

No.173.

4th Session, 8th Parliament, 29th Victoria, 1865.

BILL.

An Act for the better regulation of the
traffic on Railways and Canals:

Received and read, first time, Thursday,
24th August, 1865.

Second reading, Friday, 25th Aug., 1865.

Mr. MACFARLANE.

QUEBEC:

PRINTED BY HUNTER, ROSS & CO., CT.
URQUHART STREET.

An Act for the better Regulation of the Traffic on Railways and Canals.

WHEREAS it is expedient to make better provision for regulating the traffic on Railways and Canals: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. In the construction of this Act "the Board of Trade" shall so far as applies to Upper Canada, mean the Board of Trade of the City of Toronto, and so far as applies to Lower Canada, mean the Board of Trade of the City of Montreal; the word "Traffic" shall include not only passengers and their luggage and goods, animals and other things, conveyed by any Railway and Canal Company, but also carriages, wagons, trucks, boats, and vehicles of every description adapted for the purposes of any such Company; the word "Railway" shall include every station of or belonging to such Railway, used for the purposes of public traffic; and the word "Canal" shall include any navigation wherein tolls are levied by authority of Parliament, and also the wharves and landing places of and belonging to such canal or navigation, and used for the purposes of public traffic; the expression "Railway Company," "Canal Company," or "Railway and Canal Company," shall include any person being the owner or lessee of or any contractor working any Railway or Canal or navigation constructed or carried on under the powers of any Act of Parliament; a station, terminus, or wharf shall be deemed to be near another station, terminus, or wharf when the distance between such station, terminus, or wharves shall not exceed one mile.

2. Every Railway Company, Canal Company, and Railway and Canal Company, shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several Railways and Canals belonging to or worked by such Companies respectively, and for the return of carriages, trucks, boats and other vehicles, and no such company shall make or give any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, and every Railway Company and Canal Company and Railway and Canal Company being or working railways or canals which form part of a continuous line of Railway or Canal or Railway and Canal communication, or which have the terminus, station or wharf of the one near the terminus, station or wharf of the other, shall afford all due and reasonable faci-

lities for receiving and forwarding all the traffic arriving by one of such Railways or Canals by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such Railways or Canals or Railways 5 and Canals, as a continuous line of communication, and so that all reasonable accommodation may by means of the Railways and Canals of the several Companies, be at all times afforded to the public in that behalf.

Remedy for parties complaining against any Railway or Canal Company.

3. It shall be lawful for any company or person complaining 10 against any such company or companies of any thing done, or of any omission made in violation or contravention of this Act, to apply in a summary way, by motion or summons in Upper Canada, to Her Majesty's Courts of Queen's Bench or Common Pleas at Toronto; or in Lower Canada, to any of Her Majesty's Superior Courts in Lower 15 Canada, as the case may be, or to any Judge of any such Court, and upon the certificate to the Attorney General for Upper Canada, of the Board of Trade of the City of Toronto when the case arises in Upper Canada, or the Attorney General for Lower Canada, of the Board of Trade of the City Montreal when the case arises in Lower 20 Canada, alleging any such violation or contravention of this Act by any such company or companies, it shall also be lawful for the said Attorney General (as the case may be) to appoint in like manner to any such Court or Judge, and in either of such cases it shall be lawful for such Court or Judge to hear and determine the matter of such com- 25 plaint, and for that purpose, if such Court or Judge shall think fit, to direct and prosecute in such mode and by such engineers, barristers or other persons as they shall think proper, all such enquiries as may be deemed necessary to enable such Court or Judge to form a just judgment on the matter of such complaint; and if it be made to 30 appear to such Court or Judge on such hearing, or on the report of any such person, that any thing has been done or omission made, in violation or contravention of this Act, by such company or companies, it shall be lawful for such Court or Judge to issue a writ of injunction or interdict, restraining such company or companies from 35 further continuing such violation or contravention of this Act, and enjoining obedience to the same; and in case of disobedience of any such writ of injunction or interdict, it shall be lawful for such Court or Judge to order that a writ or writs of attachment, or any other process of such Court incident or applicable to writs of injunction or 40 interdict, shall issue against any one or more of the Directors of any Company, or against any owner, lessee, contractor, or other persons failing to obey such writ of injunction or interdict; and such Court or Judge may also, if they or he shall think fit, make an order directing the payment by any one or more of such companies, of such sum of money 45 as such Court or Judge shall determine, not exceeding for each company the sum of two hundred pounds for every day, after a day to be named in the order, that such company or companies shall fail to obey such injunction or interdict; and such moneys shall be payable as the Court or Judge may direct, either to the party complaining or 50 into Court to abide the ultimate decision of the Court, or to Her Majesty; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by judgment or decree of judgment of any Supe- 55 rior Court in Lower Canada, or of such Court of Queen's Bench or Common Pleas in Upper Canada; and in any such proceeding as aforesaid, such Court or Judge may order and determine that all

