

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

THIRTY-SECOND LEGISLATURE

OF THE

STATE OF MAINE,

A. D. 1853.

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Published by the Secretary of State, agreeably to Resolves of June 28, 1820,  
Feb. 26, 1840, and March 16, 1842.  
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Augusta:

WILLIAM T. JOHNSON, PRINTER TO THE STATE.

1853.

PUBLIC LAWS
OF THE
STATE OF MAINE.

1853.

of deeds shall receive, instead of the fees provided by said eighteenth section, the sum of fifty cents and no more for each mortgage recorded; fifty cents for each deed; twenty-five cents for each assignment of a mortgage, and one dollar and fifty cents for each levy, and the same sum for certified copies of these several instruments as for recording the same; and said registers are required to make an alphabet to each volume of records, without charge to the county.

SECT. 2. All acts and parts of acts inconsistent with this act, are hereby repealed; and this act shall take effect from and after its approval by the governor.

[Approved March 30, 1853.]

Chapter 41.

An act concerning railroads.

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

SECT. 1. It shall be the duty of every railroad company on whose road any accident shall occur which shall result in the death of any person, to give immediate notice to the county attorney, whose duty it shall be to call forthwith upon some coroner of the county, whose residence is near the place where such accident shall occur, to take an inquest upon view of the dead body or bodies of such persons as shall have come to their death by such accident, in the manner provided by the revised statutes of this state; *provided, however,* that if the county attorney shall reside more than ten miles from the place of such accident, said railroad company shall first call upon some justice of the peace in the vicinity, to notify a coroner to hold such inquest, and then forthwith notify the county attorney as aforesaid, that he may be present at the hearing before said coroner.

Death, by accident on railroads, duty of company.

Proviso.

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

Penalty, if officers in charge of train, &c., become intoxicated.

SECT. 3. Railroads shall not be carried along any existing highway, but must cross the same in the line of the railway,

Railroads not to pass along highways.

CHAP. 41.

—crossing
highways, &c.,
regulation of.

unless leave be obtained from the town or city through which the same shall pass. And no railroad shall be located across any county road, until the place, manner and conditions of such crossing shall have been ordered and determined, in writing, by the county commissioners, and recorded in the county commissioners' office. And before such determination is made, reasonable notice of the time and place of hearing upon the same shall be given to the selectmen of the town in which said crossing is proposed to be made. And no railroad shall cross any street of a city, not a county road, without the written assent of the mayor and aldermen of the city, which written assent shall determine and state the manner and conditions upon which such crossing may be made; and shall be recorded in the county commissioners' office. And every such crossing, made contrary to the foregoing provisions, shall be considered a nuisance, and liable to all the provisions of law relating to nuisances, and the directors of the company, making the same, shall be personally liable therefor. And all fees of the commissioners, for the services herein specified, shall be paid by the company; *provided, however,* that if the directors of any railroad company shall be dissatisfied with the decision of the county commissioners with regard to the crossing of any county road, the governor may, upon the written application of said directors, appoint in writing, three disinterested persons, not residents of the county where such crossing is proposed to be made, who shall, after notice to said commissioners, and at the expense of said company, proceed to revise such decision, and to adjudicate upon the subject matter thereof, and their adjudication, signed and recorded in the office of said county commissioners, shall be final.

Liability for
violation.

Proviso.

Decision of
county com-
missioners
may be revised.

Taking of real
estate by
railroad
companies.

SECT. 4. No railroad company shall enter upon, or use, any real estate, for the purposes of their road, except for making surveys, until the location of said road over said estate shall have been legally made, and filed in the office of the county commissioners; and when such location shall have been filed, the said commissioners shall, before said company shall have any right to use said estate for the purposes of said company, after giving at least fourteen days' notice to the owner, proceed to view and examine such location, and shall allow and approve the same, and shall make their adjudication thereupon a matter of record; and shall further, if requested by the owner, order said company to give security for damages, according to the provisions of the sixth section of the eighty-first chapter of the revised statutes, and such security shall be given accordingly.

