

MAINE STATE LEGISLATURE

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DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING THE

EXTRA SESSION OF 1853, AND SESSION OF 1854.



Augusta:

WILLIAM T. JOHNSON, PRINTER TO THE STATE.

1854.

THIRTY-THIRD LEGISLATURE.

HOUSE.

No. 18.

REPORT.

THE Committee on Railroads and Bridges, to which was referred the petitions of Sewall B. Swasey and others, for widening draw in bridge leading from Bucksport to Orphan Island, and remonstrances of selectmen of Bucksport, of Joshua Abbott and others, of John P. Mason and others against the same. The petition of Jacob Longfellow and others, for widening the draw in the Machiasport and East Machias toll bridge: Remonstrances of Dunbar H. Norton and 43 others, of Wm. H. Beck and 154 others, of M. J. Talbot and others, of A. P. Cushing and 45 others, of Charles Foster and 49 others, of J. C. Talbot and 93 others, against the same:

The petition of Joshua Patterson and others, for freedom of navigation of the tide waters of Georges river, and the remonstrances of John Creighton, jr., and 106 others, and remonstrance of the inhabitants of Thomaston, against the same, all of which are referred to the said committee, having been presented to this Legislature, also the petition of John Pierce and others, for a draw in Rutherford Island bridge, referred by the last Legislature to the present Legislature, and to said committee, have had the same under consideration, and ask leave to report:—That they consider, that the free navigation of the tide waters and navigable rivers of this State, is of common

right and ought to be open and free to all the citizens of the State; that the right to build bridges over such waters and rivers, under charters granted by the Legislature, can only be exercised in a reasonable manner, and not to the destruction or great hindrance of the common right to navigate the same; they are also of opinion, that if in any instance, such common right has been unreasonably diminished or interrupted by any bridges built under any such charters, in accordance with the terms of such charter, it is not only the right, but it is the duty of the Legislature, either wholly to repeal, or to modify such charter, either by a special act for the particular case, or by some general law, framed in such manner as to provide a remedy for all such cases, and to restore the reasonable use of such common right.

They have examined the charters referred to in the several petitions set forth, and many other charters for building bridges granted by the Legislature of this State, over such waters. Most, if not all these charters, contain provisions requiring draws and piers, and wharves, to be built as it is expressed, in such acts, "sufficient" or "convenient" for the passing of vessels, and in many of them, a number of feet is expressed, and the draw is required to be not less than that dimension. The committee are of opinion, that a bridge built in accordance with such provisions of its charter, may be lawfully maintained by the proprietors, unless it shall be shown, that for the safe and convenient passing of vessels, of some description, required to navigate such waters, a larger or differently constructed or placed, draw or piers, or wharves, is needed, in which case such provisions of the charter are no defense against a suit for damages or any lawful mode of removal. This rule as well applies to bridges built by towns over such waters as to those built by companies under charters, on private account. Great changes have taken place since many of these charters were granted in the size of vessels built upon such waters as well as in the size and kind of vessels used to navigate such waters, and the committee regard it as an intolerable grievance, if such vessels are

to be excluded from such waters by draws constructed many years ago, in a manner suitable to the requirements and wants of those periods, but which are altogether inadequate to the purposes of shipbuilding and navigation, which would now be introduced upon such waters were the impediments caused by such bridges removed.

The committee also deem it a question worthy of consideration, whether the constitution of the United States, having given to congress the exclusive right to regulate commerce among the several States, it is competent for the States by any legislation to authorize the construction of bridges over tide waters to the interruption of such commerce.

In accordance with these views, the committee have prepared a bill, which is herewith presented.

All which is respectfully submitted.

J. B. HILL, *Per Order.*

March 17, 1854.

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STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND FIFTY-FOUR.

AN ACT to regulate draws in bridges over navigable waters.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECTION 1. In every bridge heretofore or hereafter built, over navigable waters, under any charter or grant of the legislature, there shall at all times be kept and maintained a draw so wide, and so constructed, as to permit any vessel or steamboat for any purpose required, to navigate such water, to pass the same with ease and safety, and without unreasonable delay ; and there shall also be maintained and kept in good order, above and below such bridge, such wharves and piers as shall be needed to make such passing safe and convenient ; and said draw shall be raised without expense for the passage of all such vessels and boats.

SECT. 2. Any such bridge, the proprietors or
2 managers of which shall have reasonable notice that the
3 draw in the same is not constructed and kept as this
4 act requires, or is not properly provided with wharves
5 and piers for the purposes aforesaid, shall be liable to
6 be indicted, and removed as a nuisance, notwith
7 standing any clause or provision in the charter under
8 which it is or shall be built, defining, or in any man-
9 ner limiting the capacity of such draw, or the manner
10 in which it shall be constructed.

SECT. 3. Any person suffering damage by reason
2 of any such draw not being constructed and kept as
3 this act requires, or by want of any such wharves or
4 piers, after due notice to the corporation or proprie-
5 tors of such bridge, of such want or insufficiency,
6 and after reasonable time to supply or repair the same,
7 may recover his reasonable damages therefor, in an
8 action on the case against such corporation or pro-
9 prietors.



STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
March 17, 1854. }

ORDERED, That this Bill, and the accompanying Report, be laid upon the table, and 350 copies printed for the use of the Legislature; and that the third of April next be assigned for its further consideration.

JOHN J. PERRY, *Clerk.*