

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1853.

Augusta:
WILLIAM T. JOHNSON, PRINTER TO THE STATE.

1853.

STATE OF MAINE.

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

AN ACT concerning Railroads.

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

AMENDMENT 1.

[Strike out first three sections.]

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 be

9 run over such road any locomotive engine, passenger
10 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 to
2 punishment by fine not exceeding one thousand dol-
3 lars, or imprisonment for a term not exceeding five
4 years, or by both, at the discretion of the court before
5 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.

AMENDMENT A.

[Strike out the word "such," in the 2d line of Sect. 4,
and insert after the word "occur," in the same line, the
words "which shall result in the death of any person."]

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
5 of the county whose residence is near the place where
6 such accident shall occur, to take an inquest upon

7 view of the dead body or bodies of such persons as
8 shall have come to their death by such accident, in the
9 manner provided by the revised statutes of this State:
10 *provided, however,* that if the county attorney shall
11 reside more than ten miles from the place of such
12 accident, said railroad company shall first call upon
13 some justice of the peace in the vicinity, to notify a
14 coroner to hold such inquest, and then forthwith
15 notify the county attorney as aforesaid, that he may
16 be present at the 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, or
3 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 a 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.

AMENDMENT F.

[Amend by striking out Section 6.]

SECT. 6. 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
11 road so altered are situated.

AMENDMENT C.

[Amend by striking out the clause in Sect. 7, beginning with "And," in line 4, and ending with "office," in line 10, and insert—

"And no railroad shall be constructed across any county road, until the place, manner and conditions of such crossing shall have been ordered and determined by the county commissioners, and recorded in the county commissioners' office. And if, in the opinion of said commissioners, the necessities of the company do not require that such crossing should be made, and none such can be made without great injury to the public, they may refuse to give such order, and such crossing shall not be made."]

AMENDMENT J.

[Insert after the word "city," in the 15th line of Sect. 7, the words, "not a county road."]

SECT. 7. 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 town
4 or city through which the same shall pass. And no
5 railroad shall cross any county road, without the
6 written assent of the county commissioners thereto,
7 which written assent shall determine and state the
8 manner and conditions, upon which such crossing
9 may be made; and shall be recorded in the county
10 commissioners' office. And before such determination
11 is made, reasonable notice, of the time and place of
12 hearing upon the same, shall be given to the select-
13 men of the town in which said crossing is proposed
14 to be made. And no railroad shall cross any town
15 road, or street of a city, without the written assent of
16 the selectmen of the town, or mayor and aldermen
17 of the city, which written assent shall determine and
18 state the manner and conditions upon which such
19 crossing may be made; and shall be recorded in
20 the county commissioners' office. And every such
21 crossing, made contrary to the foregoing provisions,
22 shall be considered a nuisance, and liable to all the
23 provisions of law relating to nuisances, and the directors
24 of the company, making the same, shall be personally

25 liable therefor. And all fees of the commissioners,
26 for the services herein specified, shall be paid by the
27 company.

AMENDMENT N.

[Amend in line 12, Sect. 8, by striking out the words
“such location with,” and by inserting after the word
“adjudication,” in said line, the word “thereupon.”]

AMENDMENT D.

[Sect. 8, line 17; after the word “accordingly,” add
these words: “And before any work of construction of
the railroad shall be commenced upon the land so located,
the railroad company shall, at their own expense, make a
sufficient and permanent fence upon both exterior lines of
the land so located on or across any fields, pastures or
wood-lots appertaining to farms, which fence they shall
keep in good order and repair during all the time the work
of such construction is carried on upon such location.”]

