

# MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

**A. D. 1834.**

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## FOURTEENTH LEGISLATURE.

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**NO. 26.**

**SENATE.**

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*To the Senate and House of Representatives,  
of the State of Maine, in Legislature assembled.*

The undersigned, Agents for the “Stillwater Canal Corporation” and for the signers of a Remonstrance against the Petition of the “Penobscot Mill Dam Company,” in their behalf and in behalf of other persons interested in the lumber business upon the Penobscot River, respectfully represent: That the powers claimed and exercised by the Penobscot Mill Dam Company are extensive and alarming—infringing Public and Private Rights, and operating in a manner not intended or warranted by their Act of Incorporation.

By an act of the Legislature of this State (approved Feb. 12th 1828) William Lowder and others, with their associates and successors, were incorporated a body politic by the name of “the Penobscot Mill Dam Company”—and the object of said Company is expressed in the 2d Section of said Act, as follows, viz: “That said Corporation

“ shall have power to erect and keep a Dam or  
 “ Dams *across* the Penobscot River, from Bangor  
 “ to Brewer or Eddington, with such Canals,  
 “ locks, sluices, wharves, piers and side booms, at  
 “ such place or places as they may deem most safe  
 “ and convenient, *between* the foot of Rose’s or  
 “ Treat’s falls, in Bangor, and *McMahon’s* falls in  
 “ Eddington, *for the purpose of flowing* the water  
 “ a *sufficient height for the safe and convenient*  
 “ passage of boats and rafts from the foot of Eayer’s  
 “ falls in Orono to Bangor.”

*Previous* to the granting of said Act, John Bennoch and others (by an Act entitled “An Act to establish the Stillwater Canal Corporation,” approved Feb. 7th 1828,) were authorized to lay out and maintain a Canal, to commence at or below the Pushaw Stream, in Orono, and proceeding down the Stillwater Stream to Bennoch’s Mills and to the Basin, so called, and thence to the *main Penobscot River*--And the Act *subsequently* granted, by the same Legislature, to the “Penobscot Mill Dam Company” was intended to aid and co-operate with the said *Canal Corporation*, and to promote and improve the navigation of said River. It was then expected, and distinctly understood, that the said Mill Dam Company would build their dam *below McMahon’s* falls, and entirely *across* the said River, so as to *flow the water over* said falls and make an easy and convenient passage for

rafts, boats or vessels, having occasion to *ascend* or *descend* the River. A dam erected *below* said falls, *within* the *limits defined* in the *Charter* of the Mill Dam Company, *across* the River, and *provided with suitable locks or canals*, would have enabled boats to pass up, over said falls, and to the foot of Eayer's falls, in Orono, a distance of four miles from the head of tide waters—and the Still-water canal, (authorized as aforesaid and *now actually under contract*,) would have rendered it practicable to ascend in boats from the tide waters in Bangor to the Pushaw stream in Orono, a distance of sixteen miles.

But the said Penobscot Mill Dam Company have neither erected a Dam of the *character* contemplated, nor *confined* themselves within the *limits* of their aforesaid *Charter*. They *have*, in defiance of the Public, and against the earnest entreaties of individuals interested, assumed the power to erect works *above* the foot of McMahan's falls:—and instead of extending *across* the River, they have run their dam *up* the said falls—making a WING or SIDE DAM *seven hundred feet* in length—and projecting more than *four hundred and thirty feet*, into the bed of the River.—*No locks or canals* have been provided, as required, and the *whole current* of the River is suddenly turned into a space, *less than two hundred feet in width*.—The entire river, being thus turned aside and forced to pass

through less than *one third* of its former space, greatly increases the fall—quickens the current and presents a fearful prospect to the navigator.—Your memorialists do not now recollect a single instance of the passage of a boat *down* said falls, *since the erection of said dam*; and it is literally *impossible* for any one to *ascend* the same.

