

HOUSE....No. 174.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, March 20, 1855.

The Committee on the Judiciary, to whom was referred an Order relative to Stationary Steam Engines, have considered the same, and report the accompanying Bill.

For the Committee,

J. Q. A. GRIFFIN.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Fifty
Five.

AN ACT

In relation to Stationary Steam Engines.

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. Hereafter no stationary steam engine
2 shall be used in any city or town in this Common-
3 wealth for furnishing power to run or drive any
4 kind of machinery, unless the use of said stationary
5 steam engine be first licensed by the mayor and
6 aldermen of the city, or the selectmen of the town, in
7 which it is situate, in the manner hereinafter provided
8 for; and if any stationary steam engine is hereafter
9 used for the purpose of driving or running machinery
10 without such license, it shall be held and deemed to

11 be a common nuisance ; and, in addition to the liabili-
12 ties incurred by law for maintaining a common nui-
13 sance, the person who shall so use said steam engine
14 without such license, and the owner who shall permit
15 such use, shall be severally liable to a penalty of fifty
16 dollars for each and every day said steam engine is so
17 used without license, to be recovered in the name of
18 the city or town in which the same is situate, by an
19 action of tort, to the use of the said city or town.
20 And upon the commencement of any such action, the
21 court to which the same is returnable shall have
22 authority to enjoin the party against whom the said
23 action is brought from the further use of said engine
24 without license.

1 SECT. 2. The mayor and aldermen of any city,
2 and the selectmen of any town, shall have power to
3 license the use of any stationary steam engine in said
4 city or town for driving or running machinery of any
5 kind, which license shall be applied for and granted
6 in the manner following: Any person desirous of
7 using a stationary steam engine for the purposes
8 aforesaid, in any city or town, shall apply to the
9 mayor and aldermen of said city, or selectmen of said
10 town, by petition in writing, setting forth the place
11 where, the purposes for which, he desires to use said
12 steam engine, its size, power and capacity, and the
13 kind of fuel proposed to be used in generating steam.
14 Upon receiving such petition, the mayor and aldermen
15 or selectmen shall appoint a time and place for the
16 hearing of the same, and give public notice thereof, at
17 least fourteen days beforehand, in such manner as
18 said mayor and aldermen or selectmen may direct, at

19 which time and place all persons interested therein
20 may be heard. And if, at said hearing, said mayor
21 and aldermen or selectmen shall grant the prayer of
22 said petition, the license so granted shall be in writing,
23 signed by said mayor and aldermen or selectmen, or
24 a majority of them, and recorded in the city or
25 town records. And said license shall designate the
26 place where, and the purposes for which, said engine
27 is to be used, and the manner in which, and the ma-
28 terials of which, the building in which said engine is
29 to be used shall be constructed, and all such other
30 provisions and limitations as to the use of said engine,
31 and the fuel to be used to generate steam for the
32 same, which the said mayor and aldermen or select-
33 men shall adjudge the safety of the neighborhood in
34 which said engine is to be used requires. And every
35 such applicant shall be held to pay said mayor and
36 aldermen or selectmen, the expenses of giving notice
37 of his application and recording his license, and also
38 two dollars per day for each of said board of mayor
39 and aldermen or selectmen for each and every day
40 they shall be engaged in the hearing of his said
41 application. A copy of said license, duly certified by
42 the city or town clerk, shall be sufficient evidence of
43 the same in any court in this Commonwealth.

1 SECT. 3. Whenever a complaint shall be made to
2 the mayor and aldermen of any city, or selectmen of
3 any town, that any stationary steam engine for the
4 use of which a license has been granted as aforesaid
5 is being used contrary to the provisions of said license,
6 it shall be the duty of said mayor and aldermen or
7 selectmen immediately to notify the person so using

8 the same of such complaint, and to then proceed to
9 examine into the truth of the same; and if they shall
10 find that said steam engine has been knowingly and
11 designedly used contrary to the provisions of the
12 license, then they may pass an order annulling said
13 license, which order shall be recorded in the city or
14 town records, and a copy of the same be immediately
15 served on the person using or the owner of said steam
16 engine, which shall put an end to said license and
17 all rights and authority given by it.

1 SECT. 4. If any person shall claim that he is
2 injured in his property by the use of any stationary
3 steam engine licensed as hereinbefore provided, he
4 shall, within one year of the granting of said license,
5 apply in writing to the mayor and aldermen of the
6 city or selectmen of the town in which said engine
7 is used, stating his claim and the kind and amount of
8 the damage thus sustained by him; and the mayor
9 and aldermen or selectmen so applied to shall forth-
10 with appoint a time and place for the hearing of said
11 application, and give seven days' notice thereof to the
12 owner of said engine if he shall reside in said city or
13 town, otherwise to the person using said steam engine.
14 And if, upon the said hearing, said mayor and alder-
15 men or selectmen shall adjudge that the applicant has
16 suffered damages in his property by the use of said
17 engine for which the owner thereof is legally liable,
18 they shall appraise the amount of said damage up to
19 the time of presenting said petition, and also the
20 amount which will compensate said applicant for the
21 damages to his property for which the owner of said
22 engine is legally liable, to be sustained each year by

