

SENATE.....

.....No. 83.

REPORT AND BILL

RESPECTING

BOSTON AND LOWELL RAIL-ROAD CORPORATION.

To the Honorable the Senate and House of Representatives, of the Commonwealth of Massachusetts, in General Court assembled :

The petition of the Boston and Lowell Rail-road Corporation by their Directors, duly authorized, respectfully represents,

That the corporation have expended the whole of the capital stock, which they are authorized by their charter to raise, in constructing their road, and in providing the proper moving power with the requisite appendages, as will more fully appear in their annual return made to your honorable body this present session.

Being desirous of completing the second track of their road of which there is yet to be laid about fifteen miles, for which purpose an addition to their capital of one hundred and fifty thousand dollars will be required ; your petitioners respectfully ask permission to increase their capital stock, by creating and adding thereto, three hundred shares of five hundred dollars each.

All which is respectfully submitted,

JOSEPH TILDEN,
JNO. F. LORING,
GEO. W. PRATT,
WM. APPLETON,
P. T. JACKSON,

Directors.

Boston, Jan. 5, 1837.

Commonwealth of Massachusetts.

IN SENATE, Jan. 19, 1837.

The Joint Committee on Railways and Canals, to whom was committed the Petition of the Boston and Lowell Rail-road Corporation, have examined the subject and ask leave to report a Bill.

C. HUDSON, *Chairman.*

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Thirty-
Seven.

AN ACT

To authorize the Boston and Lowell Rail-road Corpora-
tion to increase their Capital Stock.

BE *it enacted by the Senate and House of Representa-
tives, in General Court assembled, and by the authority
of the same, as follows :*

1 SEC. 1. The Boston and Lowell Rail-road Cor-
2 poration, are hereby authorized to increase their cap-
3 ital stock to an amount not exceeding one hundred
4 and fifty thousand dollars, by creating an additional
5 number of shares, not exceeding three hundred, of
6 five hundred dollars each ; the said shares to be as-
7 sessed by instalments, from time to time, as the direc-
8 tors shall think proper ; the amount thus raised to be

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9 applied for the purposes specified in their original act
10 of incorporation, and the acts in addition thereto.

1 SEC. 2. When the said corporation shall have
2 completed their second track, they shall compel all
3 engines and cars going in a northerly direction, to
4 keep upon one track, and all engines and cars going
5 in a southerly direction to keep upon the other.

1 SEC. 3. Whenever by reason of accident or other
2 unavoidable cause one track shall be out of repair, it
3 shall then be lawful for said corporation to allow the
4 engines and cars to pass and repass on the same track :
5 *provided*, that the corporation use all due diligence to
6 put the said road in repair.

IN SENATE, Jan. 31, 1837.

Passed to be engrossed.

Sent down for concurrence.

CHA'S. CALHOUN, *Clerk.*

HOUSE OF REPRESENTATIVES, March 13, 1837.

Passed to be engrossed, in concurrence, with the following amendment, viz. : at the end of the 3d section, insert, as follows, viz. :

“ Provided that the said corporation shall be subject to the general laws of the Commonwealth, to the same extent as other rail-road corporations are, which have been created since the eleventh day of March, in the year one thousand eight hundred and thirty-one.”

Sent up for concurrence.

L. S. CUSHING, *Clerk.*

Commonwealth of Massachusetts.

IN SENATE, March. 24, 1837.

The Special Committee of this Board, to whom was committed "an act to authorize the Boston and Lowell Rail-road Corporation to increase their capital stock," having examined the subject, ask leave to submit the following

R E P O R T :

As early as February, 1825, the Legislature, being impressed with the importance of increasing the facilities for communication between the city of Boston and the interior, authorized the appointment of three commissioners to ascertain the practicability of making a canal from Boston Harbour to Connecticut River, and from thence to the Hudson River in the state of New York. In June of the same year, His Excellency, in his annual Message, called the attention of the Legislature to the subject of *Rail-roads*, a new mode of communication, which had been partially tested in England. From that period onward, the attention of the Legislature was constantly directed to the great subject of internal improvements. In Jan. 1829, the Commissioners of Internal Improvements made a detailed Report, recommending to the Commonwealth to embark in the great work of constructing a rail-

