

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSIONS

A. D. 1851--2.

Augusta:

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1852.

THIRTY-FIRST LEGISLATURE.

No. 43.]

[SENATE.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND
FIFTY-TWO.

AN ACT concerning railroads.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECTION 1. It shall be the duty of every railroad
2 company in this State to establish rules and regula-
3 tions for the running of its road, as soon as the same
4 or any portion thereof is in operation, and fix the
5 needful time tables thereof, with the times of arrival
6 and departure of trains ; and any engine driver, con-
7 ductor, or other person having charge of any train, or
8 of any locomotive engine, who shall run or cause to
9 be run over such road any locomotive engine, passen-

10 ger train, freight train, or gravel train contrary to the
11 rules, regulations and time tables so established, shall
12 be guilty of a misdemeanor.

SECT. 2. Any person so offending, shall be liable
2 to punishment by fine not exceeding one thousand
3 dollars, or imprisonment for a term not exceeding five
4 years, or by both, at the discretion of the court be-
5 fore whom he shall be tried.

SECT. 3. The county attorney for each county is
2 hereby directed to cause a prosecution to be instituted
3 against every person, who shall be guilty of the offense
4 described in the first section of this act, in case any
5 accident shall occur therefrom.

SECT. 4. It shall be the duty of every railroad com-
2 pany on whose road any such accident shall occur, to
3 give immediate notice to the county attorney, whose
4 duty it shall be to call forthwith upon some coroner of
5 the county whose residence is near the place where
6 such accident shall occur, to take an inquest upon view
7 of the dead body or bodies of such persons as shall have
8 come to their death by such accident, in the manner
9 provided by the revised statutes of this State: *provided,*
10 *however,* that if the county attorney shall reside more

11 than ten miles from the place of such accident, said
12 railroad company shall first call upon some justice of
13 the peace in the vicinity, to notify a coroner to hold
14 such inquest, and then forthwith notify the county at-
15 torney as aforesaid, that he may be present at the
16 hearing before said coroner.

SECT. 5. Any person in charge of a locomotive
2 engine, or acting as the conductor of a car or train,
3 or as brakeman, or as switchman in the employment
4 of any company, who shall be intoxicated while so
5 engaged on the railway, shall be deemed guilty of a
6 misdemeanor, and liable to fine not exceeding one
7 hundred dollars or imprisonment not exceeding six
8 months, or both, at the discretion of the court before
9 whom he may be tried.

SECT. 6. In case it shall be necessary for any rail-
2 road company to procure earth, gravel, or other ma-
3 terial, for the formation of their roadbed, or ballasting
4 the same, outside or beyond the line of their location,
5 as filed, such company shall have the right to take
6 such earth, gravel, or other material, paying there-
7 for in the same manner as if the same was within the
8 line of such location, and the county commissioners

9 shall assess the damages therefor, in case the parties
10 cannot agree, in the same manner as in other cases
11 where land is taken by railroad companies.

SECT. 7. Whenever a railroad corporation shall
2 have paid, or become liable to pay land damages for
3 the location of their road, and shall afterwards change
4 such location and occupy other lands of the same
5 land owner to whom damages shall have been paid,
6 or awarded, such land first located upon, shall, on the
7 completion of such second location, revert absolutely
8 to such land owner, and on such subsequent location,
9 the commissioners shall award no other or greater
10 damages than under all the circumstances shall be
11 just and equitable ; and if the damages awarded on
12 such second location shall be less than the damages
13 awarded in the first location, the corporation may
14 recover the difference, if paid, from such land owner,
15 and if awarded and not paid, may retain the differ-
16 ence, and shall not be liable to pay the same : *pro-*
17 *vided*, that in case the damages on the first location
18 shall have been assessed by the commissioners and an
19 appeal taken therefrom, and be pending, such corpo-
20 ration shall pay the costs that may have accrued in
21 such appeal, and cause their new location to be

22 recorded, before they shall be allowed to take any
23 benefit of this section.

SECT. 8. If the location of any railroad shall be
2 changed, after the payment of damages to any land
3 owner, and no portion of the lands of such owner
4 shall be taken for the new location, then the lands so
5 taken for said first location shall revert absolutely to
6 the owner, as provided in the preceding section ; and
7 such railroad corporation shall have the right to
8 recover from such land owner the amount so paid, as
9 damages, deducting therefrom the damages which
10 shall have actually accrued to such owner, in conse-
11 quence of locating said railroad across said lands,
12 which damages shall be ascertained by the county
13 commissioners in the manner provided by law for
14 determining land damages upon the location of any
15 railroad: *provided, however,* such land owner may,
16 if he chooses, convey to such company the land so
17 located upon, and in that case may retain the sum so
18 awarded.

