

VICTORIA.



ANNO VICESIMO PRIMO

VICTORIÆ REGINÆ.

No. XL.

An Act to provide for the Supervision of Railways.

[24th November, 1857.]

WHEREAS it is necessary to make further provision for the protection of persons travelling on railways Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say)

I. That it shall be lawful for the Board of Land and Works at all times to make inspection of and to exercise supervision over all railways whatsoever for the purpose of carrying into effect the provisions of this Act or of any other Act and when they shall so think fit to authorize any proper person or persons to inspect any railway and such person so authorized may at all reasonable times enter upon and examine the railway and the stations works buildings and lands and the engines and carriages belonging thereto and such power of supervision inspection and examination shall apply as well to railways heretofore as to those hereafter to be constructed and the board and any person authorized by them to make such supervision inspection or examination may hear receive and examine evidence and require the production of plans books and other documents and exercise all such other powers and authority as may be required for the due discharge of their respective offices Provided always that any person demanding to make such inspection shall produce to the company to whom such railway belongs his authority if required.

Board may authorize inspection of any railway.

3 & 4 Vict. c. 97. s. 5, and 7 & 8 Vict. c. 85, ss. 15, 16.

II. No railway or portion of a railway shall be opened for the public conveyance of passengers until one month after notice in writing shall have been given to the board of the intention of the company to whom such railway shall belong to open the same nor until the board shall have given to such company a certificate in writing under their hands that the said railway or portion of railway is in the opinion of the said board sufficiently completed for the safe conveyance of passengers and ready for inspection.

Railway not to be opened without notice.

1b. s. 5.

III. If

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If railway opened
without notice
company to pay
penalty.
Ib. s. 3.

III. If any such railway or portion of a railway the property of a company be opened without such certificate as aforesaid the company to whom such railway belongs shall forfeit the sum of fifty pounds for every day during which the same shall continue open without such certificate and every such penalty may be recovered by information in the name of the Attorney General in the supreme court.

Board may postpone
opening of railway.
Ib. s. 6.

IV. If the person authorized to inspect any such railway before it shall be opened (or before it shall be re-opened if the same has been closed) shall after inspection thereof report in writing to the board that in his 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 grounds of such opinion it shall be lawful for the board (and so from time to time as often as such person shall after further inspection thereof so report) to order and direct the company to whom such railway shall belong to postpone such opening for any period not exceeding one month at any one time until it shall appear to the 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 and direction the company to whom such railway shall belong shall forfeit the sum of one hundred pounds for every day during which the same shall continue open contrary to such order and direction and every such penalty may be recovered by information in the name of the Attorney General in the supreme court Provided always that no such order or direction shall be binding on any such company unless therewith shall be delivered to the said company a copy of the report on which such order or direction shall be founded.

Judge may order rail-
way to be closed
until repaired.

V. If the person authorized to inspect any railway opened by the company for the carriage of passengers animals or goods shall certify under his hand to the board that in his opinion the railway or any portion thereof is unfit for traffic or that it will be unsafe to travel thereon at a greater speed than a rate specified therein stating therein with reasonable certainty in what particulars the said railway is supposed to be unsafe it shall be lawful for the said board after having endorsed such certificate with a memorandum of their approval as also such plans sections surveys and drawings as may be necessary to illustrate the defects or other matters objected to to apply by petition in a summary way to the supreme court or a judge thereof complaining of the incompleteness or inadequacy of the works or the omission to erect gates as hereinafter provided or to carry any highway or road either over or under the railway by means of bridges arches or tunnels as the case may require or the insufficiency of the establishment for making such railway or of the rolling stock of the same and it shall be lawful for the court or a judge thereof to direct the company to whom such railway shall belong to discontinue the traffic on the whole or any part thereof or to travel at a reduced speed thereon until the requirements of the said certificate shall have been complied with or to make such other order as to the said court or a judge thereof shall seem necessary or proper and to make from time to time such further or other order for restraining the company or any other persons from using the said railway or any part thereof otherwise than in conformity with the said certificate or order of the court or a judge thereof and to issue any writ of injunction for the purpose aforesaid and such court shall have power to award costs to be paid by such company or by

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by such other persons as aforesaid. Provided always that before any such application shall be made as aforesaid the board shall give six days previous notice of their intention to make any such application and of the day and hour at which the same will be made and shall also fourteen days before such application furnish the company with a true copy of the certificate so endorsed as aforesaid.

VI. The use of signals on all railways whatsoever shall be under the superintendence and control of the board who shall have full power and authority from time to time to issue a code or codes of signals and to make rules and regulations in that behalf and any company violating the same shall forfeit for each offence a sum not exceeding ten pounds and such penalty may be recovered by information in the name of the Attorney General in the supreme court.

Signals to be under superintendence of board.

VII. Every railway company shall within forty eight hours after the occurrence upon the railway belonging to such company of any accident attended with personal injury to the public using the same give notice thereof to the board and if any company shall wilfully omit to give such notice every such company shall forfeit the sum of twenty pounds for every day during which the omission to give the same shall continue and every such penalty may be recovered by information in the name of the Attorney General in the supreme court.

Notice of accidents to be given to the board by companies

5 & 6 Vict. c. 55, s. 7

VIII. Every railway company shall make such periodical and other returns of 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 board shall deem necessary and require for their information with a view to the public safety and if any such returns shall not be so delivered within fourteen days after the same shall have been required or after the day appointed for making the same respectively every such company shall forfeit the sum of twenty pounds for every day during which the said company shall neglect to deliver the same and every such penalty may be recovered by information in the name of the Attorney General in the supreme court.