road, from the city of Boston to the interior of New England, and to the state of New York. But the Legislature of that year, after great deliberation, refused to embark in the enterprize. The next Legislature reviewed the whole subject, and came solemnly to the same decision. The language of the Legislature at that time was this : Rail-roads are yet in their infancy ; the experiments made in England, and at the south, will not apply here. The snow and frost of New England may render these improvements useless in this state, which are valuable in other climes. We will not, however, act the part of the dog in the manger—refusing to embark ourselves, we will cheerfully afford every reasonable facility to those who will test this new mode of transportation—who will try this experiment. Such was virtually the language of the Legislature at that time. They were anxious that an experiment should be made ; consequently in March of 1830, at the same session at which the Legislature had refused for the second time to embark themselves, they granted to the Franklin Rail-road Company a charter to construct a rail-road from Boston to the county of Franklin, and thence to Vermont. At the same session a charter was granted to the Massachusetts Rail-road Company, to construct a road from the city to Connecticut River, and thence to the line of the state of New York ; and also a charter for a rail-road from Boston to Providence, and from Boston to Taunton. These charters were freely granted, but the stock could not be taken up. Capitalists would not embark in an untried and unpromising enterprize. These charters, I say, were freely given, but they were not accepted ; they all expired. The *present* Boston and Providence Rail-road Corporation was subsequently created.

The Legislature convened in May, 1830. At that time the charters for the above mentioned rail-roads had been granted, but no one seriously believed that they would ever be accepted, or the roads made. The State had solemnly refused to embark, and no individuals would take a charter, and give any assurance that they would test what was then considered in New England an experiment. At that session the gentlemen, now corporators of the Boston and Lowell rail-road corporation, came forward and gave assurance that they would try the experiment, if they could obtain a charter. The Legislature readily closed with this proposition, and granted them an act, which bears date June 5, 1830. This charter to the Lowell corporation was granted earlier, by more than a year, than the charter to the present Providence or Worcester corporations. The Lowell rail-road corporation was not only created earlier than the Providence or Worcester, but they were the first to organize, the first to commence, and the first to complete and open their whole road for use. From this comparison of dates it will be seen, that the Lowell corporation has been the pioneer in the great work of internal improvement in this State. If the Legislature had any special favors to bestow, they were bound to bestow them upon those who came early to the work, and who took the risk of an unpromising experiment upon themselves, when no others would embark. The Legislature evidently regarded the Lowell road as an object of great importance; for, before the Worcester charter was granted, they created the Boston and Ontario rail-road corporation, to construct a road from the Lowell road through New Hampshire, Vermont and New York to Lake Ontario, or Ogdensburg. We state these facts to show, that, at that time,

the Lowell corporation had every reason to believe that the Legislature acted in good faith, and that they should be protected in all the privileges specified in their charter.

We propose in the next place to inquire, what kind of a road was contemplated by the parties, when this charter was granted. The charter itself does not decide whether the road should consist of one or of two tracks; but at the same time a double track was even then supposed to be necessary, on all roads doing any considerable amount of business. In the report made by Mr. Baldwin, and submitted to the Legislature in January, 1829,—the report which first called the attention of the public to this great subject, and which gave the impetus to that spirit which has since distinguished our State,—in this report a double track is expressly recommended. Mr. Baldwin says that he and the commissioners had concluded, that “the road is to have *two tracks, or carriage ways*, and to be twenty-two feet wide.” Report, p. 22.

From this circumstance it appears, that, from the first, a double track was contemplated, whenever the state of business should require it. Mr. Jackson, the first agent of the Lowell corporation, reported to the directors before they commenced their work, that “it is expedient to purchase land and lay out the road, contemplating a *double track*.” A committee of said corporation reported to the stockholders, in 1831, “that the road should be laid out wide enough to lay *another track*.” This report was printed and circulated at that time among the members of the Legislature. These facts go directly to show that a double track was contemplated from the first; consequently the corporation commenced their work by grading their road for a *double track*, and actually laid a *double track* for some two miles. These facts have been

laid before the Legislature by the annual reports of the corporation. In their report of January 9, 1834, they say: "During the past year the grading of the road has been completed for *two tracks*, with the exception of some deep excavations near each terminus of the rail-road." In the same report, they say, "they would also represent, that it will probably be found expedient to lay *two tracks* of railway."