SECT. 9. If the location of any such road shall have
2 been changed as mention in the preceding section,
3 and the damages shall have been awarded and not
4 paid, the land first located upon shall revert to the

5 owner thereof, and the corporation shall not be re-
6 quired to pay the sum so awarded, but shall pay to
7 such owner all damages which may have accrued to
8 him by reason of such location, to be determined by
9 said commissioners.

SECT. 10. Any railroad corporation, after having
2 taken land, for any portion of their road, may, if they
3 find it expedient, vary the direction of the road, pro-
4 vided, they shall not thereby locate their road, or any
5 part thereof, without the limits prescribed by their act
6 of incorporation; and they shall, before the time
7 required by law for completing their road, file the
8 location of the different parts of the road, where such
9 variations are made, with the county commissioners
10 of the respective counties where said parts of the road
11 so altered are situated.

SECT. 11. Railroads shall not be carried along any
2 existing highway, but must cross the same in the line
3 of the railway, unless leave be obtained from the
4 town or city through which the same shall pass.

SECT. 12. No person who has suffered damages
2 by the location of any railroad, and is entitled to
3 compensation therefor, or who may hereafter suffer
4 damages by any such location and shall be entitled
5 to such compensation, shall be barred of his claim,

6 nor shall any rights whatever be acquired against
7 him, if no proceedings shall have been, or shall be,
8 instituted under the provisions of chapter eighty-one
9 of the revised statutes to ascertain and determine
10 such damages, within the time specified in the fourth
11 section of said chapter, or as is hereafter provided ;
12 but any such person shall be entitled to his suit at law
13 as in cases of trespass, or disseizin ; and may also
14 have a further remedy as is hereinafter provided.

SECT. 13. All railroad companies shall be liable for
2 trespasses upon, and injuries to, lands adjoining to,
3 or in the vicinity of, their respective roads, by any
4 contractor, or person in the employ of any con-
5 tractor, or other person in the employ of any such
6 company, and whether such injury is direct or conse-
7 quential, in an action appropriate to such trespass, or
8 injury, in the same manner, and to the same extent,
9 as if such trespass or injury were done, or occasioned,
10 by the direct and specific order of said company ; but
11 nothing herein contained shall be construed to bar,
12 or affect, any remedy, or right of action, against the
13 person by whom such trespass, or injury, was done
14 or occasioned.

SECT. 14. In all cases where damages have been
2 heretofore ascertained and determined by the county

3 commissioners against any railroad company, or where
4 damages may hereafter be ascertained and determined
5 against any such company as aforesaid, and where
6 the proceedings in any such case shall have been
7 closed before said commissioners, if the amount thus
8 ascertained shall not be paid, or tendered, by such
9 company, within thirty days after the same shall have
10 been demanded of said company, the person to whom
11 damages may have been awarded as aforesaid, or
12 who may be legally entitled to receive the same, may
13 file a bill in equity before the supreme judicial court
14 in the county where such damages were ascertained
15 and determined, in term time, or in vacation, setting
16 forth the facts in the case, and praying for an injunc-
17 tion against said company, its servants, agents, grant-
18 ees, lessees, and all other persons whatsoever; and any
19 judge of said court may, after summary notice to said
20 company, and to such other person or persons as said
21 judge may see fit to order notice upon, on proof of
22 the facts aforesaid, and without requiring any bond
23 of the complainant, issue a writ of injunction, accord-
24 ing to the course of equity proceedings, prohibiting
25 and enjoining said company, its servants, agents,
26 grantees, lessees, and all other persons whatsoever,
27 from using or occupying any lands for which the

28 damages have not been paid as aforesaid, for the pur-
29 poses of said road, or for any other purposes what-
30 ever, until such damages and all interest and costs,
31 and all the costs of such injunction shall have been
32 fully paid and satisfied. And said bill being duly
33 entered in court, and continued for one term thereof
34 after such injunction shall have been decreed, and
35 duly served upon said company and all others named
36 as defendants in said bill, the said court may, at the
37 term thereof, to which said bill shall have been con-
38 tinued as aforesaid, if said damages and costs shall
39 not then have been paid, make said injunction abso-
40 lute. And all rights whatever in any lands for which
41 the damages have not been paid, and concerning
42 which such proceedings shall have been had, shall
43 thenceforth cease, and the owner of such lands may
44 maintain any appropriate action at law for, or in
45 reference thereto, in the same manner, and to the
46 same extent, as in cases of trespass, or disseizin.
47 And nothing herein contained shall bar, or in any
48 manner limit, any legal rights which any owner of
49 lands might have, if this act had not been passed.

