

# MAINE STATE LEGISLATURE

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# DOCUMENTS

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# THE LEGISLATURE

OF THE

# STATE OF MAINE,

DURING ITS SESSION

**A. D. 1844.**

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*AUGUSTA:*  
WM. R. SMITH & Co., PRINTERS.

1844.

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TWENTY-FOURTH LEGISLATURE.

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No. 23.]

[HOUSE.

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AN ACT

TO ESTABLISH THE

**BATH AND PORTLAND RAIL ROAD COMPANY.**

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[Wm. R. SMITH & Co....Printers.]



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# STATE OF MAINE.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND  
FORTY-FOUR.

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AN ACT to establish the Bath and Portland Rail Road  
Company.

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*Be it enacted by the Senate and House of Represen-  
tatives in Legislature assembled*—as follows :

3 SECTION 1. James McLellan, George H. Patten,  
4 William Richardson, Thomas D. Robinson, Levi  
5 Haughton, John Patten, Joseph Sewall, William M.  
6 Rogers, Thomas M. Reed, Moses Riggs, Bernard C.  
7 Bailey, David C. Magoun, John Henry, Robert H.  
8 McKown, Jacob Robinson, William D. Sewall, Oliver  
9 Moses and Scott Morse, their associates, successors  
10 and assigns, are created a body politic and corporate  
11 by the name of the Bath and Portland Rail Road  
12 Company, and by that name shall have all the pow-  
13 ers, privileges and immunities, and be subject to all  
14 the duties and liabilities, provided and prescribed in  
15 chapter eighty-one of the Revised Statutes, and shall  
16 be and hereby are invested with all the powers, priv-  
17 ileges and immunities, which are or may be necessary  
18 to carry into effect the purposes and objects of this

19 act as hereinafter set forth. And the said corporation  
20 are hereby authorized and empowered to locate,  
21 construct, and finally complete, alter and keep in  
22 repair a rail road with one or more sets of rails or  
23 tracks, with all suitable bridges, viaducts, turnouts,  
24 culverts, drains and all other necessary appendages  
25 from some point or place in the town of Bath, through  
26 the towns of Brunswick, Freeport, North Yarmouth,  
27 Cumberland, Falmouth and Westbrook, to some place  
28 in or near the city of Portland. And for this purpose  
29 said corporation shall have the right to take and hold  
30 so much of the land, and other real estate of private  
31 persons, as may be necessary for the location, con-  
32 struction and convenient operation of their rail road;  
33 and they shall have also the right to take, remove and  
34 use for the construction and repair of said rail road  
35 and appurtenances, any earth, gravel, stone, timber  
36 or other materials, on or from the land so taken.  
37 Provided, however, that said land so taken shall not  
38 exceed four rods in width, except where greater width  
39 is necessary for the purpose of excavation or embank-  
40 ment. And provided also, that in all cases said cor-  
41 poration shall pay for such lands, estate or materials  
42 so taken and used, such price as they and the owner  
43 or respective owners thereof may mutually agree on ;  
44 and in case said parties shall not otherwise agree,  
45 then said corporation shall pay such damages as shall  
46 be ascertained and determined by the county com-  
47 missioners for the county where such land or other

48 property may be situated, in the same manner and  
49 under the same conditions and limitations, as are by  
50 law provided in the case of damages by laying out of  
51 highways. And no application to said commissioners  
52 to estimate said damages shall be sustained, unless  
53 made within three years from the time of taking such  
54 land or other property: and in case such rail road  
55 shall pass through any wood lands or forests, the said  
56 company shall have the right to fell or remove any  
57 trees standing therein, within four rods from such  
58 road, which by their liability to be blown down or  
59 from their natural falling might obstruct or impair  
60 said rail road, by paying a just compensation therefor,  
61 to be recovered in the same manner as is provided  
62 for the recovery of other damages in this act.

SEC. 2. The capital stock of said corporation shall  
2 consist of not less than four thousand, nor more than  
3 twelve thousand shares; and the immediate govern-  
4 ment and direction of the affairs of said corporation  
5 shall be vested in seven, nine, or thirteen directors,  
6 who shall be chosen by the members of said corpora-  
7 tion in the manner hereinafter provided, and shall  
8 hold their offices until others shall have been duly  
9 elected and qualified to take their places, a majority  
10 of whom shall form a quorum for the transaction of  
11 business; and they shall elect one of their number to  
12 be the President of the board, who shall also be the  
13 President of the corporation; and shall have author-  
14 ity to choose a clerk, who shall be sworn to the faith-