The corporation, then, have from the first, contemplated a double track. They have informed the public by their double grade; they have informed us by their reports, that they have always contemplated a double track for the convenience and safety of the public. And how has this project been regarded by the Legislature? They have favored it, by granting them an increase of capital two several times. And what is the request of the corporation at the present time? They ask for permission to expend \$150,000 more of their own money, to accomplish the very object which the public desire. They ask us to allow them to comply with the contract they have made with the government. They pray us to permit them to lay a double track, that the public may be better served,—and that the lives and limbs of our citizens may not be endangered by the collision of the trains. The mere statement of the case shows the justice of their request. They ask to be permitted to expend their own money, to do what they have always informed us that they wished to do, and what we have told them again and again to perform. Whatever may be said of their original charter, by granting them the additional acts of Jan. 31, 1834, and April 6, 1836, to increase their capital stock, for the express purpose of laying down a double track, we have made it their duty to perform this act. But they cannot do it

without money. They ask of us this permission, and they are told by the amendment now before us, that they shall not spend their own money for the convenience and safety of the public, unless they will surrender their birthright. If they came to us for a grant of money, the case would be different. But they ask no such thing. They simply desire to expend their own capital in doing what we have bid them do, and what they have covenanted to perform.

This corporation, in several respects, has performed its duties more faithfully than any other rail-road company. While the Providence and the Worcester have crossed many of our great public roads on the same level, and thereby endangered the property and the lives of the public, whether travelling in the cars or on the common roads, the Lowell corporation has exerted itself to pass either over or under the common roads, thereby rendering travel on the rail-road and on the common road more secure. Thousands of dollars have been expended by that corporation, to facilitate these crossings. In fact, had it not been for the expense thus incurred, the Lowell corporation would not at this time have been here, asking to hold additional capital. If they had adopted the policy of the Providence and Worcester corporations, and crossed the public roads, as they have generally done, on the same level, their capital would have been amply sufficient to complete their road. But they have adopted a different policy; they have crossed all roads independently, where it was practicable; they have consequently served the public better than other corporations; and shall their faithfulness and liberality be made an occasion of extorting from them privileges to which they are now entitled?

Your Committee cannot but look upon this attempt to

impose new liabilities upon that corporation, as an act of injustice. It is an attempt to deprive them of privileges which the Legislature freely granted them. It is making their faithfulness an occasion for wringing from them their rights, and inflicting upon them a deep injury. We feel confident that no honorable man would be guilty of such conduct in the transaction of his private affairs; and we have yet to learn that what would disgrace an individual, is honorable or even just in the Legislature. If that corporation were not before us, we are satisfied that no sound jurist would pretend that we had the constitutional power of imposing upon them the liability of having their charter amended or repealed at the pleasure of the Legislature. And how does the case now stand? That corporation is here, it is true. But they are not here asking for a favor; they are only asking us to allow them to fulfil their contract with the government, that the traveller may be saved from the calamity which recently befel travellers on the Providence road. And does this alter the principle in the least? Without expressing an opinion upon the constitutional question, we must say that expediency, that honor, that justice remonstrate against the course proposed by the amendment.

There is, in the opinion of your Committee, a great mistake relative to the Lowell Rail-road Corporation. It seems to be taken for granted, that the Lowell charter is vastly more favorable to the corporation, than the Providence, or the Worcester. This opinion we believe to be erroneous. A comparison of the Lowell charter with that of the Worcester, will show at once that the latter charter is the more favorable to the corporation. The Lowell charter allows the Legislature to come in every four years, and reduce the tolls, if they exceed ten

per cent. ; the Worcester charter allows them to come only once in ten years : Lowell charter, sec. 5 : Wor. charter, sec. 5. Both charters allow the Legislature to purchase the road and franchise after twenty years. But the terms of purchase are very different. The Lowell corporation must, when the State shall purchase, account to the State for all their excess above ten per cent. ; but it is not so with the Worcester corporation ; they are not required to account for the excess above ten per cent. : Stat. of 1836, ch. 146 : Stat. of 1832, ch. 153. When we consider, that, in all cases of reduction of tolls, the amount of business must be estimated as stationary, it will be seen, that if the business should increase, the income will exceed ten per cent. before the expiration of the next period. When the State attempts to reduce the tolls on the Lowell road, they are to take the four preceding years as the basis of calculation, and estimate the business for the next four years to be the same as the last four. In the case of the Worcester road, the period of ten years is to be substituted for that of four. This uniform or stationary amount of business is assumed from the necessity of the case. Every man believes that business will increase ; but as the exact amount of this increase cannot be anticipated, the charters provide that the business, during the next period, shall be assumed to be the same as during the last period.

