

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbshire & George Desbarats, 1857.

20 Victoria – Chapter 12

An Act for the better Prevention of Accidents on Railways. Assented to 27th May, 1857.

Whereas it is expedient to make further provision for the prevention of accidents on Railways:
Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. The Board of Railway Commissioners constituted by the Seventeenth section of the Act passed in the Session held in the fourteenth and fifteenth years of Her Majesty's Reign, Chapter seventy-three, intituled, *An Act to make provision for the construction of a Main Trunk Line of Railway throughout the whole length of this Province*, shall, in addition to their present powers and duties, have and discharge the powers and duties in this Act prescribed, and may from time to time appoint some fit and qualified person to be Secretary of the said Board in the stead of the Secretary of the Commissioners of Public Works, who shall henceforth cease to be the Secretary of the said Board.

II. It shall be lawful for the Governor in Council to appoint and authorize any proper person or persons not exceeding three in number whose duty it shall be from time to time to inspect all Railways constructed or; in course of construction; and it shall be lawful: for every person so authorized, at all reasonable times, upon producing his authority: if required, to enter upon; and examine the said railway and the stations, fences or gates, road crossings, cattle guards, works, and buildings, and the engines, ears and carriages belonging thereto: And it shall be the duty of every Railway Company and the Officers and Directors, thereof to afford to such Inspector or Inspectors every information and full and true explanations so far as may be in their, power or knowledge on all matters inquired into by any such Inspector or Inspectors, and to submit, to such Inspector or Inspectors all plans, specifications, drawings and documents relating to the construction or reconstruction, repair or state of repair of such Railway or any portion thereof, whether a bridge, culvert or other part; And. any such Inspector shall have the right to use the telegraph wires and machinery in the offices of or under the control of any such Railway Company, for the purpose thereby or therewith of communicating with any of the officers of the said Company, or transmitting any order of any such Inspector relating to such Railway, and the operators or officers employed in the telegraph offices of or under the control of the said Company, shall without unnecessary delay obey all orders of any such Inspector for effecting such communications and transmitting messages for the purpose aforesaid, and any such operator or officer refusing or neglecting so to do, shall forfeit for every such offence the sum of Ten Pounds; and the authority of any such Inspector shall be sufficiently evidenced by a paper in writing nominating him an Inspector of Railways or of any Railway in particular signed by the Chairman of the said Board of Railway Commissioners and countersigned by the Secretary thereof.

III. Every person wilfully obstructing any person duly authorized as aforesaid in the execution of his duty shall, on conviction before a Justice of the Peace having jurisdiction in the place where the offence shall have been committed, forfeit and pay for every such offence any sum not exceeding ten pounds,

and in default of payment of any penalty so adjudged immediately or within such time as the said Justice of the Peace shall appoint, the same Justice, or any other Justice having jurisdiction in the place where the offender shall be or reside, may commit the offender to prison for any period not exceeding three calendar months; such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing Court of Quarter Sessions in the usual manner.

IV. No Railway or portion of any Railway shall be opened for the public conveyance of passengers until one calendar month after notice in writing of the intention of opening the same shall have been given by the Company to whom such Railway shall belong to the Board of Railway Commissioners, and until ten days alter notice in writing shall have been given by the said Company to the said Board of Railway Commissioners of the time when the said Railway or portion of Railway will be, in their opinion, sufficiently completed for the safe conveyance of passengers, and ready for inspection.

V. If any Railway or portion of any Railway, shall be opened without such notices as aforesaid, the Company to whom such Railway shall belong, shall forfeit to Her Majesty the sum of fifty pounds for every day daring, which the same shall continue open, until the said notices shall have been duly given and shall have expired.

VI. If the Inspector or Inspectors appointed as aforesaid, shall, after inspection of any Railway, report in writing to the said Board that, in his or their opinion, the opening of the same would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such Railway, together with the ground of such opinion, it shall be lawful for the said Board of Railway Commissioners, with the sanction of the Governor in Council, and so from time to time, as often as such Inspector or Inspectors shall after further inspection thereof so report, to order and direct the Company to whom such Railway shall belong to postpone such opening not exceeding one calendar month at any one time, until it shall appear to the said Board that such opening may take place without danger to the public; and if any such Railway, or any portion thereof, shall be opened contrary to any such order or direction of the Board of Railway Commissioners, the Company to whom such Railway shall belong shall forfeit to Her Majesty the sum of fifty pounds for every day during which the same shall continue open contrary to such order and direction; Provided always, that no such order as aforesaid shall be binding upon any Railway Company unless therewith shall be delivered to the said Company a copy of the report of the Inspector or Inspectors on which such order shall be founded.

