

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. 34.

HOUSE.

STATE OF MAINE.

In Senate, February 18, 1834.

The Committee on Claims, to which was referred the Petition of Charles Miller and John C. Glidden, have had the subject matter of the same under consideration ; and on investigating the whole case, in as thorough a manner as the facts laid before them would warrant, ask leave to report, " That the petitioners were authorized by a resolve of March 17, 1830, to make and complete the Canada road," so called, leading from this State to Quebec in Lower Canada. That, at this time, the portion of said road to be so made and completed was about nine miles, and was to be made on the route surveyed by Messrs. Redington, Sewall and Smith. There is no other description of the route of said road in the Resolve, or any reference to any plan, or survey of the same. It was further provided in said Resolve, that Miller and Glidden should file a bond in the office of the Secretary of State, on or before the 1st day of April 1830, in the penalty of \$10,000, with sureties, for the full and faithful accomplishment of the object of completing the road by the first day of November then next. This bond was duly filed and deemed

satisfactory. By the same Resolve authority was given to the Governor, with advice of Council, to appoint an agent, to examine and inspect said road as the work progressed, and when the same was finished, to certify to the Governor and Council whether it had been done according to the terms and requirements of the Resolve. And if it should appear by *said certificate* that the road had been so made and completed, the Governor was authorized to cause to be paid to said Miller and Glidden the balance then due them, which will subsequently appear in this Report. In compliance with said Resolve, Samuel Searle of Norridgewock, was appointed said last mentioned agent, who was also required to give bonds for the faithful discharge of his duty, to the satisfaction of the Governor and Council. By the same Resolve Mr. Searle is made the agent, also, so far, as to keep a correct account of all moneys by him received and expended in completing said road : and also all contracts by him made. For the further particulars of which your Committee refer to said Resolve. The road before named was finished, and a certificate of said Searle was seasonably returned to the Governor and Council to that effect; whereupon the balance due said Miller and Glidden should then have been paid them, unless the objections hereafter stated, should prevail against such payment. The reason offered for the non-payment of the balance was, that the road was not made on the route surveyed by Messrs. Redington, Sewail and Smith, which route was *round* and *west* of Bald Mountain, when in *fact*, the road was made over the end of the Mountain, on the route, designated by Massachusetts, in the year 1817 ; for a more full history of this part of the transaction, your Committee refer to the Report of the Committee on the subject of the Canada Road, made February 28, 1831, and published among the Resolves of that year. They also

refer to the Report of the Committee of the Commonwealth of Massachusetts, and a Resolve of the same, passed January 27, 1832, and a further Report and Resolve of this State, accepted and passed Feb. 18, 1832, and March 3d of the same year. Your Committee without going further into the history of the case, now come to the point in question.—Miller and Glidden called on the Governor for the Resolve and other papers relative to building the contemplated road, in order that they might know the route the same was to take. The then Governor informed them, that all the necessary papers relative to the survey and route of the road would be forwarded in due season to Mr. Searle the agent before named, and upon this assurance Miller and Glidden entrusted the route of the road to the direction of Searle. For a more full history of this part of the transaction, your Committee refer to the Report of the Committee on State Roads, published in the Resolves of the last session of the Legislature. It will be found by this last Report, that the sum withheld by the Governor from Miller and Glidden, was \$1366 66, and that this sum should have been paid them Nov. 2, 1830, had the road been built on the survey of Messrs. Redington, Sewall and Smith. Messrs. Miller and Glidden let out the building of this road to two contractors by the name of Clements and Shed, who gave them a bond similar to the one filed by Miller and Glidden: And these sub-contractors built the road over the Bald Mountain under the immediate superintendance of Mr. Searle, who was present and worked on the road during its progress. Upon the refusal of payment of the last instalment to Miller and Glidden, *they* refused to pay these sub-contractors, on the ground, that they had not fulfilled the contract of completing the road, on the proper route, having built it on the old survey of Massachusetts, leading over Bald Moun-

tain. Mr. Clements, one of the contractors, sued Miller and Glidden, and the action was decided in his favor by the Supreme Court, on the principle that Mr. Searle's certificate was conclusive. The other contractor, Mr. Shed, has not yet sued, but awaited the event of Clements' suit, which being founded on the same cause, decides the same question, which is that the petitioners are holden to pay *him*, one of the sub-contractors, in suit, but failed for the cause before stated, so that they have been obliged to pay these sub-contractors with costs, as before stated. The Canada road has been travelled as made over the Mountain, ever since, or until the present winter.

