

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.

FOURTEENTH LEGISLATURE.

NO. 28.

SENATE.

STATE OF MAINE.

In Senate, Feb. 20, 1834.

The Joint Special Committee to whom was referred the petition of Greenleaf White and others, praying to be incorporated into a body politic, by the name of the *Kennebec Dam Company*, for the purpose of erecting a Dam across the Kennebec River, above and near the bridge in the town of Augusta, have had the same under consideration, and ask leave to Report :

That they have bestowed much attention upon the subject, which to them its great importance seemed to require ; and have listened with the utmost patience to the numerous Petitions and Remonstrances from various parts of the State, and also to the testimony of a large number of witnesses produced by the parties ; and to the arguments and suggestions of their learned and able Counsel.

The great and manifest advantages set forth by the petitioners, which must obviously result to the community from the execution of such an enterprise, were met by the following objections:—

1st. It was urged that the Fisheries upon and at the mouth of said River, now of great value, would be thereby partially, if not *wholly* destroyed.

2d. The navigation of the River for boats and rafts of lumber, as heretofore carried on, would be greatly incommoded and injured by the proposed Dam.

3d. The erection of such a Dam as prayed for, would probably cause the water of said River to flow back, so as to endanger, if not greatly injure the village of Winslow, and the Mills on Ticonic Falls, in times of high freshets.

Your Committee are not aware of any objections to the prayer of said Petitioners, which might not be resolved into some one of the foregoing. And after maturely considering them, and weighing, as they believe, all the material evidence produced in relation to each, they have unanimously come to the conclusion that they are not sufficiently valid, and therefore report that the Petitioners have leave to bring in a Bill, which is herewith submitted.

JOSIAH PRESCOTT, Chairman.

STATE OF MAINE.

IN THE YEAR OF OUR LORD, ONE THOUSAND EIGHT
HUNDRED AND THIRTY FOUR.

AN ACT to Incorporate the Kennebec Dam Company.

SECT. 1. *Be it enacted by the Senate and House*
2 *of Representatives in Legislature assembled, That*
3 Allen Lambard, Daniel Williams, James Bridge,
4 James L. Child, Asa Redington Jr., Rufus C.
5 Vose, Luther Severance, Mark Nason, William
6 H. Kittredge, William A. Brooks, George W.
7 Morton, Edward Williams, Roscoe G. Greene,
8 Edmand T. Bridge, William Bridge, Elias Craig
9 Jr., Lot Myrick, Alfred Redington, William
10 Dewey, Henry R. Smith, Henry Williams, George
11 W. Perkins Jr., William L. Wheeler, Horatio
12 Bridge, Greenlief White, James W. Bradbury, Jo-
13 seph G. Moody, William Lambard, Charles
14 Keene, and John Pope, their associates, successors
15 and assigns, be and they hereby are incorporated
16 into a body politic by the name of the Kennebec Dam
17 Company, and by that name may prosecute and de-
18 fend suits at law and equity; have and use a common
19 seal; make and establish by-laws, rules and reg-
20 ulations, not repugnant to the laws of the State,
21 for the management of their concerns; choose all
22 necessary officers; and have, exercise and enjoy all
23 the rights, privileges and immunities pertaining to
24 companies legally incorporated.

SECT. 2. *Be it further enacted, That any three*
2 *of the five persons first above named may call the*
3 *first meeting of the Corporation, by publishing the*

4 time and place thereof seven days previously in the
 5 Kennebec Journal, at which meeting a President,
 6 Treasurer, Directors and other officers may be
 7 chosen, by-laws adopted and any other Corpora-
 8 tion business transacted. Said officers to hold
 9 their offices until the first Monday of January next
 10 and until others are chosen in their room.

SECT. 3. *Be it further enacted*, That in all
 2 elections and in acting on any subject, at said first
 3 meeting and all subsequent meetings, the decision
 4 shall be had by a majority of the votes actually
 5 given. And each share in the stock shall be enti-
 6 tled to one vote, *Provided*, That no stockholder
 7 shall be entitled to more than fifty votes. And
 8 any stockholder may vote by proxy, authorized in
 9 writing. But no vote shall be given by any stock-
 10 holder, upon whose share or shares any instalment
 11 or arrearages shall have been due and unpaid more
 12 than thirty days previous to the meeting.