VII. It shall be lawful for the Governor in Council upon the Report of the said Board to authorize or require any Railway Company to construct fixed and permanent bridges or to substitute such bridges in the place of the swing, draw or moveable bridges on the line of such Railway, within such time as the Governor in Council may direct; and for each and every day after the period so fixed during which the said Company shall use such swing, draw or moveable bridges the said Company shall forfeit and pay to Her Majesty the sum of fifty pounds; Provided it shall not be lawful for any Railway Company to substitute any swing, draw or other moveable bridge in the place or stead of any fixed or permanent bridge already built and constructed without the consent of the Governor in Council previously had and obtained.

VIII. When and so often as any bridge, culvert, viaduct, tunnel, fence, road, crossing or cattle guard, or any other portion of any railway constructed or in course of construction or any locomotive, car or carriage used or for use on any Railway shall have been condemned on the report of an Inspector or Inspectors, by the said Board of Railway Commissioners, with the approval of the Governor in Council, or any change or alteration therein or in any part thereof, or the substitution of any new bridge, culvert, viaduct or tunnel, or of any material for the said Railway, shall be required by the said Board of Railway Commissioners, with the approval of the Governor in Council, the Company to which such Railway belongs, or using, running or controlling the same, shall, after notice thereof in writing signed by the Chairman of the said Board and countersigned by the Secretary thereof, proceed to make good or remedy the defects in the said portions of the Railway, or in the locomotive, car or carriage which shall have been so condemned, or to make such change, alteration or substitution hereinbefore referred to as may have been required in manner aforesaid by the said Board.

IX. If in the opinion of any such Railway Inspector, it shall be dangerous that trains or vehicles should pass over any particular railway, or any portion of a Railway, until alterations, substitutions or repairs shall have been made thereon, or that any particular car, carriage or locomotive should be run or used, it shall be lawful for the said Inspector forthwith to forbid the running of any train or vehicle over any such Railway or portion of Railway, or the running or using of any such car, carriage or locomotive by delivering or causing to be delivered to the President, Managing Director, or Secretary or Superintendent of the Company owning, running, or using such Railway, or to any Officer having the management or control of the running of trains on such Railway, a notice in writing to that effect with his reasons therefor, in which he shall distinctly point out the defects or nature of the danger to be apprehended; and forthwith the said Inspector shall report the same to the said Board of Railway Commissioners, who, with the sanction of the Governor in Council, may either confirm, modify or disallow such act or order of the Inspector; and such confirmation, modification or disallowance shall be duly notified to the Railway Company affected thereby; and the said Board of Railway Commissioners may, with the sanction of the Governor in Council, limit the number or times or rate of speed of running of trains or vehicles, upon such Railway or portion of railway, until such alterations or repairs as they may think sufficient shall have been made, or until such time as they may think prudent; and it shall be the duty of the Company owning, running or using such railway to comply forthwith with any such Order of the said Inspector or of the said Board, upon notice thereof as aforesaid; and for every act of non-compliance therewith every such Railway Company¹ shall forfeit to Her Majesty the sum of five hundred pounds.

X. From and after the passing of this Act, and at all times thereafter, every Railway Company which runs any trains for the conveyance of passengers upon any railway, shall provide and cause to be used in and upon such trains such known apparatus and arrangements as shall best afford good and sufficient means of immediate communication between the conductors and the engine-drivers of such trains while the trains are in motion, and good and sufficient means of applying the brakes to the truck-wheels of the locomotive or tender, or both, or of all or any of the cars or carriages composing such trains, by the power of the steam-engine or otherwise at the will of the engine-driver, or other person or persons appointed to such duty, and of disconnecting the locomotive, tender, and cars or carriages from each other by any such power or means, and as shall best and most securely place and fix the

seats or chairs in such cars or carriages, and shall alter such apparatus and arrangements or supply new apparatus and arrangements from time to time as the said Board of Railway Commissioners, with the sanction of the Governor in Council, may order; and every Railway Company shall make such by-laws, rules and regulations, to be observed by the conductors, engine-drivers, and other officers and servants of such Company, and by all other Companies and persons using the Railway of such Company, and such regulations with regard to the construction of the carriages and other vehicles, to be used in such trains on the Railway of such Company, as are requisite for ensuring the employment and proper use of such means of communication, application and disconnection, as aforesaid; and every Railway Company which fails to comply with the provisions hereinbefore contained as to ensuring means of communication between the conductors and engine-drivers of trains, or of applying the brakes or disconnecting the carriages composing trains or of placing and fixing the seats or chairs aforesaid, shall forfeit to Her Majesty a sum not exceeding Fifty Pounds, for every day during which such default shall continue.