23 the use of said engine agreeably to its license, which
24 adjudication and appraisement shall be reduced to
25 writing and signed by the said mayor and aldermen
26 or selectmen, or a majority of them, and, together with
27 the petition and all the proceedings on the same, shall
28 be recorded in the city or town records. And if said
29 adjudication is not appealed from as hereinafter pro-
30 vided, the said applicant may have his action of con-
31 tract to recover the past damage appraised as afore-
32 said, and the sums, if any, paid by him for witnesses
33 at said hearing, against either the owner of said engine
34 or the person using the same, before any court com-
35 petent to try the same. And if either party shall be
36 dissatisfied with the adjudication or appraisement of
37 damages by said mayor and aldermen or selectmen,
38 he may appeal to the court of common pleas next to
39 be holden in the county where said engine is used,
40 after said adjudication is made, and he shall produce
41 copies of all the proceedings at said court appealed
42 to, and enter his appeal therein. And the said claim
43 for damages shall be submitted to a jury of said court,
44 under the direction of the court, who shall determine
45 by their verdict the following matters: First, whether
46 any damages have been sustained as claimed for which
47 the owner of said engine is legally responsible;
48 secondly, the amount of past damages for which the
49 owner of said engine is legally liable, sustained, if any,
50 up to the presentation of the said application; and
51 thirdly, the amount of money that shall be a fair and
52 just compensation for the damages for which the
53 owner of said engine is legally liable that will be sus-
54 tained each and every year thereafter by said appli-
55 cant, as long as said engine is run under said license.

56 And either party may except to any opinion, ruling
57 or direction of the court in matters of law, and ob-
58 tain the judgment of the supreme judicial court
59 thereon, in the same manner and to as full an extent
60 as may now by law be done at the trial of any civil
61 action in the court of common pleas. And if the
62 party claiming damages shall recover a larger sum,
63 either for past or yearly damages, than was awarded
64 by the mayor and aldermen or selectmen, he shall
65 recover his costs in the court of common pleas and
66 supreme judicial court, to be taxed as in civil cases,
67 together with all sums paid for witnesses at the hear-
68 ing before the mayor and aldermen or selectmen.
69 But if the past and yearly damages awarded by the
70 mayor and aldermen or selectmen shall be reduced
71 or one kind of damages reduced while the other kind
72 remains the same, on the appeal, then the party of
73 whom said damages are claimed shall recover his costs
74 after the appeal; and if both said past and yearly
75 damages shall be neither increased nor diminished on
76 the appeal, then the appellee shall recover his costs
77 after the appeal. And for all past damages, together
78 with interest from the time of the presentation of the
79 claim for damages and costs so ascertained on said
80 appeal, the court shall issue execution or executions
81 against the party liable to pay the same; and for all
82 yearly damages which shall be fixed and appraised
83 in any of the modes hereinbefore prescribed, the
84 party entitled thereto may maintain an action of con-
85 tract to recover the same, after they become due and
86 payable, against the owner or any person who shall
87 be using and running said steam engine under said
88 license at the time said yearly damages shall be

89 payable; and the damages for each year shall be
90 deemed to be payable in advance, reckoning the first
91 year to commence at the presentation of the appli-
92 cation for damages. And after the commencement
93 of said action, the court to which it is returnable, or
94 any judge thereof, shall, on application of the plain-
95 tiff therein, enjoin all persons against using said
96 steam engine until a bond with sufficient sureties be
97 given that whatever judgment is recovered in said
98 action shall be paid on demand. And said license
99 shall be deemed to be annulled, and all powers under
100 it to lease, whenever the owner of the steam engine
101 licensed shall, in writing, surrender the same to the
102 mayor and aldermen of the city or the selectmen of
103 the town granting the same, which surrender shall
104 be recorded in the city or town records; and from
105 the time of such surrender, all liability for yearly
106 damages occasioned by the use of said steam engine
107 shall cease.

1 SECT. 5. If the owner of any stationary steam
2 engine in use at the time of the passage of this act
3 shall petition the mayor and aldermen of the city or
4 selectmen of the town where said engine is used for
5 a license as is herein provided for, within sixty days
6 after this act takes effect, he shall not be liable for
7 any of the penalties herein prescribed for using a
8 stationary steam engine without license, unless he
9 shall continue to use the same after a license has been
10 refused upon the hearing on his petition.

1 SECT. 6. No complaint, indictment, action at law,
2 or proceeding in equity, shall be sustained in any of

3 the courts of this Commonwealth for using any sta-
4 tionary steam engine for the purpose of running or
5 driving machinery of any kind, or for the use of
6 machinery so run or driven, upon the ground the
7 same is a nuisance, when said engine is used agreeably
8 to the provisions of a license granted as herein pro-
9 vided for.

1 SECT. 7. This act shall not be in force in any city
2 or town until the same has been accepted by the city
3 council of such city, or the legal voters of such town
4 at a meeting legally called and held.

1 SECT. 8. All laws inconsistent herewith are hereby
2 repealed.