SECT. 4. *Be it further enacted*, That the capi-
 2 tal Stock of said Corporation shall consist of Three
 3 Hundred Thousand Dollars, divided into Three
 4 Thousand shares of One Hundred Dollars each.
 5 And said Company shall prepare a book for sub-
 6 scriptions thereto, in form following, viz:

“We whose names are hereunto subscribed, severally promise to pay the Kennebec Dam Company, the sum of Ninety Nine Dollars for every share of stock set against our respective names, in such manner and proportions and at such times, as the Directors thereof shall order, pursuant to an Act entitled An Act to incorporate the Kennebec Dam Company.

DATE.	STOCKHOLDERS' NAMES.	NO. OF SHARES.
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SECT 5. *Be it further enacted*, That said Cor-
 2 porators, having subscribed for such portion of the
 3 stock as they may wish to retain, not in the whole
 4 exceeding one third part thereof, shall, withir

5 thirty days from the passing of this Act, cause
 6 said book to be opened and kept at the Citizens'
 7 Bank for any person or persons to subscribe there-
 8 to, until the first day of May next, or until two
 9 thirds of said Stock in the whole, shall have been
 10 taken up. And the State, if they shall so deter-
 11 mine may authorize their Treasurer on said first
 12 day of May to subscribe for and take one third
 13 part of said stock, in behalf of the State. And
 14 that portion of the stock, if any, which shall not
 15 have been subscribed for on said first day of May,
 16 may afterwards be subscribed for by the persons
 17 named in the first section of this Act, each one his
 18 equal part thereof, *Provided*, he shall so subscribe
 19 therefor before the annual meeting in January
 20 next. And the State and each Corporator and
 21 other person shall, on subscribing therefor, pay to
 22 said Treasurer one dollar upon each share so tak-
 23 en, for the use of the whole Company.

SECT. 6. *Be it further enacted*, That each stock-
 2 holder shall be entitled to receive a certificate of
 3 his Stock, signed by the President, and coun-
 4 ter-signed by the Treasurer and sealed with
 5 the common seal. And he may assign said
 6 stock or any part thereof, by himself or his attor-
 7 ney, upon surrendering the certificate thereof and
 8 entering said assignment upon the transfer book of
 9 the Company. But all transfers of shares shall
 10 be subject to the payment of all sums, balances or
 11 arrearages due or to become due thereon. And
 12 every such assignee shall become a member of said
 13 Company, subject to all the penalties and forfeit-
 14 ures, and of being sued for all the balance and pen-
 15 alty due or to become due on each share, in the
 16 same manner as the original subscriber would have
 17 been.

SECT. 7. *Be it further enacted,* That the stock-
 2 holders shall meet annually on the first Monday of
 3 January at such hour and place as shall be pre-
 4 scribed by the by-laws, at which meeting the Pres-
 5 ident, Treasurer, Directors and other officers of the
 6 Company shall be chosen, who shall hold their of-
 7 fices for one year and till others are chosen and
 8 qualified in their room, and any other corporation
 9 business may be transacted. The by-laws shall
 10 prescribe the mode of calling special meetings.
 11 At any annual meeting, or at any special meeting,
 12 wherein one half at least of the stock actually sub-
 13 scribed for shall be represented, the Company may
 14 make, alter or annul any of their by-laws, rules or
 15 regulations.

SECT. 8. *Be it further enacted,* That as soon
 2 as three hundred or more of the shares shall have
 3 been subscribed for as aforesaid, it shall be lawful
 4 for said Company to proceed in the operations here-
 5 after mentioned.

SECT. 9. *Be it further enacted,* That said
 2 Company be and they hereby are authorized to
 3 build, maintain, keep up, repair and rebuild a dam
 4 across the Kennebec River in Augusta at or near
 5 a small island, which is about half a mile above the
 6 Kennebec Bridge, (not to exceed in height fifteen
 7 feet above common high-water mark,) for the pur-
 8 pose of raising a head of water for propelling facto-
 9 ries and for other purposes. And said Company are
 10 authorized by means of said dam to flow the water
 11 as aforesaid, and the same to draw, use, occupy
 12 sell or lease in whole, or in part, either upon said
 13 dam or in canals, basins or collateral sluices made
 14 therefor.

