

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE.

1861.



AUGUSTA:
STEVENS & SAYWARD, PRINTERS TO THE STATE.
1861.

FORTIETH LEGISLATURE.

HOUSE.

No. 50.

*The Honorable the Senate and House of
Representatives in Legislature assembled, in 1861:*

The undersigned, President of the Kennebec and Portland Railroad Company, in behalf of said road and by authority of the Directors thereof, hereby represents, that it is for the public safety and convenience that an alteration in the location of said railroad over Deering's mill pond in Westbrook and Portland should be made, and the description of such alteration in the act of April 14, 1857, is such as renders it impracticable to make the change within the limits therein prescribed, and the Trustees of the bondholders having requested it, is therefore requested that an act may be passed to authorize the corporation to make an alteration of the location of said road, commencing at the York and Cumberland Railroad in Westbrook, at some point not over three hundred feet northerly from the road leading from Deering's bridge to Sacca-rappa village, by the dwelling house of the late James Deering, and thence southeasterly by a curve, to intersect and connect with their road as now laid out and used, nearly opposite the almshouse in Portland. And it is further requested, that power be granted said company to change the location of their road in Portland, so as to authorize them to make their road from the angle in Canal street over and across the land and track of the Portland, Saco and Portsmouth Railroad Company, to the lot east of their road lately purchased of Tyler & Rice for a station.

ALLEN LAMBARD,

President K. & P. Railroad.

Augusta, Jan. 19, 1861.

To the Legislature of the State of Maine:

The Kennebec and Portland Railroad Company represent that their road in Westbrook and Portland, as located and used over Deering's mill pond, is unsafe and inconvenient to the public, and that the description of an alteration authorized by the act of 1857, is such as renders it impracticable to make and use it. They therefore ask authority to change their location between the York and Cumberland Railroad in Westbrook and the present track of the Kennebec and Portland Railroad, nearly opposite the almshouse in Portland, and from Canal street across the track of the P. S. & P. Railroad, to the lot lately purchased of Tyler & Rice for a station.

ALLEN LAMBARD,

President K. & P. Railroad.

November 1, 1860.

This certifies that the foregoing notice was published three weeks in the Kennebec Journal, in the month of November, 1860.

JOHN S. SAYWARD.

To the Legislature of Maine :

The remonstrance of William P. Fessenden of Portland, respectfully represents, that the Kennebec and Portland Railroad Company has applied to your Honorable bodies for an enlargement of its powers, by which it may be authorized to make a new track in Westbrook, crossing the road leading from Deering's bridge to Saccarappa, and running into the pond above said bridge, through land now owned and occupied by Harriot and Mary Deering. Your remonstrant understands the object of the proposed grant to be the obtaining a larger curve, so as to secure an increased rate of speed. No other purpose can be imagined, as said company now has the right to run in the same direction on a shorter curve, or could obtain such right, if content to exercise it in a manner more safe for the public, and not destructive to the property and comfort of individuals.

To this proposed alteration your remonstrant objects, for several reasons. Your remonstrant holds that, although railroads are of importance, the interests of the people should be the first care of the Legislature. Regard should be had, in all cases, to the safety and welfare of the community. All experience has shown how difficult it is to guard against abuses of power granted to corporations, whenever corporate interests come in conflict with public or private rights. In this case, the object is to obtain a greater rate of speed. The travelled highway at the point of crossing is one of the main avenues into Portland, passed at all hours of the day and evening, on foot, and with teams and carriages. The crossing of the York and Cumberland Railroad is within a few rods of that now proposed, and is, of itself, an inconvenience. It is quite manifest that another so near would not only greatly increase that inconvenience, but would be extremely dangerous.

It must be obvious to the legislature that at all points where great thoroughfares are crossed by locomotives, the rate of speed should be slow; and in many charters a diminished rate of speed in such cases is required by law, experience having proved the absolute necessity

of such provisions. In this case, the object is to increase that rate. While compelled to cross on the track over which the K. and P. Railroad is now located, the travelling public is not only saved from the danger of two distinct crossings near each other, but the shortness of the curve compels a moderate rate of speed. This is an advantage to the public, which saves the necessity of resorting to legislation to effect the same purpose. The pecuniary interests of the company might, perhaps, be subserved in some slight degree by increasing the speed, but the safety of passengers, and more particularly of the travelling public, would be seriously endangered. Ought the legislature, for so trifling a consideration, to exert the power, at least a doubtful one in the case of railroads, of taking private property from the owners against their will? In my judgment, the legislature should refuse to permit such an alteration, even if the consent of those owning the property was obtained, much more where the injury to property cannot be compensated by money, as your remonstrant will endeavor to show.

Secondly. While the rights of individuals may properly be made subservient to public necessity, it is neither fair nor just to compel great sacrifices of private property, and individual comfort, for the mere purpose of increasing the profits of a corporation, which is but an aggregate of individuals. Where a corporation has been clothed by government with all the powers necessary to its existence and purposes, and the property of individuals forcibly taken for that object, it should be left, like natural persons, to promote its mere convenience and profit by private negotiation and enterprise, without invoking the interference of the State. To grant the prayer of the petitioners would result in a great injury to individuals, which money could not compensate, with no other object than to put money in the pockets of other individuals incorporated as a railroad company.