SECT. 15. If any railroad company, its servants,
2 agents, grantees, lessees, or other persons, shall, after

3 service of such injunction, either preliminary or ab-
4 solute, continue to use and occupy the lands aforesaid,
5 for any purpose, the said court may, at any term
6 thereof, on motion of the complainants in any such
7 bill, order the directors of any such company, or any
8 other person by or under whom said lands may have
9 been so used and occupied, to show cause, at a time
10 to be fixed by said court, why a decree should not be
11 entered and execution issued against them, or either
12 of them, and their individual goods and estate, for the
13 amount of all damages, interest, and costs as afore-
14 said, and for such additional damages and costs as said
15 court may order and decree for breach of the injunc-
16 tion as aforesaid ; and upon service and return of such
17 order the court may enter such decree for damages
18 and costs as may be a just and equitable remuneration
19 to the complainants, against all or any of such direct-
20 ors and other person or persons, or either of them,
21 as their individual or official action or neglect, and the
22 nature of the case may justify and require, and issue
23 execution therefor, against any or all such persons,
24 either jointly or severally. And nothing herein con-
25 tained shall be construed to limit or affect the right of

26 said court to proceed against any person or persons
27 for breach of any such injunction, as in other cases.

SECT. 16. Any person not the owner of lands tak-
2 en by any railroad company under the provisions of
3 its charter, and of the eighty-first chapter of the re-
4 vised statutes, but who may have a direct interest in
5 the use or occupation of any such lands, for any pur-
6 pose or to any extent, shall be entitled to all the rem-
7 edies provided for the owner of lands taken as afore-
8 said.

SECT. 17. Whenever any railroad company has
2 been, or may hereafter be, required by the award of
3 the county commissioners in their estimate of dam-
4 ages, to do or perform any act, or to omit the doing
5 or performing any act, and the same shall not be done
6 within a reasonable time after notice and request, or
6 shall hereafter be done contrary to said award, as the
7 case may be, the person suffering damages as afore-
8 said shall be entitled to all the remedies hereinbefore
9 provided.

SECT. 18. In all cases where no proceedings have
2 been, or shall be, instituted within the time limited in
3 chapter eighty-one of the revised statutes, or as is

4 hereafter provided, to ascertain and determine the
5 damages as aforesaid, any person entitled thereto may
6 have the remedy by injunction provided in the third
7 section of this act; and the court may, if the same
8 is prayed for in said bill, proceed to ascertain the
9 damages which such person has suffered by the acts
10 and doings of any such railroad company, or any other
11 person or persons defendants in said bill, and to make
12 a decree, and issue execution accordingly. And any
13 such complainant shall be further entitled to all the
14 remedies for breach of any injunction hereinbefore
15 provided.

SECT. 19. In all cases where the time limited in the
2 fourth section of chapter eighty-one of the revised
3 statutes shall have expired before this act takes effect,
4 or within six months thereafter, and no proceedings
5 shall have been commenced under said act to ascer-
6 tain and determine the damages therein referred to,
7 one year from and after the day when this act shall
8 take effect as aforesaid, shall be allowed for that pur-
9 pose.

SECT. 20. Service of any bill, subpoena, notice,
2 order, injunction, or decree, provided for in this act,

3 may be made upon the president of any company,
4 and, if there be no president, upon any other officer
5 thereof, and if there be no officers, then upon any
6 stockholder. And service of any writ of injunction
7 issued under the provisions of this act upon any per-
8 son, whether a party to the bill or not, shall be bind-
9 ing upon him, and he shall be liable to all the conse-
10 quences and penalties herein provided, for breach of
11 such injunction.

SECT. 21. The annual reports of railroad corpora-
2 tions required to be made to the secretary of State as
3 provided in chapter 145 of the statutes of 1849, of the
4 operations of the year ending on the first of January,
5 shall be made within the month of January in each
6 year, instead of the time now required by law. It
7 shall be the duty of the secretary of State to prepare
8 the necessary printed blank forms for such return, and
9 forward a suitable number of copies thereof to the
10 several railroad companies in the month of November
11 in each year. If any railroad company shall willfully
12 refuse or neglect to make such return, they shall be
13 liable to a fine of one thousand dollars to the use of
14 any party suing for the same.

SECT. 22. At all railroad crossings, where notice is
2 now given of the approach of any locomotive or rail-
3 road train by the ringing of a bell, the steam whistle
4 shall be substituted therefor.

SECT. 23. This act shall take effect and be in
2 force in thirty days from and after its signature by the
3 governor.

STATE OF MAINE.



IN SENATE, March 26, 1852.

Ordered, That 350 copies of the foregoing bill (reported by Mr. Hobbs from the committee on railroads and bridges) be printed for the use of the Legislature.

ALBERT H. SMALL, *Secretary*.