Company to make return of accidents to board.

Ib. s. 8.

IX. Whenever it shall appear to the board that any railway company has not complied with or is acting in a manner unauthorized by the provisions of this Act or any general Act which may be hereafter passed relating to railways or of the special Act or in excess of the powers given or objects defined by any of such Acts and that it would be for the public advantage that the company should be restrained from so acting the board may certify the same to the Attorney General and thereupon he shall in case such default of the company shall consist of non-compliance with the provision of any of the Acts aforesaid proceed to recover such penalties and forfeitures or otherwise to enforce the due performance of the said provisions by such means as any person aggrieved by such non-compliance or otherwise authorized to sue for such penalties might employ under the provisions of the said Acts and in case the default of the company shall consist in the commission of act or acts unauthorized by law then the said Attorney General upon receiving such certificate as aforesaid shall proceed to obtain an injunction or order to restrain the company from acting in such illegal manner or to give such other relief as the nature of the case may require and the judge to whom such application is made shall be authorized to grant such injunction or order or to give such other relief if he shall be of opinion that the act or acts of the company is or are not authorized by law.

Remedy by board against railway companies exceeding their powers or violating Acts.

7 & 8 Vict. c. 85, s. 17

X. No such certificate as last aforesaid shall be given by the board

How legal proceedings may be taken.

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7 & 8 Vict. c. 85, s. 2. board until twenty-one days after they shall have given notice to the company against or in relation to whom they shall intend to give such certificate of their intention to give the same and that no legal proceedings shall be commenced under the authority of the board against any company for any offence against any of the several Acts relating to railways or to this Act or any general Act relating to railways except upon such certificate of the board and within one year after such offence shall have been committed.

Board may make suggestions to company which shall be entered in a book.

XI. Whenever the board shall consider that the exigencies of any case do not call for or warrant more active interference on their part in the regulation of any matter relating to the railway of any company it shall be lawful for them to make such suggestions to the directors as the said board shall think conducive to the safety interest or convenience of the public or as the circumstances of the case may require and the directors shall cause every such suggestion to be forthwith entered in a book to be kept by them for such purpose and shall be liable to a penalty of ten pounds to be recovered as aforesaid for every omission to make any such entry.

Penalty.

Communications to and from Board signing of notices, &c.

7 & 8 Vict. c. 85, s. 23.

XII. All notices requisitions orders regulations appointments certificates certified copies and other documents in writing signed by the secretary to the board or some other officer nominated for that purpose by the board and all certificates of any thing done by them in relation to this Act and certified copies of the minutes of proceedings or correspondence of the board in relation thereto signed by such secretary or officer as aforesaid shall be deemed sufficient evidence thereof and in the absence of evidence to the contrary without proof of the authority of the person signing the same or of the signature thereto and service of the same at one of the principal offices of any railway company on the secretary or clerk of the said company or by sending the same by post addressed to him at such office shall be deemed good service upon the said company and all notices returns and other documents required by this Act to be given to or laid before the board shall be delivered at or sent by post addressed to the office of the board.

Provision in cases where roads are crossed on a level.

XIII. If any railway cross any public road on a level the company to whom such railway belongs shall erect and permanently maintain either a station or a lodge at such crossing and shall at all times maintain good and sufficient gates across such road on each side of the railway where the same shall communicate therewith and shall employ proper persons to open and shut such gates and such gates shall be kept constantly closed across such road on both sides of the railway except during the time when horses cattle sheep or other animals carts or carriages passing along the road shall have to cross such railway and such gates shall be of such dimensions and so constructed as while closed to fence in the railway and prevent such traffic as aforesaid from entering upon the railway and when opened to form a fence on each side of the road across the railway and prevent the said traffic while crossing the railway from deviating from the direct road across the same and the person entrusted with the care of such gates shall cause the same to be closed as soon as such horses cattle sheep or other animals carts or carriages shall have passed through the same under a penalty of twenty pounds for every default therein Provided always that it shall be lawful for the said board in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway instead of across the road to order that such gates shall be kept so closed instead of across the

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the road and in such case such gates shall be constantly closed across the railway except when engines or carriages passing along the railway shall have occasion to cross such road in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

XIV. Whenever level crossings are allowed for the accommodation of private roads or for the owners of land adjoining the railway or otherwise than is hereinbefore provided for gates shall be constructed by the company at such respective crossings which gates shall be placed on either side of the railway and shall open outwards from the railway and when closed shall fence in the railway as aforesaid and every person using such crossing shall close and fasten such gates immediately after passing through the same and if he shall cross with any carriage cart horse cattle sheep or other animal shall use all convenient despatch in crossing the railway with the same and every person offending in any of the said respects or crossing on the level with any carriage horse cattle sheep or other animal save where gates shall have been constructed shall forfeit for such offence the sum of ten pounds.

Level crossings at private roads, &c.

XV. In the case of any information or indictment at the instance of a private prosecutor against any railway company if a verdict shall be found for such company they shall be entitled to recover from such prosecutor the costs sustained by them by reason of such information or indictment and if a verdict shall be found for the Crown then such prosecutor shall be entitled to recover from such company the costs sustained by him in prosecuting such information such costs so to be recovered by the company or prosecutor respectively to be taxed by the proper officer of the supreme court and such company may appear and such information may be tried in the same manner as any other information at any circuit court or at the criminal sittings of the supreme court at Melbourne.

Costs to be allowed to successful party.

Costs to be taxed.

Company may appear and case be tried as in other trials by information.

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