

MAINE STATE LEGISLATURE

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CHAPTER 263

PROPERTY TAKEN FOR PUBLIC USE AND
ASSESSMENT OF DAMAGES

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§ 3241. 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.1954, c. 52, § 11; 1963, c. 414, § 28.

§ 3242. Proceedings before entry; filing location and map; description corrected

All property so taken shall, before it is entered upon for any purpose except to make surveys, be located by a description, signed by the party taking, which shall describe in detail the property taken, give the names of the owners thereof and shall be accompanied by a map showing said property as described. Such location and map shall be filed with the county commissioners of the county where the property is located, who shall indorse the time of filing thereon and order the location recorded. A copy of said location shall be recorded in the registry of deeds of the county

or registry district where the property is located. When there is a recorded mortgage covering any portion of the land so taken, which mortgage has been recorded within 40 years of the taking and bears no record of discharge, satisfaction or release, personal notice shall be given forthwith to the owner of record of said mortgage by sending to said mortgage holder's place of abode, if known, otherwise to the abode or address as set forth in said record, by registered mail, a written or a printed notice of said taking in which shall be set forth a description of the property so taken, and the name of the owner of said property. When for any reason the taker fails to acquire the property authorized to be taken and which is described in such location, or the location recorded is defective or uncertain, the taker may, at any time, correct and perfect such location, and file a new description thereof. In such case the taker is liable in damages, only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the taker shall not be liable for any acts which would have been justified if the original taking had been valid and legal.

R.S.1954, c. 52, § 12.

§ 3243. Damages for property owners; 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.1954, c. 52, § 13; 1961, c. 317, § 130.

§ 3244. Notice to adverse party

In all cases, the notice to the adverse party of the time and place of hearing on any petition to the county commissioners for the assessment of damages on account of any property so taken shall be a personal notice of 14 days, or by publication of the petition and order of notice thereon in some newspaper published in said county, 2 weeks successively, the last publication being 14 days before said hearing.

R.S.1954, c. 52, § 14.

§ 3245. Terms and conditions for property taken

The commissioners in awarding damages for property so taken, on the application of the taker, may prescribe such terms and conditions, in all respects for the use of the property taken, by the owner thereof and by the taker respectively, as will secure the best accommodation of the owners of the property and the convenient use of the same by the taker. In case of appeal by either party, the only question in issue shall be the amount or measure of damages on the terms and conditions imposed by the commissioners.

R.S.1954, c. 52, § 15.

§ 3246. Report of commissioners

The commissioners shall, at a regular session, make a report of their general estimate of damages, stating therein specifically the terms and conditions imposed by them and the rights and obligations of each party, and cause it to be recorded. Their clerk shall then make out a notice to each person, stating the amount of damages awarded to him, which shall be served by an officer on those resident in the State and upon others, if any, by a publication 3 weeks successively in a newspaper printed in the county, if any; if not, in the state paper. The expense of notices shall be added to the costs of the proceedings which shall be paid by the taker.

R.S.1954, c. 52, § 16.

§ 3247. Appeals

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 ver-

dict 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.1954, c. 52, § 17; 1959, c. 317, §§ 26, 27.

§ 3248. Deposit of awards

When the proceedings are closed, the taker may deposit with the clerk the amount of damages awarded with interest thereon to time of deposit, which shall be in full satisfaction of all claims, unless a demand has been previously made and payment neglected.

R.S.1954, c. 52, § 18.

§ 3249. 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.1954, c. 52, § 19; 1961, c. 317, § 131.

§ 3250. 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.1954, c. 52, § 20; 1961, c. 317, § 132.

§ 3251. Failure to apply for assessment not a waiver

No failure by the owner of the property to make application for the assessment of damages within said 3 years shall be held to be a waiver by him of compensation for property so taken.

R.S.1954, c. 52, § 21.

§ 3252. Proceedings to defect in taking by 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. 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.1954, c. 52, § 22; 1961, c. 317, § 133.