

By Mr. Valentine of Chelmsford, petition of John H. Valentine that municipalities be estopped from denying validity of takings by eminent domain by reason of failure to comply with statutory requirements. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT TO PREVENT MUNICIPALITIES FROM DENYING THE VALIDITY OF TAKING BY EMINENT DOMAIN BY REASON OF FAILURE TO COMPLY WITH ANY STATUTORY REQUIREMENT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter seventy-nine of the General Laws is hereby
2 amended by striking out section twenty-two, as
3 appearing in the Tercentenary Edition, and inserting
4 in place thereof the following:—

5 *Section 22.* A petition brought under section four-
6 teen shall name all parties adversely interested known
7 to the petitioner, and process shall issue and service
8 be made as in suits in equity. Any defence to the
9 petition not relating to the amount of damages must
10 be pleaded within thirty days after the return day
11 of the subpoena and a body politic or corporate which
12 has entered upon land shall in any event be estopped
13 from denying the validity of its acts because of its
14 failure to comply with some statutory requirement;

15 but no answer relating solely to the amount of dam-
16 ages shall be filed by any party and no person shall
17 be defaulted for failure to enter an appearance. The
18 trial shall be by the court unless one of the parties
19 within the time prescribed in actions at law files a
20 notice that he desires a trial by jury; and the court
21 may appoint an auditor. Interrogatories may be
22 filed with the same effect as in actions at law. In
23 case of trial by jury, if either party requests it the jury
24 shall view the premises. Judgment shall be entered
25 and execution issue as in actions at law; and when
26 the commonwealth is liable for the damages the
27 amount found due shall be certified and paid under
28 section three of chapter two hundred and fifty-eight.