XI. In any case where a Railway not already commenced may hereafter be constructed or authorized to be constructed, across any turnpike road, street, or other public highway, on the level, it shall be lawful for the Board of Railway Commissioners, if it appear to them necessary for the public safety, with the sanction of the Governor in Council, to authorize and require the Company to whom such Railway belongs, within such time as the said Board shall direct, to carry such road, street or highway either over or under the said Railway, by means of a bridge or arch, instead of crossing the same on the level, or to execute such other works as under the circumstances of the case appear to the said Board the best adapted for removing or diminishing the danger arising from such level crossing; and all the provisions of law at any such time applicable to the taking of land by Railway Companies and its valuation and conveyance to them, and to the compensation therefor, shall apply to the case of any land being required for the construction of any works for effecting the alteration of such level crossing; Provided that any thing contained in any Act of the Parliament of this Province which suspends the operation of the Act sixteenth Victoria, chapter one hundred and sixty-nine, section six, requiring "That in all cases where Railways pass any draw or swing bridge over any navigable river, canal or stream, which is subject to be opened for the purposes of navigation, the trains shall in all cases be stopped at least three minutes to ascertain from the bridge tender that such bridge is closed and in perfect order for passing," be and the same is hereby repealed; Provided also, that it shall be the duty of every Railway Company to station an officer at every point, on their line crossed on a level by any other Railway, and no train shall proceed over such crossing until signal has been made to the Conductor thereof that the way is clear; Provided also, that hereafter every locomotive or Railway engine or train of cars, on any Railway, shall, before it crosses the track of any other Railway on a level, be stopped for at least, the space of three minutes, and that no locomotive or Railway engine shall pass in or through any thickly peopled portion of any City, Town or Village at a speed greater than six miles per hour, unless the track is properly fenced, and that whenever any train of cars shall be moving reversely in any City, Town or Village, the locomotive being in the rear, the Company shall station on the last car in the train a person whose duty it shall be to warn parties, standing on or crossing the track of such Railway, of the approach of such train, under a penalty of twenty-five pounds for any contravention of these provisions.

XII. If the Board of Railway Commissioners, in the exercise of the powers hereinbefore contained, order any Railway Company to erect at or near or in lieu of any such level crossing of a turnpike road, or other public highway as aforesaid, a footbridge or foot-bridges over their Railway for the purpose of enabling persons passing on foot along the said turnpike road or public highway to cross the said Railway by means of such bridge or bridges, then and in any such case, from and after the completion of such foot-bridge or foot-bridges as shall be so required to be erected, and while the said Company keep the same in good and sufficient repair, the said level crossing shall not be used by foot passengers on the said turnpike road or public highway, except during the time when the same shall be used for the passage of carriages, carts, horses or cattle along the said road.

XIII. Every Railway Company shall as soon as possible, and at least within forty-eight hours, after the occurrence upon the railway belonging to such Company of any accident attended with serious personal injury to the public using the same, or whereby any bridge, culvert, viaduct or tunnel on or of the said Railway shall be broken or so damaged as to be impassable or unlit for immediate use, give notice thereof to the Board of Railway Commissioners; and if any Company shall wilfully omit to give such notice, such Company shall forfeit to Her Majesty the sum of Fifty pounds for every day during which the omission to give the same shall continue.