At the last session of the Legislature, there were passed two resolves relative to this road. The first of which recites by way of preamble, that said Miller and Glidden had not completed the same agreeably to the conditions of their bond to the State, and that it was desirable and important that the same be done in the course of the ensuing summer.

The resolve then provides, that unless said Miller and Glidden do begin and continue the making of said road by the first of June last, and subsequently, an agent is authorized to make the same, and the sum of \$2,500, is appropriated by said resolve to carry the same into effect. Another resolve at the same session passed, providing that in case Miller and Glidden did commence the road by the time stated, they should receive from the Treasury the sum of \$520 at the commencement of the work, \$520 when one half the same is completed, and the other \$520 when the road is finished, as by reference to said resolve will appear. The petitioners after the passage of the last resolve, finding themselves holden to the State on their original bond, proceeded forthwith to build the road round and west of Bald mountain, and on the survey of Reding-

ton, Sewall and Smith, and contracted with Nehemiah Pierce of Monmouth, to finish and complete the same according to the tenor of said last resolve, for the sum of \$2,240. Mr. Pierce appeared before your Committee and testified that this was the lowest sum he would contract for to finish the road, and that with all the diligence he could use he should lose money by the contract: he further testified that the road was completed within the distance of about 180 rods, and that this distance was grubbed out and passable in the winter season—that he should have completed the whole the last season, had it not been for the uncommonly early rains and cold; and that as soon as the spring opens, he shall go on and finish it according to the terms of the resolve, of which your committee have no doubt. When this is done, it is probable the road over the Mountain will be but little used.

From the foregoing statement of facts, your committee draw the following conclusions, that unless Miller and Glidden were in fault in not obtaining the true route of the road, they are entitled to receive from the State, the last instalment of

	\$1,366 66
And interest from Nov. 2d, 1830, to June, 1833,	218 63
Also the bill of costs on the action of Clements	
against them,	53 97
Also costs on their action on Clements' bond,	76 75
Also costs paid as by his account,	124 07

\$1840 08

They are also of opinion that the petitioners are entitled to the sum of \$2,240, for building the road round the Mountain, as by contract with Nehemiah Pierce, when that road shall be completed according to the terms of the resolve of the last Legislature; and as the contractors have allowed the sum of \$1,560, granted them by said resolve.

this sum is to be deducted from the said sum of \$2,240, leaving a balance of \$680, that will still be due and unprovided for. Had the State paid Miller and Glidden the balance of \$1,366 66, as claimed by them on the 2d of November, 1830, and then put their bond in suit, for not making the road on Redington, Sewall and Smith's survey, your Committee are of opinion, that this question would have been more fully investigated than it can now be, as it is out of the power of the petitioners to sue the State. In the case decided against the petitioners in favor of Clements, it was decided that the certificate of Searle, the agent of the State was conclusive. Another fact is manifest, that unless the petitioners are relieved, they must be losers to the amount of the aforementioned balances, and the State will have two roads on that part of the Canada route, built by them. It has been the object of your Committee to exhibit the facts in this case, in as concise a manner as possible, and they regret that they cannot condense them in a narrower compass. They beg leave to introduce the accompanying resolve to carry the provisions of the same into effect.

NATH'L GROTON, *Chairman.*

STATE OF MAINE.

RESOLVE in favor of Charles Miller and John C. Glidden.

Resolved, That there be paid out of the Treasury of this State to Charles Miller and John C. Glidden, the sum of One Thousand Eight Hundred and Forty Dollars and eight cents, in full for all claim they have on this State for building and completing the Canada road over Bald Mountain in the year 1830, agreeably to the certificate of Samuel Searle then agent of the State.

Resolved, That when said Miller and Glidden shall produce satisfactory evidence to the Governor and Council that they have completed and finished the Canada road leading West and round Bald Mountain agreeably to the survey of Messrs. Redington, Sewall and Smith, there shall be paid to them out of the Treasury of this State the sum of six hundred and eighty Dollars in full for the same.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 21, 1834. }

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

[Extract from the Journal.]

Attest, ASAPH R. NICHOLS, *Clerk.*