SECT. 10. *Be it further enacted,* That it shall
 2 be the duty of said Corporation to insert and con-

3 stantly keep and maintain in said dam a lock or
 4 locks for the passage of boats, rafts, steam boats
 5 and river craft, each of which locks to be not less
 6 than twenty-eight feet in width in the clear, and of
 7 such length as to receive and accommodate boats
 8 or rafts of one hundred feet in length, and of such
 9 depth as that boats or steam boats, drawing four
 10 feet of water, may at all times enter the lock
 11 from below, and of such height and structure as to
 12 afford a safe and easy entrance, passage and de-
 13 parture of boats, rafts, steam boats and river craft
 14 into, through and from said lock or locks, and
 15 said Company shall cause said lock or locks to be
 16 constantly attended by a sufficient number of capa-
 17 ble and faithful persons, whose duty it shall be at
 18 all times promptly and diligently, carefully and
 19 faithfully to tend said lock or locks and aid in
 20 transmitting through the same all boats, rafts, steam
 21 boats and river craft having occasion to pass.

SECT. 11. *Be it further enacted,* That said
 2 Corporation may erect and maintain, within two
 3 hundred rods above or below said dam, such piers,
 4 bulk-heads, abutments, side-booms, temporary
 5 dams or other structures as may be necessary and
 6 suitable for the protection of said dam, locks and
 7 other works of said Company, and for creating
 8 such eddies and slack-water pools as may be use-
 9 ful for the safe and easy guidance into and from
 10 said locks of boats, rafts, steam boats and river
 11 craft. *Provided,* That such piers, bulk-heads,
 12 abutments, side-booms or other structure shall not
 13 impede the free passage of logs or other lumber
 14 floated down and designed by the owners thereof
 15 to pass over the dam.

SECT. 12. *Be it further enacted,* That for the
 2 purposes of this Act, said Corporation are author-

3 ized to purchase, have, hold and enjoy in fee sim-
 4 ple or any less estate, lands, tenements and estates,
 5 real personal or mixed to an amount not exceeding
 6 three hundred thousand dollars; and the same or
 7 any part thereof to sell, lease or convey at pleasure.

SECT. 13. *Be it further enacted,* That it shall
 2 be lawful for said Company by their superintend-
 3 ants, surveyors, engineers, artists and workmen to
 4 enter upon and occupy the land which shall be
 5 necessary for the purpose, doing as little damage as
 6 possible, and there to dig, construct and erect such
 7 dam, locks, basins, canals, sluices, piers, bulk-
 8 heads, side-booms, temporary dams and other
 9 structures. And for the damages arising therefrom
 10 to the owner or owners of said land, a just com-
 11 pensation shall be paid by said Company, after
 12 deducting for the benefits, if any, derived to said
 13 owner or owners from the erection of said dam and
 14 other works.

SEC. 14. *Be it further enacted,* That said lock
 2 or locks shall be completed and fitted for use
 3 before the main dam shall be extended more than
 4 half way across the river. And said dam shall
 5 be so constructed, that a space of at least sixty
 6 feet thereof, shall be at least twelve inches lower
 7 than any other part of said dam and of smooth
 8 surface, with a slope therefrom of the same width,
 9 to be made and kept in repair by said Company,
 10 and to extend down the river with such inclination,
 11 length, and of such construction as shall facilitate
 12 the passage of rafts, logs and other lumber, in the
 13 most safe and convenient manner.

SEC. 15. *Be it further enacted,* That after said
 2 lock or locks shall have been completed, if there
 3 shall be any unreasonable delay or neglect to keep
 4 the same in good repair, or in attending to open

5 and shut the gates thereof and render the necessa-
 6 ry aid in getting boats, rafts and steam boats and
 7 river craft through the same, said Company shall
 8 be liable to pay all damages to the person or
 9 persons injured thereby; to be recovered by action
 10 of the case before any Court of competent jurisdic-
 11 tion.