Before any work of the construction of the railroad shall be commenced upon the land so located, the railroad company shall, at their own expense, make a sufficient 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. And for all acts done by any company, its servants, agents, or contractors, contrary to the provisions of this section, the directors of such company shall be personally liable, both jointly and severally, to the same extent, and in the same manner as if said acts were performed by themselves; and an action therefor, against all or any number of said directors, shall be maintained in any court of competent jurisdiction.

Fences.

Company
liable for acts
of agents, &c.

SECT. 5. No person who has suffered damages by the location of any railroad, and is entitled to compensation therefor, or who may hereafter suffer damages by any such location and shall be entitled to such compensation, shall be barred of his claim, nor shall any rights whatever be acquired against him, if no proceedings shall have been, or shall be, instituted under the provisions of chapter eighty-one of the revised statutes to ascertain and determine such damages, within the time specified in the fourth section of said chapter, or as is hereafter provided; but any such person shall be entitled to his suit at law as in case of trespass, or disseizin; and may also have a further remedy, as is hereinafter provided.

Remedy for
damages.

SECT. 6. All railroad companies shall be liable for trespass upon, and injuries to, lands or buildings adjoining to, or in the vicinity of, their respective roads, by any contractor, or person in the employ of any contractor, or other person in the employ of any such company, in an action appropriate to such trespass, or injury, in the same manner, and to the same extent, as if such trespass or injury were done, or occasioned by the direct and specific order of said company; *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* that nothing herein contained shall be construed to bar, or affect, any remedy, or right of action, against the person by whom such trespass, or injury, was done or occasioned, and that the liability of such companies shall not extend to acts of willful and malicious trespass.

Railroad
companies
liable for
trespass, &c.,
by contractors.Proviso—
notice of
damage to be
given.Right of
action, &c.,
against
persons
committing
trespass.
Extent of
liability.

SECT. 7. In all cases where damages have been heretofore ascertained and determined by the county commissioner's against any railroad company, or where damages may hereafter be

Damages, how
recovered.

CHAP. 41.

ascertained and determined against any such company as aforesaid, and where the proceedings in any such case shall have been closed before said commissioners, if the amount thus ascertained shall not be paid, or tendered, by such company, within thirty days after the same shall have been demanded of said company, the person to whom damages may have been awarded as aforesaid, or who may be legally entitled to receive the same, may file a bill in equity before the supreme judicial court in the county where such damages were ascertained and determined, in term time, or in vacation, setting forth the facts in the case, and praying for an injunction against said company, its servants, agents, grantees, lessees, and all other persons whatsoever; and any judge of said court may, after summary notice to said company, and to such other person or persons as said judge may see fit to order notice upon, on proof of the facts aforesaid, and without requiring any bond of the complainant, issue a writ of injunction, according to the course of equity proceedings, prohibiting and enjoining said company, its servants, agents, grantees, lessees, and all other persons whatsoever, from using or occupying any lands for which the damages have not been paid as aforesaid, for the purposes of said road, or for any other purposes whatever, until such damages and all interest and costs, and all the costs of such injunction, shall have been fully paid and satisfied. And said bill being duly entered in court, and continued for one term thereof after such injunction shall have been decreed, and duly served upon said company and all others named as defendants in said bill, the said court may, at the term thereof to which said bill shall have been continued as aforesaid, if said damages and costs shall not then have been paid, make said injunction absolute. And all rights whatever in any lands for which the damages have not been paid, and concerning which such proceedings shall have been had, and all rights of property in and to the superstructure of said road, and other erections, over and upon said lands, and the materials composing the same, in any person, or persons, other than the owner of said lands, shall thenceforth cease, and the owner of such lands may maintain any appropriate action at law for, or in reference thereto, in the same manner, and to the same extent, as in case of trespass, or disseizin. And nothing herein contained shall bar, or in any manner limit, any legal rights which any owner of lands might have, if this act had not been passed.

Writ of
injunction.

--absolute.

Rights to
land, &c., to
cease.

Not to bar the
legal rights of
any owners of
land.

Breach of
injunction,
proceedings in
case of.