We have the fullest assurance that business on each of these roads will increase. Now the longer the period between these reductions by the Legislature, the greater will be the excess above ten per cent. The Worcester road has in this respect an advantage over the Lowell as ten to four. Nor is this all ; the construction of the Western and Norwich roads, will tend to increase the

business on the Worcester road more rapidly than it will increase upon the Lowell. This again will serve to increase their receipts. When at the expiration of twenty years the State shall purchase the Lowell road, that corporation must account for every dollar of excess above ten per cent. If they shall have received twenty per cent., ten of it must be deducted from their original outlay. But in the Worcester road it is entirely different. Let their income amount to twenty or fifty per cent., they are not called upon to account for the excess above ten per cent. This gives the Worcester road a decided advantage over the Lowell road.

In other respects the Worcester charter, is much more favorable to the corporation than the Lowell. The Lowell company are not authorized to construct any branch road; but the Worcester company is authorized "to construct branch rail-roads, at such convenient points as shall be selected therefor, to any part of the towns through which the said main rail-road shall pass, or of the towns adjoining." This is giving to the Worcester company a power far exceeding any thing enjoyed by the Lowell.

In another respect the advantage is greatly on the side of the Worcester corporation. The Lowell company are here asking for permission to increase their capital to the amount of \$150,000, but the Worcester is authorized to increase its own capital at pleasure, to the amount of \$1,000,000. Their additional act provides that for the purpose of constructing branches, or "a double set of tracks," they may increase their capital to that amount. See additional act of March 22d, 1832, sec. 5. If the Lowell company had the power granted to the Worcester, they would not be here at the present time, asking

for an increase of capital. Nor is this all—the Worcester company are not only authorized to hold their own road, and manage the affairs of their own corporation, on terms more favorable than any other company, but they are allowed to take, if they shall so elect, an amount of stock in the Western Rail-road Corporation, equal to their own capital stock. Statutes of 1833, chap. 116.

Now with all these facts staring him in the face, will any man assert that the Lowell corporation enjoys privileges greater than any other company? Let the facts above stated be considered, and we shall hear no more of the *monopoly of the Lowell Rail-road Company*.

Under what general law is it proposed by the amendment from the House, to place the Lowell Rail-road? The act bears date March 11, 1831, and provides “that all acts of incorporation, which shall be passed after the passage of this act, shall at all times hereafter be liable to be amended, altered, or repealed at the pleasure of the Legislature, and in the same manner as if an express provision to that effect were therein contained; unless there shall have been inserted, in such act of incorporation, an express limitation as to the duration of the same.”

The Lowell Rail-road Corporation, was created prior to the passage of this general law, but all the other rail-road corporations have been created subsequently to that act. Nothing can be more obvious, than that a charter coming under this general law, is essentially different from one which does not. It is said that every rail-road charter except the Lowell, may be altered, amended or repealed at the pleasure of the Legislature. Admit this position to be true, and what is proposed to be done? Why to take advantage of the Lowell corporation which

came here in the line of their duty, and impose upon them the liability of having their profits reduced to nothing, or their charter vacated at any moment, and that without any fault of their own!

If the views entertained by those who advocate this amendment, be correct, we are called upon to inflict the deepest injury upon an innocent corporation, and that for no assignable cause. The Legislature have now the power of reducing the rate of tolls on the Lowell railroad, on certain conditions, once in four years, and the charter is now liable to be taken away *for cause*. And is not this sufficient? Can the Legislature of Massachusetts ask for more power? Do they wish to vacate a charter *without cause*? If they do not wish to exercise a wanton power, why labour to obtain it? Why take the advantage of a corporation, and extort from them a power which we are told will never be exercised.

But we are asked, why object to put this corporation under the operation of such laws as apply to all other rail-road corporations? To this inquiry we answer, that it is by no means certain, that the other charters are liable to alteration and repeal at the pleasure of the Legislature. We allow that all other charters were passed subsequently to the law of March 1831; but we do not admit that it follows of course, that they are under the operations of that law. What is the essence of that law? Simply this—that charters which have no limitation in them, shall be under the control of the Legislature, but that charters which have limitations shall not. The plain principle recognized in this statute is, that no charter shall be held in perpetuity—that an endless monopoly shall not grow up. That act assumes that the Legislature will look well to the charter for the time being—that where a

limitation is inserted, whether the time be twenty-eight years, as in case of insurance, or a longer term as in some other charters, there is nothing to fear. The Legislature yields its right to amend and alter a charter, when it contains a limitation, on the ground, that, if it be limited, it will expire by time, and consequently no monopoly could grow up.