SECT. 8. No railroad company shall enter upon, or
2 use, any real estate, for the purposes of their road,
3 except for making surveys, until the location of said
4 road over said estate shall have been legally made,
5 and filed in the office of the county commissioners;
6 and when such location shall have been filed, the said
7 commissioners shall, before said company shall have

8 any right to use said estate, for the purposes of said
9 company, after giving at least fourteen days' notice to
10 the owner, proceed to view and examine such location,
11 and shall allow and approve the same, and shall make
12 such location, with their adjudication, a matter of
13 record; and shall further, if requested by the owner,
14 order said company to give security for damages,
15 according to the provisions of the sixth section of the
16 eighty-first chapter of the revised statutes, and such
17 security shall be given accordingly. And for all acts
18 done by any company, its servants, agents, or con-
19 tractors, contrary to the provisions of this section, the
20 directors of such company shall be personally liable,
21 both jointly and severally, to the same extent, and
22 in the same manner as if said acts were performed by
23 themselves; and an action therefor, against all or any
24 number of said directors, shall be maintained in any
25 court of competent jurisdiction.

SECT. 9. No person who has suffered damages by
2 the location of any railroad, and is entitled to com-
3 pensation therefor, or who may hereafter suffer dam-
4 ages by any such location and shall be entitled to such
5 compensation, shall be barred of his claim, nor
6 shall any rights whatever be acquired against him, if

7 no proceedings shall have been, or shall be, instituted
8 under the provisions of chapter eighty-one of the
9 revised statutes to ascertain and determine such dam-
10 ages, within the time specified in the fourth section
11 of said chapter, or as is hereafter provided ; but any
12 such person shall be entitled to his suit at law as in
13 case of trespass or disseizin ; and may also have a
14 further remedy, as is hereinafter provided.

AMENDMENT K.

[Amend in Sect. 10, line 2, by inserting after the word
“lands” the words “or buildings.”]

AMENDMENT E.

[Amend in line 10, Sect. 10, by striking out the word
“providing,” and inserting in lieu thereof the words,
“Provided that the party claiming damages shall, within
sixty days after the damage is sustained, give notice to
the company from which said damages are claimed ; and
provided also”]

SECT. 10. All railroad companies shall be liable for
2 trespasses upon, and injuries to, lands adjoining to, or
3 in the vicinity of, their respective roads, by any con-
4 tractor, or person in the employ of any contractor, or
5 other person in the employ of any such company, and
6 whether such injury is direct or consequential, in an

7 action appropriate to such trespass, or injury, in the
8 same manner, and to the same extent, as if such tres-
9 pass or injury were done, or occasioned, by the direct
10 and specific order of said company; providing that
11 nothing herein contained shall be construed to bar, or
12 affect, any remedy, or right of action, against the
13 person by whom such trespass, or injury, was done or
14 occasioned, and that the liability of such companies
15 shall not extend to acts of willful and malicious
16 trespass.

SECT. 11. 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 who
12 may be legally entitled to receive the same, may file a
13 bill in equity before the supreme judicial court in the
14 county where such damages were ascertained and

15 determined, in term time, or in vacation, setting forth
16 the facts in the case, and praying for an injunction
17 against said company, its servants, agents, grantees,
18 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 the
22 facts aforesaid, and without requiring any bond of the
23 complainant, issue a writ of injunction, according to
24 the course of equity proceedings, prohibiting and
25 enjoining said company, its servants, agents, grantees,
26 lessees, and all other persons whatsoever, from using
27 or occupying any lands for which the damages have
28 not been paid as aforesaid, for the purposes of said
29 road, or for any other purposes whatever, until such
30 damages and all interest and costs, and all the costs
31 of such injunction, shall have been fully paid and
32 satisfied. And said bill being duly entered in court,
33 and continued for one term thereof after such injunc-
34 tion shall have been decreed, and duly served upon
35 said company and all others named as defendants in
36 said bill, the said court may, at the term thereof to
37 which said bill shall have been continued as aforesaid,
38 if said damages and costs shall not then have been

39 paid, make said injunction absolute. And all rights
40 whatever in any lands for which the damages have
41 not been paid, and concerning which such proceedings
42 shall have been had, and all rights of property in and
43 to the superstructure of said road, and other erections,
44 over and upon said lands, and the materials composing
45 the same, in any person, or persons, other than the
46 owner of said lands, shall thenceforth cease, and the
47 owner of such lands may maintain any appropriate
48 action at law for, or in reference thereto, in the same
49 manner, and to the same extent, as in cases of trespass,
50 or disseizin. And nothing herein contained shall bar,
51 or in any manner limit, any legal rights which any
52 owner of lands might have, if this act had not been
53 passed.