To any person familiar with the premises, this would be perfectly obvious. A large field, valuable in itself, and much more so as giving beauty and value to the estate of which it forms a part, would be utterly ruined for any other than the use of what was not taken for agricultural purposes. More than this, the value of the whole estate would be greatly depreciated, while the damage done would be of such a nature that pecuniary damages which would afford any

thing like compensation, could not be obtained. Situated as the property is, it cannot now be brought into market for sale. A few years may render it of great value for building purposes, such is its beauty of location and convenient distance from the city. The proposed road would render it almost valueless for any such purpose, and also affect most injuriously the whole remaining property in the vicinity. It is clear that compensation could not be obtained for such injuries, any more than for destroying the comfort of the family residence, which depends much upon its surroundings. The persons interested may well claim that they are entitled to consideration and protection against a corporation which has already enjoyed the use of their property without compensation, and which desires to sacrifice individual interest and comfort, not to public necessity, but to corporate profit.

Your remonstrant is very certain that no member of your honorable body could possibly see the premises referred to at any season of the year, more especially the summer, without saying at once, that to take the property in question for any thing short of actual pressing public necessity, would be an outrage and a wrong to individuals, not to be excused. The Hon. Reuel Williams, formerly President of the road, and largely interested in it, remarked to your remonstrant, when the project was first started, that he considered it an outrage, and could not give it his countenance.

Again, there are peculiar reasons why this company ought not to ask such a power in this particular case. The property of the late James Deering was very badly injured by the original location of the York and Cumberland Railroad, for which a very inadequate compensation was awarded, a large portion of which still remains unpaid. The K. & P. Railroad Company located its track directly over that of the York and Cumberland Railroad, under an agreement, but never paid a dollar for the rights acquired by that location, although it has been using it for years. It has for some time been in the power of those interested in the estate to take up the rails, and stop the roads, but they have been averse to so summary a proceeding, and have suffered both companies to use their property without compensation, in the hope that, at some future time, the two companies would be able and disposed to pay for the injury done, and the privileges enjoyed. A few years since the Kennebec and

Portland Company applied for a change of location, and, although the owners had not been paid, they agreed to make no objection, on the condition that it should be so made as to keep within certain prescribed limits, and thus avoid the great injury and disturbance which would otherwise accrue. These terms were agreed to, and the charter was granted—but this was not done until the proposed curve had been thoroughly examined by a competent engineer, and found to be sufficient for the purposes of the company. After obtaining the charter, the company has not seen fit to avail itself of its provisions, but after this lapse of time, it repudiates the agreement then entered into with your remonstrant and others, and seeks to inflict this great injury both on the public and individuals, for an advantage slight to the company, but destructive to a large and valuable estate—now an ornament to the vicinity, but which by the proposed encroachment, would be deprived of beauty.

Your remonstrant would further point your attention to the railroad law as it now stands, and to the provisions of it designed to protect public rights and private interests. That law has approved itself to the community by the necessary and salutary guards afforded by it against encroachment and abuse; and he respectfully suggests that if, for any reason the power to change its location should be granted to this or any other company, it may remain subject to all the conditions and provisions of existing laws; and that the Legislature will not commit the injustice of granting to one company privileges denied to others, or deciding finally upon questions of location, which can only safely be left to a tribunal provided by law, and which has the power to examine and determine, understandingly, upon what the public interest may demand.

Your remonstrant has no pecuniary interest, present or prospective, in the property referred to. He feels, however, deeply interested for others whose rights he is bound, so far as he can, to protect; and for them, and for the public, he respectfully, but strongly protests against a grant of power which can find no justification in public necessity.

W. P. FESSENDEN.

STATE OF MAINE.

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

AN ACT additional to an act to incorporate the Kennebec
and Portland Railroad Company.

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

SECTION 1. The Kennebec and Portland Railroad
2 Company is hereby authorized, at any time within
3 three years, to alter and change the location of their
4 road between the York and Cumberland railroad on
5 land of the late James Deering in Westbrook, and the
6 present railroad of the Kennebec and Portland com-
7 pany leading from Deering's bridge to Grove street in
8 Portland, so as to avoid crossing Deering's bridge,
9 *provided* that the new location shall not be made
10 further west than the westerly line of stakes lately set
11 up through the Deering farm by C. J. Noyes, engineer,
12 and that the track in the cove shall be made upon an
13 open bridge so constructed as not unnecessarily to

14 obstruct the passage of the water in said cove ; *and*
 15 *provided further*, that said company in exercising the
 16 right granted by this act shall be subject to all the
 17 provisions of existing laws in relation to railroads and
 18 railroad companies.

SECT. 2. Said Kennebec and Portland Railroad
 2 Company may also change their location in Portland
 3 so as to run from the angle in Canal street across the
 4 Portland, Saco and Portsmouth railroad, with one or
 5 more tracks, to the lot lately purchased of Tyler & Rice
 6 for a station, instead of running into the depot of the
 7 Portland, Saco and Portsmouth road.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
 March 1, 1861. }

Reported by Mr. SKOLFIELD, from the Committee on Railroads, Ways and Bridges, and on motion of Mr. FOX of Portland, laid on the table and 350 copies ordered to be printed, together with the petition of Allen Lambard, Pres. of K. & P. Railroad Co., and the remonstrance of Wm. Pitt Fessenden, for the use of the Legislature.

CHARLES A. MILLER, *Clerk.*