Keeping this principle in view, let us look at the rail-road acts. Take the Providence company. Their charter has several limitations in it. In the first place, their toll may be reduced once in four years, if it should exceed ten per cent. This, though it is not a limitation of the charter, is nevertheless such a limitation as will render the continuance of the charter harmless. There can be no evil in the endless continuance of the charter, if the corporation serve the community faithfully, and promote the public good. So that the limitation above relating to the tolls, would, in principle, take the rail-road charters out of the operation of the law in question. But there is another limitation of more importance. It is provided in every rail-road charter, that, at the expiration of twenty years, the State may come in and purchase the franchise. This is to all practical purposes a limitation. It is a limitation on the part of the corporation itself. No power of theirs can continue the charter for a single moment beyond that time. Twenty years from the opening of the road for use, bounds their existence, unless the Legislature wills their continuance. A bank is charter for a term of years; but before the charter expires, it is continued for another period. A rail-road is charter for twenty years, and their charter is continued. But how are these charters continued? They are both continued by the will of the Legislature. The bank charter is continued by the

will of the Legislature expressed by a statute ; the rail-road charter is continued by the will of the Legislature expressed by their refusing to act, by their permitting the corporation to continue.

What are the attributes of a limited charter ? A charter limited by its terms, cannot be continued by the corporation itself. Now this is as true of a rail-road charter, as it is of an insurance charter, which is limited to twenty-eight years. A limited charter may be extended beyond the time specified, if the Legislature so will. And this is equally true of a rail-road charter. The Legislature may continue it, or bring it to an end, as they may desire. The rail-road charters have then all the attributes of a limited charter ;—they cannot be continued by the corporation without the consent of the Legislature ; and it matters not whether this consent is given by silent acquiescence, or by a statute provision. The Legislature may express its will by acquiescence as well as by statute ; it is on this principle that many doctrines of common law have acquired a binding authority.

We know that the letter of the statute requires an *express* limitation. But words are nothing only as they convey ideas ; and the moment we examine the subject, we find that the limitation in those rail-road acts puts them as completely within the power of the Legislature as any limitation could do. *It is a limitation.*

We come then to the conclusion, that the Providence, the Worcester, and the other rail-road charters, are not under the operation of the law of March, 1831 ; and we are strengthened in this position by cotemporaneous construction. As early as 1824 or 1825, the Legislature introduced the practice of appending, to acts of incorporation of a certain class, a provision that the charter may be amended or repealed at the pleasure of the Legisla-

ture. Religious societies and academies were some of the first corporations to which this provision was affixed; but in 1828 or 1830, a similar provision was inserted in the acts to extend wharves, and in charters granted to several other classes of corporations.

In 1831, for the purpose of avoiding the repetition of this provision, the general law was passed. It was designed as a substitute for the section which had been incorporated into various charters. Now if we can ascertain to what class of corporations the Legislature appended this provision, we shall then have learned to what corporations the general law was intended to apply. By turning to the statutes, we find that this reservation was appended to religious societies, and generally to the whole class of eleemosynary and some other corporations. But we find nothing like this applied to that class of corporations which will bear any analogy to rail-road corporations. The Lowell rail-road was created before the passage of the general law, and several of the other rail-roads immediately after; and yet these charters are substantially the same. Now, as the one passed before the passage of the general law, contained no provision that the Legislature might alter or amend the charter, and the acts passed immediately after are mere copies from the former act, it seems obvious that the Legislature did not intend that these latter charters should come under the operation of the general law.

We have before remarked that all acts of incorporation, passed before March, 1831, which bore any analogy to rail-road corporations, had no provision giving the Legislature the power to alter or repeal. Turnpike roads are substantially analogous to rail-roads; and yet the "Taunton and Providence," the "Hampden and Berkshire,"

the "Wilkinsonville," the "Providence and Bristol," and many other turnpikes which were created, some of them but a short time before the passage of the general law, were not subjected to a provision allowing the Legislature to alter or amend. This clearly shows the design of the Legislature with reference to these roads, which are very similar to rail-roads. And why were not these turnpike charters made subject to alteration or repeal? Evidently for the reason that they were under the operation of the general turnpike law, which is very similar in its provisions to all our rail-road charters.