Great losses of lumber and hazard of life have already occurred in consequence of said dam—and, in the opinion of your memorialists, the existence or erection of said wing dam, or of any other dam above the foot of McMahan's falls—and near the same, ought not to be *sanctioned* by the legislature—or any additional powers or privileges be granted to said Mill Dam Company.—They have already nearly four miles upon the River included in their Act of incorporation—the powers already granted, have been abused by them—They have created obstructions where new facilities were promised, and have proved the destroyers of the very rights which they were designed to aid and improve.—Having wrongfully erected their existing works, and *failed* to comply with the provisions of their charter, which required a dam, *with LOCKS, ACROSS* the River, and *BELOW* the McMahan Falls—they have asked for an advantage from their own wrong, and wish perhaps, for some act which shall accept or approve the *construction*, which makes the word "*between*" embrace the *termini*, and renders "*up* the River" and "*across* the River" synonymous.

The said Mill Dam Company have also petitioned for further privileges upon said River, and for power to construct booms above McMahon's Falls;—should such powers be granted, the lumbering interest would be endangered—and rafts which should happen to break or be in difficulty above said Falls, would be greatly in danger of going over the Falls for want of an opportunity to enter a harbor or escape the current.

Your memorialists beg leave to state, that the lumbering interest, above the falls aforesaid is of immense value, and greatly jeopardised. There are, on the *Penobscot waters alone*, within *nine* miles of the dam aforesaid and above the same, 110 Saws, which cut annually ninety millions feet of boards—all of which lumber, must, with a vast quantity more, pass down the said river and by the said dam :—Wherefore your memorialists earnestly *remonstrate* against the petition of said Penobscot Mill Dam Company, and pray that this Legislature will give such directions, adopt such measures, and cause such process to issue in the case, as shall be deemed proper to secure and protect the public rights :—And as in duty bound will ever pray.

JOHN BENNOCH,  
B. BROWN,  
SAMUEL VEAZIE.

*Augusta, Feb. 8, 1834.*

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## STATE OF MAINE.

*In Senate, February 15, 1834.*

The Joint Select Committee to whom was referred the Petition of the Penobscot Mill Dam Company, and the accompanying Bills, together with the Petition of Samuel W. McMahon and others, and the memorial of John Bennoch and others, have had the same under consideration and ask leave to report:—That they have given the parties and their Counsel a full and attentive hearing; and have duly considered the case as its interest and magnitude and the public good seemed to require. On the one hand, they have been solicitous to protect private rights and encourage honest exertion—and on the other hand, they have been anxious to preserve unimpaired those rights and privileges which nature has bestowed, and in which the community and future generations may be regarded as concerned.

It appeared in evidence to the Committee, that in 1828 there were several Petitions to the Legislature for Dams, Booms and Canals, on the waters of the Penobscot—That on the 7th day of February of that year, the Stillwater Canal Company were incorporated for the purpose of improving the navigation from Pushaw Stream in Orono to the main



Penobscot river, as mentioned in the Memorial aforesaid. And said Canal is now under contract. On the 12th day of said month, an act of incorporation was granted to the Penobscot Mill Dam Company. The original Petition for said act, has been referred to, which represented 'that the navigation of the Penobscot river from Bangor to Orono could be *greatly improved* and rendered *safe* and convenient for the passage of boats and rafts by means of Dams, locks and sluices,' and prayed for an act of incorporation for the purpose of erecting a Dam or Dams *across* the River from Bangor to Brewer or Eddington; and with the privilege of erecting a Bridge and Factories connected therewith. This and other statements made by said Petitioners at the time of the passing of said act of incorporation, prove, that it was contemplated to build the Dam or Dams *across* the River, and with suitable Locks, Canals and Sluices, for improving the navigation of the River, and for boats to pass up and down the same. And it also appeared that the Legislature of 1828 so intended to benefit the navigation as aforesaid; for the said act provides that said Mill Dam Company shall have "power to erect and keep  
 " a dam or dams **ACROSS** the Penobscot River from  
 " Bangor to Brewer or Eddington with such Canals,  
 " Locks, Sluices, Wharves, Piers and Side Booms,  
 " at such place or places as they may deem most  
 " expedient, between the foot of Rose's or Treat's  
 " Falls in Bangor and McMahan's falls in Edding-