15 ful discharge of his duty, and a treasurer, who shall  
16 give bonds to the corporation, with sureties to the  
17 satisfaction of the directors, in a sum not less than  
18 thirty thousand dollars, for the faithful discharge of  
19 his trust. And for the purpose of receiving subscrip-  
20 tions to the said stock, books shall be opened under  
21 the direction of the persons named in the first section  
22 of this act in the towns of Bath, Brunswick, Free-  
23 port, North Yarmouth and the city of Portland in this  
24 State, and the city of Boston in Massachusetts, and  
25 elsewhere as they shall appoint, to remain open for  
26 ten successive days, of which time and place of sub-  
27 scription, public notice shall be given in some news-  
28 paper printed in Bath, Portland and Boston, twenty  
29 days at least previous to the opening such subscrip-  
30 tion, and in case the amount subscribed shall exceed  
31 twelve thousand shares, the same shall be distributed  
32 among all the subscribers, according to such regula-  
33 tions as the persons having charge of the opening of  
34 the subscription books shall prescribe before the  
35 opening of said books. And any seven of the per-  
36 sons named in the first section of this act, are hereby  
37 authorized to call the first meeting of said corporation  
38 by giving notice in one or more newspapers published  
39 in the towns and cities above named, of the time and  
40 place, and the purpose of such meeting, at least  
41 twenty days before the time mentioned in such notice.

SEC. 3. The president and directors for the time  
2 being are hereby authorized and empowered, by them-



3 selves or their agents, to exercise all the powers herein  
4 granted to the corporation, for the purpose of locat-  
5 ing, constructing and completing said rail road, and  
6 for the transportation of persons, goods and property  
7 of all descriptions, and all such power and authority  
8 for the management of the affairs of the corporation,  
9 as may be necessary and proper to carry into effect the  
10 objects of this grant: to purchase and hold land, mate-  
11 rials, engines, and cars, and other necessary things, in  
12 the name of the corporation, for the use of said road,  
13 and for the transportation of persons, goods, and prop-  
14 erty of all descriptions: to make such equal assessments  
15 from time to time, on all the shares in said corpora-  
16 tion as they may deem expedient and necessary, in  
17 the execution and the progress of the work, and di-  
18 rect the same to be paid to the treasurer of the cor-  
19 poration. And the treasurer shall give notice of all  
20 such assessments: and in case any subscriber or  
21 stockholder shall neglect to pay any assessment on  
22 his share or shares for the space of thirty days after  
23 such notice is given as shall be prescribed by the by-  
24 laws of said corporation, the directors may order the  
25 treasurer to sell such share or shares, at public auc-  
26 tion, after giving such notice as may be prescribed as  
27 aforesaid, to the highest bidder, and the same shall be  
28 transferred to the purchaser, and such delinquent sub-  
29 scriber or stockholder shall be held accountable to the  
30 corporation for the balance, if his share or shares shall  
31 sell for less than the assessments due thereon, with

32 interest and costs of sale : and shall be entitled to the  
33 overplus if his share or shares shall sell for more than  
34 the assessments due, with interests and costs of sale :  
35 *provided however*, that no assessments shall be laid  
36 upon any shares in said corporation of greater amount  
37 in the whole than one hundred dollars.

SEC. 4. And said corporation shall have power to  
2 make, ordain and establish all necessary by-laws and  
3 regulations, consistent with the constitution and the  
4 laws of this State, for their own government, and for  
5 the due and orderly conducting of their affairs, and  
6 the management of their property—and the twenty  
7 third section of the seventy sixth chapter of the Re-  
8 vised Statutes, shall not apply or extend to the company  
9 hereby incorporated.

SEC. 5. A toll be and hereby is granted and es-  
2 tablished, for the sole benefit of said corporation,  
3 upon all passengers, and property of all descriptions,  
4 which may be conveyed or transported upon said road,  
5 at such rate per mile as may be agreed upon and es-  
6 tablished from time to time by the directors of said  
7 corporation. The transportation of persons and prop-  
8 erty, the construction of wheels, the forms of cars  
9 and carriages, the weights of loads, and all other  
10 matters and things in relation to the use of said road,  
11 shall be in conformity with such rules, regulations and  
12 provisions, as the directors shall from time to time  
13 prescribe and direct : *provided however*, that if, at the  
14 expiration of twelve years from and after the comple-

15 tion of said road, the net income or receipts from  
16 tolls and other profits, taking the twelve years afore-  
17 said as the basis of calculation, shall have amounted  
18 to more than twelve per cent. per annum upon the  
19 cost of the road and incidental expenses, the Legis-  
20 lature may alter and reduce the rate of tolls and other  
21 profits, so that the net income shall not exceed twelve  
22 per cent. for the next twelve years, calculating the  
23 amount of transportation on the road to be the same  
24 as in the twelve preceding years; and at the expira-  
25 tion of every twelve years thereafter, the same pro-  
26 ceedings may be had. *And further provided*, that the  
27 Legislature shall not at any time so reduce the tolls  
28 and other profits, as to produce less than twelve per  
29 centum upon the cost of said rail road, taking the  
30 basis of calculation as aforesaid, without the consent of  
31 said corporation. *And provided further*, that the Leg-  
32 islature may, instead of reducing said tolls and profits  
33 to twelve per cent., appropriate the surplus to the  
34 public schools of the State.