or any cost thereof or thereon incurred shall and may be paid by or to the one party or the other, as such Court or Judge shall think fit; and it shall be lawful for any such engineer, barrister, or other persons if directed so to do by such Court or Judge, to receive evidence
 5 on oath relating to the matter of any such enquiry, and to administer such oath.

4. It shall be lawful for the said Court of Queen's Bench and Common Pleas in Upper Canada, or any three of the Judges thereof, of whom the Chief Justice for Upper Canada shall be one; and it shall
 10 be lawful for the said Superior Courts in Lower Canada or any three of the Judges thereof, of whom the Chief Justice for Lower Canada shall be one, from time to time to make all such general rules and orders as to the forms of proceedings and process and all other matter and things touching the practice and otherwise in carrying this Act
 15 into execution before such Courts and Judges respectively, as they may think fit.

5. Upon the application of any party aggrieved by the order made upon any such motion or summons as aforesaid, it shall be lawful for the Court or Judge by whom such order was made to direct, if they
 20 think fit so to do, such motion or application on summons to be reheard before such Court or Judge, and upon such rehearing to rescind or vary such order.

6. No proceeding shall be taken for any violation or contravention of the above enactments, except in the manner herein provided, but
 25 nothing herein contained shall take away or diminish any rights, remedies or privileges of any person or company against any Railway or Canal, or Railway and Canal Company under the existing law.

7. Every such company as aforesaid, shall be liable for the loss of or for any injury done to any horses, cattle, or other animals, or to
 30 any articles, goods or things in the receiving, forwarding or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition or declaration made and given by such company contrary thereto, or in any wise limiting such liability; every such notice, condition, or declaration being
 35 hereby declared to be null and void: provided always, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding and delivering of any of the said animals, articles, goods or things, as shall be adjudged by the Court or Judge before whom any
 40 question relating thereto shall be tried to be just and reasonable; provided always, that no greater damages shall be recovered for the loss or for any injury done to any such animals, beyond the sums hereinafter mentioned, (that is to say) for any horse fifty pounds; for any neat cattle, per head fifteen pounds; for any sheep or pigs, per head whether live or dressed when dead, two pounds; unless the
 45 person sending or delivering the same to such company shall, at the time of such delivery, have declared them to be respectively of higher value than as above mentioned, in which case it shall be lawful for such company to demand and receive, by way of compensation for the increased risk and care thereby occasioned, a reasonable percentage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge, and such percentage or increased rate of charge shall be notified in the manner prescribed in the Statute Eleventh George Fourth, and First William Fourth, chapter fifty-

Courts may make rules or orders as to procuring in carrying out this Act.

Party aggrieved by such order may apply for rehearing.

Mode of proceeding restricted.

Company to be liable for injury or loss resulting from neglect.

Proviso; Company may make reasonable conditions as to receiving, forwarding &c.

Proviso; Damages for loss of animals limited. When animals are declared to be higher than the fixed value.

Proof of value in case of loss

eighth, and shall be binding on such company in the manner therein
 mentioned; provided also, that the proof of the value of such ani-
 mals, articles, goods and things, and the amount of the injury done
 thereto, shall in all cases lie upon the person claiming compensation
 for such loss or injury; provided also, that no special contract be- 5
 tween such company and any other parties respecting the receiving,
 forwarding or delivering of any animals, articles, goods or things as
 aforesaid, be binding upon or affect any such party unless the same
 be signed by him or by the person delivering such animals, articles,
 goods or things respectively for carriage; provided also, that nothing 10
 herein contained shall alter or affect the rights, privileges, or liabili-
 ties of any such company under the said Act of the Eleventh George
 Fourth, and First William Fourth, chapter sixty-eighth, with respect
 to articles of the descriptions mentioned in the said Act.

Name of Act. S. This Act may be cited for all purposes as "The Railway and 15
 Canal Traffic Act, one thousand eighteen and sixty-five.