SEC. 16. *Be it further enacted,* That unless
 2 said lock or locks and slope shall be completed and
 3 fitted for use within seven years from the passing of
 4 this Act, all the powers hereingranted to said Com-
 5 pany shall be rescinded and held void.

SEC. 17. *Be it further enacted,* That if any
 2 person or persons shall sustain any injury by means
 3 of the erection of said dam, either by the over-
 4 flowing of his or their lands or by the throwing
 5 back the water of the river upon his or their mills,
 6 machinery or water-works, whether the same be
 7 erected upon said river or upon any tributary stream
 8 thereof, he or they shall be entitled to receive of
 9 said Coporation the just damages therefor, after
 10 deducting therefrom the benefits, if any, accruing
 11 to such person or persons from the erection of said
 12 dam.

SEC. 18. *Be it further enacted,* That when-
 2 ever any person or persons, entitled to compensa-
 3 tion or damages pursuant to the thirteenth or seven-
 4 teenth Section of this Act, shall not be able to a-
 5 gree with said Company upon the amount thereof,
 6 he or they, may, by petition, apply to the Supreme
 7 Judicial Court for remedy. And said Court shall
 8 order suitable notice to be given to said Company
 9 of the pendency of said petition. And if said Com-
 10 pany shall in their plea deny the complainant's ti-
 11 tle to the said lands, mills, machinery or other wa-
 12 ter works alleged to have been injured by means of

13 said dam, or shall claim a right to flow without
 14 payment of damages, or for an agreed composi-
 15 tion, the Court, if issue be joined thereon, shall or-
 16 der a trial at the bar of the Court.

SEC. 19. *Be it further enacted,* That if the
 2 said Company shall not shew sufficient cause, the
 3 said Court may appoint three or more disinterest-
 4 ed freeholders to make true and faithful apprais-
 5 ment of the damages already sustained, as well as
 6 of those to be yearly sustained by said complainant
 7 or complainants. And the report of said Commis-
 8 sioners shall, under the direction of the Court, be
 8 given in evidence to the Jury, which shall, at the
 9 request of either party, be empannelled to try such
 10 cause, subject however to be impeached by evi-
 11 dence from either party. And judgment having
 12 been rendered upon the verdict of said jury, or upon
 13 said report of the Commissioners, (if no such ju-
 14 ry trial has been requested,) the same shall be a
 15 bar to any action brought for such damages.

SEC. 20. *Be it further enacted,* That such ver-
 2 dict or report and judgment thereon shall be the
 3 measure of yearly damages, until either of the par-
 4 ties shall, on a new complaint and by the same
 5 form of process, obtain an increase or decrease
 6 thereof. And the party prevailing upon any orig-
 7 inal or subsequent complaint as aforesaid, whether
 8 by complainant's failure to prosecute or on final
 9 decision, shall be allowed reasonable expenses
 10 and costs, to be taxed by the Court.

SECT. 21. *Be it further enacted,* That whenever
 2 any three or more persons shall make complaint in
 3 writing to the Supreme Judicial Court for the
 4 County of Kennebec, alleging that the said Com-
 5 pany, in the construction of the lock or locks
 6 or of the slope, have failed to conform to the

7. conditions of this Act, it shall be the duty of the
 8 Court to appoint three or five disinterested free-
 9 holders, who, after due notice given, shall examine
 10 the premises and hear the parties and their witnes-
 11 ses, and thereupon adjudicate upon said complaint.
 12 And if they find the same to have been unfounded,
 13 they shall award reasonable costs to said Company
 14 against said complainants; but, if well founded, they
 15 shall award like costs to the complainants, and
 16 shall in writing prescribe the improvement neces-
 17 sary to be made in said lock, locks or slope, and
 18 the time in which the same shall be finished.

SECT. 22. *Be it further enacted,* That if the cor-
 2 poration shall not cause said prescribed improve-
 3 ment to be made and finished, within the time al-
 4 lowed therefor, the said commissioners shall enter
 5 into contracts therefor and cause the same to be
 6 made and finished. And for all the expense there-
 7 of, with reasonable compensation to said Commis-
 8 sioners and all other costs, the said Court shall is-
 9 sue an execution or warrant of distress against said
 10 Company.