SECT. 12. If any railroad company, its servants,
2 agents, grantees, lessees, or other persons, shall, after
3 service of such injunction, either preliminary or abso-
4 lute, 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 in 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 aforesaid,
14 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 and
18 costs as may be a just and equitable remuneration to
19 the complainants, against all or any of such directors
20 and other person or persons, or either of them, as their
21 individual or official action or neglect, and the nature
22 of the case may justify and require, and issue execu-
23 tion therefor, against any or all such persons, either
24 jointly or severally. And nothing herein contained
25 shall be construed to limit or affect the right of said
26 court to proceed against any person or persons for
27 breach of any such injunction, as in other cases.

SECT. 13. Any person not the owner of lands taken
2 by any railroad company under the provisions of its
3 charter, and of the eighty-first chapter of the revised
4 statutes, but who may have a direct interest in the

5 use or occupation of any such lands, for any purpose
6 or to any extent, shall be entitled to all the remedies
7 provided for the owner of lands taken as aforesaid.

SECT. 14. 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
7 shall hereafter be done contrary to said award, as the
8 case may be, the person suffering damages as afore-
9 said shall be entitled to all the remedies hereinbefore
10 provided.

AMENDMENT L.

[Strike out the word "third," in Sect. 15, line 6, and
insert "seventh."]

SECT. 15. 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. 16. 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 ascertain
6 and determine the damages therein referred to, one
7 year from and after the day when this act shall take
8 effect as aforesaid, shall be allowed for that purpose.

SECT. 17. In all cases where proceedings have been,
2 or may hereafter be, instituted for the recovery of
3 damages, under the provisions of the eighty-first
4 chapter of the revised statutes, within the time
5 specified in the fourth section thereof, which proceed-
6 ings have failed, or may hereafter fail, of judgment,
7 for any error or informality, or other cause not affect-
8 ing the merits of the application on which such pro-
9 ceedings are founded, one year from and after the

10 approval of this act, for cases occurring before such
11 approval, and one year from and after such failure, for
12 cases that may hereafter occur, shall be allowed,
13 wherein to institute new proceedings. And a judgment
14 obtained upon any such new proceedings shall have
15 all the incidents provided by law for proceedings
16 instituted within the time specified in said fourth
17 section.

AMENDMENT H.

[Amend Section 18, line 7. Insert after the word
“recorded,” the words “giving to each notice of the
amount awarded to him.”]

AMENDMENT M.

[Strike out the word “presented,” in line 18, of Section
18, and insert the words “filed in the office of the county
commissioners.”]

AMENDMENT O.

[Add to Section 18, the following:]

“And if the party by whom such petition for redress
is presented shall fail to prosecute the same before the
regular term of the court holden next after said petition
is filed, the said commissioners may, on motion of the
other party, and unless good cause is shown why the
same should not be done, order the proceedings in the

case to be closed, and make their final decree thereon, and such petition for redress shall not be afterwards entertained.”

SECT. 18. Where county commissioners shall make
2 their report upon any question of damages occasioned
3 by taking lands for the purposes of a railroad, and
4 the same shall be duly recorded at a regular term of
5 the court, it shall be the duty of the clerk of such
6 court forthwith to notify all parties interested therein
7 that such report has been made and recorded ; which
8 notice shall be given to parties within the state, whose
9 names and places of residence are known, by service of
10 such notice upon them, or their attorney of record,
11 by an officer ; and upon parties living without the
12 state, and having an attorney of record, by service
13 upon such attorney ; and in all other cases by causing
14 such notice to be inserted three weeks successively in
15 some newspaper published within the county. And
16 the expense of such notice shall be added to the costs
17 of the proceedings in the case, and paid accordingly.
18 And if no petition for redress shall be presented
19 within thirty days after such notice, the proceedings
20 in such case shall be closed.

