costs.

Water Line Crossing Railroad.

Sec. 28. Water utility line crossing right-of-way of railroad.—Whenever a line or main of any water utility is located and about to be constructed across the right-of-way of any railroad, unless the officers of such water utility 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 water utility. 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. (1963, c. 242.)

Chapter 52-A.

Peaceful Uses of Atomic Energy.

Sec. 1. Declaration of policy.—The state of Maine endorses the action of the congress of the United States in enacting the atomic energy act of 1954 to institute a program to encourage the widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public; and therefore declares the policy of the state to be:

I. To cooperate actively in the program thus instituted; and

II. To the extent that the regulation of special nuclear materials, source materials and by-product materials, of production facilities and utilization facilities, and of other forms of radiation, and of persons operating such facilities may be within the jurisdiction of the state, to provide for the exercise of the state's regulatory authority so as to conform, as nearly as may be, to the atomic energy act of 1954 and regulations issued thereunder, to the end that there may, in effect, be a single harmonious system of regulation within the state.

The state of Maine recognizes that the development of industries producing or utilizing atomic energy and other forms of radiation may result in new conditions calling for changes in the laws of the state and in regulations issued thereunder with respect to health and safety, working conditions, workmen's compensation, transportation, public utilities, life, health, accident, fire and casualty insurance, the conservation of natural resources, including wildlife, and the protection of streams, rivers and airspace from pollution, and therefore declares the policy of the state to be:

I. To adapt its laws and regulations to meet the new conditions in ways that will encourage the healthy development of industries producing or utilizing atomic energy while at the same time protecting the public interest; and

II. To initiate continuing studies of the need for changes in the relevant laws and regulations of the state by the respective departments and agencies of the state which are responsible for their administration; and

III. To insure the coordination of the studies thus undertaken, particularly with other atomic industrial development activities of the state and with the development and regulatory activities of other states and of the government of the United States. (1955, c. 105, § 1. 1957, c. 210, §§ 1, 2.)

Effect of amendment.—Section 1 of the 1957 amendment inserted the words "source materials" and the words "and of other forms of radiation" in subsection II of the first paragraph of this section.

Section 2 of such amendment inserted the words "and other forms of radiation" in the opening statement of the second paragraph.