SECT. 23. *Be it further enacted,* That for securing
 2 the collection of any execution or warrant of dis-
 3 tress against said Company, issued in virtue of any
 4 section of this Act, a lien shall exist upon said
 5 dam and the use of the water flowed thereby, to
 6 continue thirty days after the rendition of the judg-
 7 ment or order whereon such precepts were found-
 8 ed, within which time the officer may seize the
 9 same. And said officer, having so seized the same,
 10 and having, in the notifications of sale, proceeded
 11 as is required for selling equities of redeeming
 12 mortgaged lands, may sell at auction to the highest
 13 bidder such undivided parts of said dam and right
 14 of water, as shall pay said precepts with the costs

15 of collecting the same. And said officer's deed of
 16 the same, recorded within ten days from the time
 17 of said sale, shall pass to the purchaser a good ti-
 18 tle thereof, notwithstanding any previous or inter-
 19 mediate conveyances made by or under said corpo-
 20 ration.

SECT. 24. *Be it further enacted,* That if any
 2 person shall wilfully open or shut any gate of
 3 any lock, or drive any nails, spikes, pins or wedg-
 4 es into any such gate or any fixture thereof; or
 5 throw any rocks, earth or other heavy substance,
 6 or bring any drift stuff, lumber or other obstacle
 7 against such gate or into such lock or the vicinity
 8 thereof, whereby the free use of said gate or lock
 9 shall be prevented, or whereby any boat, raft,
 10 steam boat or river craft shall be precluded from
 11 freely and safely approaching, entering, passing
 12 and retiring from said lock, he shall, on conviction
 13 thereof, before the Court of Common Pleas or the
 14 Supreme Judicial Court, for every such offence
 15 forfeit a penalty not exceeding one hundred dollars
 16 or suffer imprisonment not exceeding six months.

SECT. 25. *Be it further enacted,* That if any
 2 person, having the care of any boat, raft, steam
 3 boat or river craft or other floating article shall
 4 willingly practice any unnecessary delay in ap-
 5 proaching, entering, passing and departing from
 6 said lock and the vicinity thereof, or shall unne-
 7 cessarily moor or fasten any of said boats, rafts,
 8 steam boats, river craft or other articles in the im-
 9 mediate vicinity of said lock, whereby the suitable
 10 movements of any other boats, rafts, steam boats,
 11 river craft or other floating articles, shall be pre-
 12 vented or retarded, he shall for every such offence
 13 forfeit and pay a penalty not exceeding ten dollars
 14 for each and every hour of delay so occasioned.

SECT. 26. *Be it further enacted*, That if any
 2 person shall at any time take any fish, called
 3 salmon, shad or alewives, within the distance of
 4 one hundred rods above or below said dam, slope
 5 or lock, he shall, for every such fish so taken for-
 6 feit a penalty of two dollars.

SECT. 27. *Be it further enacted*. That all penal-
 2 ties arising under this Act may be recovered with
 3 costs by indictment before the Court of Common
 4 Pleas or the Supreme Judicial Court for the Coun-
 5 ty of Kennebec, to the use of the State.

SECT. 28. *Be it further enacted*, That if any
 2 person shall wilfully tear down, cut or break away
 3 or in any manner deface or injure the said dam or
 4 any lock or gate thereof, or any canal, basin,
 5 sluice, pier, bulk-head, abutment, side-boom, tem-
 6 porary dam or other structure erected in virtue of
 7 this Act, he shall on conviction thereof before the
 8 Supreme Judicial Court or Court of Common Pleas,
 9 forfeit and pay a penalty, to the use of the State,
 10 of not more than five thousand dollars for every
 11 such offence, or suffer imprisonment not exceeding
 12 twelve months at the discretion of said Court; and
 13 be also liable to pay to said Company double dam-
 14 ages therefor, to be recovered by action of trespass
 15 in any Court of competent jurisdiction.

STATE OF MAINE.

IN SENATE, February 20, 1854.

ORDERED, That four hundred copies of the foregoing Report
and Bill be printed for the use of the Legislature.

(Extract from the Journal.)

Attest, WILLIAM TRAFTON, *Secretary.*