SEC. 6. The Legislature may authorize any other  
2 company or companies to connect any other rail road  
3 or rail roads with the rail road of said corporation, at  
4 any points of intersection on the route of said rail  
5 road. And said corporation shall receive and trans-  
6 port all persons, goods and property of all descriptions,  
7 which may be carried and transported, to the rail road  
8 of said corporation, on such other rail roads as may  
9 be hereafter authorized to be connected therewith, at

10 the same rates of toll and freight, as may be prescribed  
11 by said corporation, so that the rates of freight and  
12 toll on such passengers, goods and other property, as  
13 may be received from such other rail roads so con-  
14 nected with said rail road as aforesaid, shall not ex-  
15 ceed the general rates of freight and toll on said rail  
16 road received for freight and passengers, at any of  
17 the deposits of said corporation.

SEC. 7. The directors of said corporation for the  
2 time being, are hereby authorized to erect toll houses,  
3 establish gates, appoint toll gatherers and demand toll  
4 on the road, when completed, and upon such parts  
5 thereof as shall from time to time be completed.

SEC. 8. When said corporation shall take any land  
2 or other estate as aforesaid, of any infant, person non  
3 compos mentis, or feme covert, whose husband is un-  
4 der guardianship, the guardian of such infant, or per-  
5 son non compos mentis, and such feme covert, with  
6 the guardian of her husband, shall have full power  
7 and authority to agree and settle with said corpora-  
8 tion, for damages or claims for damages by reason of  
9 taking such land and estate aforesaid, and give good  
10 and valid releases and discharges therefor.

SEC. 9. If any person shall wilfully and maliciously,  
2 or wantonly and contrary to law, obstruct the passage  
3 of any carriage on said rail road, or in any way spoil,  
4 injure, or destroy said rail road, or any part thereof,  
5 or any thing belonging thereto, or any materials or im-  
6 plements to be employed in the construction, or for

7 the use of said road, he, she, or they, or any person  
8 or persons, assisting, aiding or abetting such trespass,  
9 shall forfeit and pay to said corporation for every such  
10 offence, treble such damages as shall be proved before  
11 the justice court, or jury, before whom the trial shall  
12 be had, to be sued for before any justice or in any  
13 court proper to try the same, by the treasurer of the  
14 corporation, or other officer whom they may direct, to  
15 the use of said corporation. And such offender or  
16 offenders shall be liable to indictment, by the grand  
17 jury of the county, within which, trespass shall have  
18 been committed, for any offence or offences contrary  
19 to the above provisions, and upon conviction thereof,  
20 before any court competent to try the same, shall pay  
21 a fine not exceeding one hundred dollars, to the use  
22 of the State, or may be imprisoned for a term not ex-  
23 ceeding one year, at the discretion of the court be-  
24 fore whom such conviction may be had.

SEC. 10. The annual meeting of the members of  
2 said corporation shall be holden on the second Mon-  
3 day in June, at such time and place as the directors  
4 for the time being shall appoint, at which meeting,  
5 the directors shall be chosen by ballot, each proprie-  
6 tor being entitled to as many votes as he holds shares,  
7 and no proprietor shall be entitled to more than one  
8 thousand votes. And the directors are hereby au-  
9 thorized to call special meetings of the stockholders,  
10 whenever they shall deem it expedient and proper,  
11 giving such notice as the corporation by their by-laws  
12 shall direct.

SEC. 11. If the said rail road in the course thereof,  
2 shall cross any private way, canal, turnpike, rail road  
3 or other highway, the said rail road shall be so con-  
4 structed as not to obstruct the safe and convenient  
5 use of such private way, canal, turnpike, rail road or  
6 other highway, and the said corporation shall have  
7 power to raise or lower such turnpike, highway or  
8 private way, so that the said rail road if necessary  
9 may conveniently pass under or over the same, and  
10 erect such gate or gates thereon, as may be necessary  
11 for the safety of travellers on said turnpike, rail road,  
12 highway or private way.