“ton, for the purpose of flowing the water a sufficient  
 “height for the safe and convenient passage of boats  
 “and rafts, from the foot of Eayers’ falls in Orono to  
 “Bangor; and also gives said Company the right and  
 “privilege of using the water for mills and factories.”  
 The Committee therefore are of opinion that the limits mentioned in said act do not extend up said River beyond the foot of McMahan’s falls. And a dam erected *below* these falls, *across* the river as appears to have been expected, would have rendered it practicable to ascend with ease over said falls. There has not yet been any dam erected by said company *across the river*, with *locks*, agreeably to their charter, and it was understood by the committee that such a dam is not designed to be built by said company. But they have erected a side dam about 800 feet in length and extending by three projections 430 feet into the bed of the river and stopping the raft channel; as was stated by the agents for the Petitioners, and according to a plan by them exhibited. The said plan also represented, that from thirty to fifty feet of the head works of said dam were ABOVE the foot of McMahan’s falls; but the preponderance of evidence rendered it highly probable that said falls extended further down the river and so as to include much more of the aforesaid Dam. There was evidence before the committee that boats and gondolas had passed up said falls, loaded with goods, before the erection of said works; but it had not been usual for goods to be so transported for several years

past. It was also admitted, that no boat could possibly now pass up, or even *down* with safety, by said dam; It further appeared in evidence that there are *annually* 90,000,000 feet of Lumber sawed within the distance of nine miles above this dam, all of which, with a large quantity of other kinds of Lumber, must pass down the River; and slight losses on each Raft would soon sweep away a fortune.— There was also evidence tending to show that said Company were seasonably cautioned against building their dam in the manner which they have done, and that they were without the limits of their charter. It was further proved that the existing dam was and is of *great injury* to the navigation of the said river; and that the fall is increased by having the head raised, and that the water is turned aside into about one third of its natural width, and the current therefore rendered much more rapid than before. That which was troublesome before, appears now to be rendered much worse, and it may be considered hazardous to pass down said falls. The petition and bill for side booms to be granted to this Company, were also considered by the committee. But said booms, did not appear to be required by the public. The west side of said river was declared by one of the agents for said Company to be within their control, to the distance of one and a fourth mile above said dam; and so far, they could and would erect a boom for their accommodation. In the opinion of the committee, the piers necessary

for a boom, and also the boom itself, above said falls, as prayed for, would be inconvenient for the public, and would expose persons and rafts coming down said river, in case of difficulty, to the danger of going over said falls, for the want of a harbor or an opportunity to repair, and greatly injure the navigation of the river. Indeed the said act of incorporation of the **Mill Dam Company** embraces now nearly four miles upon the **River**. And yet they have in the opinion of the **Committee** exceeded the limits of their charter, and built their dam, as described, much higher up the **River** and of a different character than was contemplated. If they had built their dam below **Mc Mahon's Falls** and at the proper place, the company would have had ample room and fine coves for booms, which were authorized by their charter. The navigation might also have been thereby improved and obstacles removed. But *no* additional booms or privileges, as the **Committee** believe, ought to be granted to said **Company** above said **Falls**; and the **Legislature** ought not to do any thing which can be supposed to accept the doings of said **Company** or to add any power of extending said dam. If they receive any such sanction or assent it must necessarily follow that no other dam can be built below without interfering with their works—and all future attempts to improve the navigation of this river, which is the great highway of this section of the **State**, must prove unavailing, as these **Falls** can only be overcome by a dam below the **McMahon Falls**;

and such a dam would flow out and destroy the existing works erected by said Company. The more, therefore, this Company expends, and the more privileges they obtain *in the place now occupied by them*, the more detrimental may they prove to the Public, and the greater will be the obstacles presented in carrying out the great line of improvements contemplated on said River.

Fully believing this dam to be above the place where the public good required, and much of it without the limits of their charter, that the same is injurious to the public and ought not to be sanctioned; and being of the opinion that the statements made in the Memorial are true, and considering that indictments are now pending in the Supreme Court against said Company for the erection of said dam, the Committee are *unanimously* of opinion that the Bills aforesaid ought not to pass, and recommend that the Petitioners have leave to withdraw their Petitions.

**JABEZ BRADBURY, *Chairman.***

STATE OF MAINE.

IN SENATE, February 17, 1854.

ORDERED, That two hundred and fifty copies of the foregoing Report, and the Memorial of John Bennoch and others, be printed for the use of the Legislature.

(Extract from the Journal.)

Attest,            WILLIAM TRAFTON, *Secretary.*