

# HOUSE....No. 137.

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[Reported by the Committee on the Judiciary, as a new draft of House, No. 80.]

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## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Fifty.

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### AN ACT

Concerning Railroad Crossings.

*BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :*

1    SECT. 1.  Whenever ten or more of the inhabitants  
2 of any county shall, in a petition by them subscribed,  
3 and addressed to the county commissioners of such  
4 county, represent that the public security requires  
5 that gates should be erected across any railroad, at  
6 its crossing of any highway, street, or travelled place  
7 in such county, and that agents should be stationed  
8 to open or close said gates, whenever an engine or

9 car passes, the said county commissioners shall, after  
10 due notice, hear the parties in interest, and if, on  
11 said hearing, the said county commissioners shall find  
12 and adjudge, that the erection of such gates, and the  
13 stationing such agents, are necessary for the public  
14 security, the said county commissioners shall order  
15 the said railroad corporation to erect such gates, and  
16 station such agents, within the time in such order  
17 specified, and also to pay the costs of such applica-  
18 tion. And when, on such application, the petitioners  
19 shall not be the prevailing party, they shall be jointly  
20 and severally liable for the costs of said application  
21 and hearing, and they shall, on the filing of said peti-  
22 tion, and before any hearing thereon, be required to  
23 give bonds therefor, with sufficient surety, to such  
24 railroad corporation.

1 SECT. 2. Either party, aggrieved by any such  
2 order as provided in the first section of this act, may  
3 apply to the court of common pleas, if sitting in such  
4 county, or to any justice thereof in vacation, for a  
5 jury, and such court or justice shall issue a warrant  
6 for a jury, to be impanelled by the sheriff, in the same  
7 manner as is provided in the twenty-fourth chapter of  
8 the Revised Statutes, in regard to the laying out of  
9 highways: *provided*, that such application to said  
10 court or justice, shall be made within ten days after  
11 the passing of such order by said county commis-  
12 sioners.

1 SECT. 3. Such jury shall find a verdict, affirming  
2 or annulling said order of the county commissioners,  
3 which verdict shall be returned to the next term of  
4 said court of common pleas by the sheriff, for accept-  
5 ance, in like manner as in the case of highways, and

6 which verdict, being accepted, shall be binding to the  
7 same effect as the original order would have been,  
8 without such application, and the costs of the whole  
9 proceedings shall be recovered and awarded, and exe-  
10 cution issued by said court therefor, in favor of the  
11 party finally prevailing.

1     SECT. 4. Whenever the railroad crossing, at which  
2 it shall be alleged that such gates and agents are ne-  
3 cessary, shall lie within the city of Boston, the mayer  
4 and aldermen of said city shall have and exercise the  
5 same powers, as by the provisions of this act are con-  
6 ferred on county commissioners.

1     SECT. 5. Whenever any railroad corporation shall,  
2 upon the final decision upon such petition or appli-  
3 cation, when such decision is adverse to them, neglect  
4 or refuse to erect such gates, and station such agents,  
5 for one week after the time appointed therefor in such  
6 decision, such corporation shall be liable to a penalty  
7 of two hundred dollars, for such neglect or refusal,  
8 and the supreme judicial court shall also have power,  
9 as a court of equity, upon application by bill, or com-  
10 plaint, by any two or more of the petitioners, to com-  
11 pel such corporation to erect such gates, and station  
12 such agents.

1     SECT. 6. The two hundred and twenty-second  
2 chapter of the acts of the year 1849, so far as the  
3 same is inconsistent with the provisions of this act, is  
4 repealed.

1     SECT. 7. This act shall take effect, from and after  
2 its passage.