SEC. 12. If the said corporation shall not have  
2 been organized, and the location according to actual  
3 survey of the route filed with the county commis-  
4 sioners of the counties through which the same shall  
5 pass on or before the thirty first day of December, in  
6 the year of our Lord eighteen hundred and forty six,  
7 or if the said corporation shall fail to complete said  
8 railroad on or before the thirty first day of December  
9 in the year of our Lord one thousand eight hundred  
10 and fifty, in either of the above mentioned cases, this  
11 act shall be null and void.

SEC. 13. Said rail road corporation shall constantly  
2 maintain in good repair all bridges with their abut-  
3 ments and embankments, which they may construct  
4 for the purpose of conducting their rail road over any  
5 canal, turnpike, highway or private way, or for  
6 conducting such private way, highway or turnpike  
7 over said rail road.

SEC. 14. If said rail road shall in the course there-  
2 of, cross any tide waters, navigable rivers or streams,  
3 the said corporation is hereby authorized and empow-  
4 ered to erect for the sole and exclusive travel on their  
5 said rail road, a bridge across each of said rivers or  
6 streams, or across any such tide waters; provided  
7 said bridge or bridges shall be so constructed as not  
8 to prevent the navigating said waters.

SEC. 15. The books of said corporation shall at all  
2 times be open to the inspection of the Governor and  
3 Council, and of any committee duly authorized by  
4 the Legislature, and at the expiration of every twelve  
5 years the treasurer of said corporation shall make  
6 an exhibit under oath to the Legislature, of the net  
7 profits derived from the income of said rail road.

SEC. 16. The said corporation shall at all times,  
2 when the Post Master General shall require it, be  
3 holden to transport the mail of the United States from  
4 and to such place or places on said road as required,  
5 for a fair and reasonable compensation. And in case  
6 the corporation and the Post Master General shall be  
7 unable to agree upon the compensation aforesaid, the  
8 Legislature of the State shall determine the same.  
9 And said corporation after they shall commence the  
10 receiving of tolls shall be bound at all times to have  
11 said rail road in good repair, and a sufficient number  
12 of suitable carriages and vehicles for the transporta-  
13 tion of persons and articles and be obliged to receive  
14 at all proper times and places and convey the same

15 when the appropriate tolls therefor shall be paid or  
16 tendered, and a lien is hereby created on all articles  
17 transported, for the tolls due for the transportation  
18 thereof.

SEC. 17. Any person who shall perform labor or  
2 furnish materials for the constructing, making, alter-  
3 ing or repairing said rail road or appurtenances, or  
4 furnish labor or materials for the above purposes, by  
5 virtue of any contract with said corporation, or other  
6 person who had contracted with said corporation,  
7 shall have a lien to secure the payment of the same,  
8 upon such rail road, and appurtenances; and upon  
9 the right of redeeming the same when under mort-  
10 gage; and said lien shall continue in force for the  
11 space of one year, from the time when such pay-  
12 ment becomes due.

SEC. 18. Such person may secure the benefit of  
2 such lien by an attachment of said rail road and ap-  
3 purtenances, or right of redemption within one year;  
4 and such attachment shall have precedence of all other  
5 attachments, not made under any such lien.

SEC. 19. If the said corporation or other person  
2 shall tender to the creditor aforesaid the sum justly  
3 due to him as aforesaid, such lien shall cease.

SEC. 20. All lands or other real estate which shall  
2 be taken or used by this rail road company for any of  
3 the purposes aforesaid, may be taxed to said rail road  
4 company by the assessors of the several cities, towns  
5 and plantations in which said lands or other real es-



6 tate may be situate, and shall be valued the same as  
7 other real estate of the same quality is, in said city,  
8 town or plantation. And such lien shall be had there-  
9 on for the payment of the tax assessed thereon as  
10 above, as is now or may be hereafter provided by law  
11 for securing the payment of taxes assessed on real es-  
12 tate. The shares in said rail road company shall be  
13 deemed and considered to be personal estate, and shall  
14 be taxed in the same way and manner as other per-  
15 sonal estate now is.

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## AMENDMENT.

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### *B.*

Amend by striking out the 20th section and inserting as follows :

SEC. 20. The said corporation shall not, for the  
2 term of three years, from and after the completion of  
3 said road, be subject to, or governed by, the act pro-  
4 viding for the taxing of rail roads and rail road prop-  
5 erty, approved March 17, 1843—but the shares in said  
6 corporation shall be taxed in the same manner as is  
7 provided for the taxation of shares in other corpora-  
8 tions.

# STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, }  
February 14, 1844. }

ORDERED: That 300 copies of the foregoing Bill and Amendment, be printed for the use of the House.

WM. T. JOHNSON, *Clerk.*