

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1853.

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

1853.

THIRTY-SECOND LEGISLATURE.

HOUSE.]

[No. 19.

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:

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,
8 or 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

11 the rules, regulations and time tables so established,
12 shall 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 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.

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

13 shall first call upon some justice of the peace in the
14 vicinity, to notify a coroner to hold such inquest, and
15 then forthwith notify the county attorney as aforesaid,
16 that he may be present at the hearing before said
17 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. 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.

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 writ-
6 ten assent of the county commissioners thereto, which
7 written assent shall determine and state the manner
8 and conditions upon which such crossing may be
9 made; and shall be recorded in the county commis-
10 sioners' office. And before such determination is
11 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 street
15 of a city without the written assent of the mayor and
16 aldermen of the city, which written assent shall deter-
17 mine and state the manner and conditions upon which
18 such crossing may be made; and shall be recorded
19 in the county commissioners' office. And every such
20 crossing, made contrary to the foregoing provisions,
21 shall be considered a nuisance, and liable to all the

22 provisions of law relating to nuisances, and the
23 directors of the company, making the same, shall be
24 personally, liable herefore. And all fees of the
25 commissioners, for the services herein specified, shall
26 be paid by the company.

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 appraise 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 in
22 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
5 such 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.

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
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 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 case 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 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 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.

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
11 other person or persons defendants in said bill, and to

12 make a decree, and issue execution accordingly.
13 And any such complainant shall be further entitled to
14 all the remedies for breach of any injunction herein-
15 before provided.

SECT. 16. In all cases where the time limited in
2 the 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
9 purpose.

SECT. 17. In all cases where proceedings have
2 been, or may hereafter be, instituted for the recovery
3 of damages, under the provisions of the eighty-first
4 chapter of the revised statutes, within the time spec-
5 ified in the fourth section thereof, which proceedings
6 have failed, or may hereafter fail, of judgment, for
7 any error or informality, or other cause not affecting
8 the merits of the application on which such proceed-
9 ings are founded, one year from and after the ap-
10 proval of this act, for cases occurring before such
11 approval, and one year from and after such failure,

12 for cases that may hereafter occur, shall be allowed,
13 wherein to institute new proceedings. And a judg-
14 ment obtained upon any such new proceedings shall
15 have all the incidents provided by law for proceed-
16 ings instituted within the time specified in said fourth
17 section.

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

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 one hundred and forty-five of the
4 statutes of eighteen hundred forty-nine, of the oper-
5 ations of the year ending on the first of January, shall
6 be made within the month of January in each year,
7 instead of the time now required by law. It shall be
8 the duty of the secretary of state to prepare the
9 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.

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.

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

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
Feb. 25, 1853. }

ORDERED, That 350 copies of the foregoing Bill, reported by the Committee on the Judiciary, be printed for the use of the Legislature.

A. B. FARWELL, *Clerk.*