XIV. Every Railway Company shall within ten days after the first days of January and July, in each and every year, make to the said Board of Railway Commissioners, under the oath of the President, Secretary or Superintendent of the said Company, a true and particular return of all accidents and casualties (whether to life or property) which have occurred on the Railway of the said Company during the half year next preceding each of the said periods respectively, setting forth the causes and natures of such accidents and casualties, the points at which they occur, whether by night or by day, and the full extent thereof, and all particulars of the same, and shall also at the same time return, a true copy of the existing By-laws of the said Company and of their rules and regulations for the management of the said Company and of their Railway; and the Board of Railway Commissioners may order and direct, from time to time, the form in which such returns shall be made up, and may order and direct any railway Company to make up and deliver to them from time to time, in addition to the said periodical returns, returns of serious accidents occurring in the course of the public traffic upon the Railway belonging to such Company, whether attended with personal injury or not, in such form and manner as the said Board shall deem necessary, and require for their information with a view to the public safety; And if any such returns, verified as aforesaid, shall not be so delivered within the respective times herein prescribed or within fourteen days after the same shall have been so required as aforesaid by the said Board, every such Company shall forfeit to Her Majesty the sum of twenty-five pounds, for every day during which the said Company shall neglect to deliver the same; Provided always, that all such returns shall be privileged communications, and shall not be evidence in any Court whatsoever.

XV. The provisions of the Act passed in the session, held in the nineteenth and twentieth years of Her Majesty's reign, chapter eleven, intituled, *An Act for the punishment of the Officers and Servants of Railway Companies contravening the By-laws of such Companies, to the danger of person and property*, shall apply to cases of the non-observance or contravention by any such officer or servant of any order or notice of the said Board of Railway Commissioners, of which he shall, before such non-observance or contravention, have had cognizance in any of the ways referred to in the second section of the said

Act; and it shall be the duty of every Railway Company, as soon as possible after the receipt of any such order or notice, to give cognizance thereof in one or more of such ways to each of its officers and servants; and all orders of the said Board of Railway Commissioners shall be considered as made known to the said Railway Company by a notice thereof signed by the Chairman and countersigned by the Secretary of the said Board, and delivered to the President, Vice-President, Managing Director, Secretary or Superintendent of the said Company, or at the office of the said Company.

XVI. No horses, sheep or swine or other cattle, shall be permitted to be at large upon any highway within a half mile of the intersection of any highway with any Railway on grade unless the same respectively shall be in charge of some person or persons to prevent their loitering or stopping on such highway at such intersection with any Railway, and all such cattle so found at large in contravention hereof, may be impounded by any person finding the same at large, in the nearest pound to the place where the same shall be so found, and the pound-keeper with whom the same shall be so impounded shall detain the same in the like manner, and subject to the like regulations as to the care and disposal thereof, as in the case of cattle impounded for trespass on private property, and no person, any of whose cattle so at large, shall be killed by any train at such point of intersection, shall have any action against any Railway Company in respect to the same being so killed.

XVII. No inspection had under this Act nor any thing in this Act contained or done or ordered or omitted to be done or ordered under or by virtue of the provisions of this Act, shall relieve or be construed to relieve any Railway Company, of or from any liability or responsibility resting upon it by law either towards Her Majesty or towards any person, or the wife or husband, parent or child, executor or administrator, tutor or curator, heir or other personal representative of any person for any thing done or omitted to be done by such Company or for any wrongful act, neglect or default, misfeasance, malfeasance or nonfeasance, of such Company, or in any manner or way to lessen such liability or responsibility, or in any way to weaken or diminish the liability or responsibility of any such Company under the existing laws of the Province.

XVIII. At every road and farm crossing on the grade of the Railways in this Province, the said crossing shall be sufficiently fenced on both sides of such points, as will allow the safe passage of the trains.

XIX. From and after the passing of this Act, every Railway now or hereafter to be constructed, so soon as any portion thereof is in use, shall pay to the Receiver General an annual rate to be fixed by the Governor in Council, and not exceeding two pounds ten shillings per mile of Railway constructed and in use; such rate to be paid half yearly on the First days of January and July in each year, and to form a special fund for the purposes of this Act to be called "The Railway Inspection Fund."

XX. All penalties incurred under this Act, except penalties under the third section thereof, may be recovered in the name of Her Majesty, by Her Majesty's Attorney General in any Court having competent jurisdiction thereover; and all penalties recovered under this Act, shall be paid to the Receiver General to the credit of the "The Railway Inspection Fund."

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XXI. In the construction of this Act the expression Railway Company shall include any person being the owner or lessee of or contractor working any railway constructed or carried on under the powers of an Act of Parliament.

XXII. This Act may be cited for all purposes as "The Accidents on Railways Act, 1857."