SECT. 19. Where a report has heretofore been made,

2 or shall hereafter be made, by county commissioners,
3 on an application to determine the damages occasioned
4 by taking lands for railroad purposes, under the pro-
5 visions of law, and the proceedings on such applica-
6 tions have been, or may be closed, a deposit by any
7 railroad company, with the clerk of said court, of the
8 amount allowed for said damages with interest there-
9 upon from the time of record of such report, and of
10 such costs as may be allowed thereby, with all other
11 legal costs, shall be a full satisfaction of such claim
12 for damages: *provided*, no demand shall have been
13 previously made therefor, and payment refused or
14 neglected.

AMENDMENT P.

[Insert between Sections 19 and 20.

“SECT. — The security provided for in the sixth section of the eighty-first chapter of the revised statutes, and by this act, shall be a deposit of specie or the notes or obligations of a state or public corporation, unless the person for whose benefit such security may be required shall consent that other security may be received; and such deposit shall be made with the clerk of the court requiring the same, and shall be at the risk of the company making the same. And so much of said specie as

may be sufficient to satisfy the judgment recovered shall be paid over to the party entitled to receive the same in satisfaction of such judgment. And such notes or obligations shall be delivered by such clerk to the officer having the warrant of distress issued upon any such judgment, and shall be by him sold thereon in the manner provided by law for the sale of personal property on execution, and the proceeds appropriated in satisfaction of said warrant and his fees, and the balance, if any, shall be paid to the treasurer of the company by which the same were deposited. And if any railroad company shall neglect or refuse to give any such security for more than thirty days after the same has been required by the county commissioners, the party for whose benefit the same is required shall be entitled to all the remedies by injunction provided by this act."]

SECT. 20. Service of any bill, subpoena, notice, order, 2 injunction, or decree, provided for in this act, may be 3 made upon the president of any company, and if there 4 be no president, upon any other officer thereof, and if 5 there be no officers, then upon any stockholder. And 6 service of any writ of injunction issued under the pro- 7 visions of this act upon any person, whether a party 8 to the bill or not, shall be binding upon him, and he

9 shall be liable to all the consequences and penalties
10 herein provided, for breach of such injunction.

AMENDMENT Q.

[Strike out "January," in the sixth line of Section 21,
and insert "February."]

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

AMENDMENT G.

[Amend by striking out Section 22.]

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 may be substituted therefor.

AMENDMENT I.

[Add after Section 21, the following Sections 22 and 23.]

“SECT. 22. Every railroad corporation in this state shall, in the month of September in each year, agree upon and fix its rates or tariffs of toll for the transportation of timber, bark, and wood, which may be rated by the thousand feet or by the cord or ton per mile. Such corporation shall, on the first day of October in each year, post up at all the stations and depots on its road, a copy of such rates or tariffs of toll, and shall cause said copy to remain so posted through the year; and if such corporation shall neglect to post up as aforesaid, or shall for one year after the rates of toll are posted as aforesaid, charge or receive any higher rates or toll than shall be fixed upon and posted as aforesaid, such corporation shall forfeit and pay the sum of one hundred dollars to any person who may sue for the same, said forfeiture to be recovered in any appropriate action and before any court competent to try the same.

SECT. 23. Whenever by the provisions of the charter or of any statute, a railroad company is bound to make or maintain fences bordering on such road, and said com-

pany shall neglect or refuse to make and maintain such fence, whereby the owner of lands through or by which said railroad passes, is liable to suffer damage by reason of such neglect, such land owner may notify the superintendent of said railroad company by giving thirty days notice in writing, that such fence has not been made, or if made is in bad repair, and in case the company shall refuse or neglect for thirty days after such notice has been given as aforesaid to make and maintain such fence, they shall forfeit and pay to the land owner the sum of one hundred dollars for each month they shall refuse or neglect to make and maintain such fence, after the expiration of said thirty days, said forfeiture to be recovered by such land owner in any appropriate action and before any court competent to try the same."

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

STATE OF MAINE.

IN SENATE, March 18, 1853.

ORDERED, That 350 copies of the foregoing Bill, with the Amendments of the House of Representatives thereto, be printed for the use of the Legislature.

LOUIS O. COWAN, *Secretary.*