SECT. 8. If any railroad company, its servants, agents, grantees, lessees, or other persons, shall, after the service of

such injunction, either preliminary or absolute, continue to use and occupy the lands aforesaid, for any purpose, the said court may, at any term thereof, on motion of the complainants in any such bill, order the directors of any such company, or any other person by or under whom said lands may have been so used and occupied, to show cause, at a time to be fixed by said court, why a decree should not be entered and execution issued against them, or either of them, and their individual goods and estate, for the amount of all damages, interest, and costs as aforesaid, and for such additional damages and costs as said court may order and decree for breach of the injunction as aforesaid; and upon service and return of such order the court may enter such decree for damages and costs as may be a just and equitable remuneration to the complainants, against all or any of such directors and other person or persons, or either of them, as their individual or official action or neglect, and the nature of the case, may justify and require, and issue execution therefor, against any or all such persons, either jointly or severally. And nothing herein contained shall be construed to limit or affect the right of said court to proceed against any person or persons for breach of any such injunction, as in other cases.

SECT. 9. Any person, not the owner of lands taken by any railroad company under the provisions of its charter, and of the eighty-first chapter of the revised statutes, but who may have a direct interest in the use or occupation of any such lands, for any purpose or to any extent, shall be entitled to all the remedies provided for the owner of lands taken as aforesaid.

Persons interested, not owners, in lands, entitled to remedy.

SECT. 10. Whenever any railroad company has been, or may hereafter be, required by any award or estimate of damages, upon which all proceedings have been or may be closed, to do or perform any act, or to omit the doing or performing any act, and the same shall not be done within a reasonable time after notice and request, or shall hereafter be done contrary to said award, as the case may be, the person suffering damages as aforesaid shall be entitled to all the remedies hereinbefore provided.

Non-performance of awards, &c.

SECT. 11. In all cases where no proceedings have been, or shall be, instituted within the time limited in chapter eighty-one of the revised statutes, or as is hereafter provided, to ascertain and determine the damages as aforesaid, any person entitled thereto may have the remedy by injunction provided in the seventh section of this act; and the court may, if the same is prayed for in said bill, proceed to ascertain the damages which such person has suffered by the acts and doings of any such railroad

Any person entitled to damages may have remedy by injunction.

CHAP. 41.

company, or any other person or persons defendants in said bill, and to make a decree, and issue execution accordingly. And any such complainant shall be further entitled to all the remedies for breach of any injunction hereinbefore provided.

Limitation in cases where proceedings have not been commenced.

SECT. 12. In all cases where the time limited in the fourth section of chapter eighty-one of the revised statutes shall have expired before this act takes effect, or within six months thereafter, and no proceeding shall have been commenced under said act to ascertain and determine the damages therein referred to, one year from and after the day when this act shall take effect as aforesaid, shall be allowed for that purpose.

—have been commenced.

SECT. 13. In all cases where proceedings have been, or may hereafter be, instituted for the recovery of damages, under the provisions of the eighty-first chapter of the revised statutes, within the time specified in the fourth section thereof, which proceedings have failed, or may hereafter fail, of judgment, for any error or informality, or other cause not affecting the merits of the application on which such proceedings are founded, one year from and after the approval of this act, for cases occurring before such approval, and one year from and after such failure, for cases that may hereafter occur, shall be allowed, wherein to institute new proceedings. And a judgment obtained upon any such new proceedings shall have all the incidents provided by law for proceedings instituted within the time specified in said fourth section.

Award of damages by county commissioners, notice of, how given, &c.

SECT. 14. Where county commissioners shall make their report upon any question of damages occasioned by taking lands for the purposes of a railroad, and the same shall be duly recorded at a regular term of the court, it shall be the duty of the clerk of such court forthwith to notify all parties interested therein that such report has been made and recorded, giving to each notice of the amount awarded to him; which notice shall be given to parties within the state, whose names and places of residence are known, by service of such notice upon them, or their attorney of record, by an officer, and upon parties living without the state, and having an attorney of record, by service upon such attorney; and in all other cases by causing such notice to be inserted three weeks successively in some newspaper published within the county. And the expense of such notice shall be added to the costs of the proceedings in the case, and paid accordingly. And if no petition for redress shall be filed in the office of the county commissioners within thirty days after such notice, the proceedings in such case shall be closed. 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.

Commissioners may order proceedings closed in certain cases.

SECT. 15. Where a report has heretofore been made, or shall hereafter be made, by county commissioners, on an application to determine the damages occasioned by taking lands for railroad purposes, under the provisions of law, and the proceedings on such applications have been, or may be closed, a deposit by any railroad company, with the clerk of said court, of the amount allowed for said damages, with interest thereupon from the time of record of such report, and of such costs as may be allowed thereby, with all other legal costs, shall be a full satisfaction of such claim for damages: *provided*, no demand shall have been previously made therefor, and payment refused or neglected.

Claim for damages, how satisfied.

SECT. 16. 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.

Deposit of security.

--how appropriated.

Proceedings in case of neglect, &c., to give security.

SECT. 17. Service of any bill, subpoena, notice, order, injunction, or decree, provided for in this act, may be made upon the president of any company, and if there be no president, upon

Service of precepts, how made.

CHAP. 41.

any other officer thereof, and if there be no officers, then upon any stockholder. And service of any writ of injunction issued under the provisions of this act upon any person, whether a party to the bill or not, shall be binding upon him, and he shall be liable to all the consequences and penalties herein provided, for breach of such injunction.

Annual report
to secretary of
state.

SECT. 18. The annual reports of railroad corporations, required to be made to the secretary of state as provided in chapter one hundred and forty-five of the statutes of eighteen hundred and forty-nine, of the operations of the year ending on the first of January, shall be made within the month of February in each year, instead of the time now required by law. It shall be the duty of the secretary of state to prepare the necessary printed blank forms for such return, and forward a suitable number of copies thereof to the several railroad companies in the month of November in each year. If any railroad company shall willfully refuse or neglect to make such return, they shall be liable to a fine of one thousand dollars to the use of any party suing for the same.

Blank forms
for returns.

Penalty for
neglect to
make return.

Tolls, regula-
tion of, &c.

SECT. 19. Every railroad corporation in this state shall, in the month of September in each year, agree upon and fix their 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 their 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 of 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.

Fences.

SECT. 20. 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 company 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 in any appropriate action and before any court competent to try the same.

SECT. 21. This act shall take effect and be in force in thirty days from and after its signature by the governor.

[Approved March 30, 1853.]

Chapter 42.

An act additional concerning town meetings, and the assessment of taxes.

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

SECT. 1. The ninth section of the fifth chapter of the revised statutes is hereby amended by striking out the words, "or April," so as to provide that the annual meeting for the choice of town officers shall be held in the month of March annually.

Time for holding annual meetings for election of town officers established.

SECT. 2. Sections sixth, seventh, ninth and tenth, of an act entitled an act concerning the assessment of taxes, approved April fifth, eighteen hundred and forty-five, being chapter one hundred and fifty-nine of the laws of said year, are hereby amended by striking out the word "May," wherever it occurs, and inserting instead thereof the word "April," so as to provide that the poll tax shall be assessed upon each taxable person, in the place where he shall be an inhabitant, on the first day of April, and that real estate shall be assessed to the person who shall be the owner or in possession thereof, on the first day of April in each year, and that personal property shall be assessed to the owner, in the place where he shall be an inhabitant, on the first day of April in each year.

—assessment of taxes.

SECT. 3. Section sixty-three of chapter twenty-five of the revised statutes is hereby amended by striking out the words "first day of May," and inserting instead thereof the words "tenth day of April," so as to provide that the selectmen of every town, before the tenth day of April, annually, shall, in writing, assign to each surveyor of highways his divisions and limits, which assignment he is hereby required to observe.

—assignment of limits to highway surveyors.

SECT. 4. Section sixty-five of chapter twenty-five of the revised statutes is hereby amended by striking out the words "on or before the first day of June," and inserting instead

Assessors to perform certain duties.