The general turnpike law provides, that "the Legislature may dissolve any turnpike corporation, after the expiration of *twenty years*, and thereupon the property of said road shall be vested in the Commonwealth, and be at the disposal of the Legislature." [Stat. of 1804, chap. 125.] This places turnpikes on the same ground as rail-roads, so far as limitation is concerned. With reference to turnpikes and with reference to rail-roads, the Legislature may dissolve or bring them to an end in twenty years. These turnpike charters are limited in such a manner that, after the Legislature introduced the custom of appending to their acts of incorporation a provision that they may be altered or repealed at pleasure, they added nothing of this kind to the turnpike charters. This clearly shows to what class of corporations the Legislature appended this altering and repealing clause; and knowing the practice at the time the law of March, 1831, was passed, we have a legislative or cotemporaneous construction of that statute.

There has been at least one legislative exposition of these rail-road charters, touching the power of the Legislature to alter or amend. In 1834 a petition from Attle-

borough, praying the Legislature to stay the Providence rail-road corporation in the location of their road across the burying-ground in that town, was before the Legislature. The case excited considerable feeling at the time; but still the petition was dismissed by the Legislature expressly on the ground that the corporation were authorized, by their charter, to locate where they pleased, and the Legislature had no right to alter the provisions of their charter. This example is directly in point, and shows conclusively in what sense the Legislature understood the charter, three years after it was granted.

Now if cotemporaneous construction can, in any case, settle the meaning of a statute, we think it is clear that the law of 1831, does not apply to rail-road corporations. We do not—we cannot, on any view of the subject, perceive that these charters are subject to alteration or repeal at the pleasure of the Legislature. There is one intrinsic reason why this class of corporations ought not to come under the operation of a law, subjecting them to the liability of having their charters vacated. If the charter of a manufacturing corporation be taken away, they could prosecute their business as a copartnership; but it is not so with a rail-road company. Take away their charter, and their road would be useless. Why then does any one wish to subject them to certain ruin, or even to a liability to be ruined, without any just cause.

But it is said, that this corporation ought to be subject to the law which relates to all other rail-road corporations. We have already attempted to show, that the Providence, Worcester, and other charters of that class, do not come under the operation of this altering and repealing provision. But there is another class of rail-road corporations. Those chartered by the last Legisla-

ture as the Eastern, the Lowell and Nashua, and several others, were subjected to the 23d section of the 44th chapter of the Revised Statutes. That provision differs in one important respect from the law of March 11, 1831. Both statutes provide that the Legislature may alter, amend, or repeal any charter which contains no limitations. The last part of both these statutes contains a conditional negative upon the first provision; but the negative applies differently in the two cases. A limitation according to the statute of 1831, would negative the power to *amend*, to *alter*, and to *repeal*: while, according to the 23d section, it would only negative the power to *repeal*, leaving the power to alter and amend still in the hands of the Legislature. This constitutes an important difference between the statute of 1831, and the 23d section of the 44th chapter.

Let us apply this distinction to the rail-road charters. The Providence, the Worcester, and all the other companies created between March 11, 1831, and the passage of the Revised Statutes, according to the view we have taken of the law of 1831, do not come under the operation of that law; these charters have limitations, and the limitation exempts them either from alteration, amendment, or repeal. But all the charters granted by the last Legislature, (and they granted some half dozen,) are brought under the operation of the 23d section, where a limitation would only exempt them from repeal, and leave them subject to alteration and amendment. We have then two classes of rail-road corporations, in respect to the very subject contemplated by the amendment now before us. The general law regulating them is different. This furnishes us with a valid objection against the amendment of the House. That amendment proposes

to put the Lowell corporation under the operation of the general laws relating to other rail-road companies; but the general law, to which reference is had, applies different; in one case it guards the charter against repeal,—in the other case it exposes it to repeal. We object to the amendment, then, because it can never be executed. It provides that this rail-road corporation shall be subject to the general laws, to the same extent that other rail-road corporations are. But other rail-road corporations are subject to these laws to different extents. It is proposed to place this company on the same foundation that others are placed upon, when others are placed on different foundations. This renders the amendment of a doubtful character, and furnishes a good reason for its rejection.

There is another uncertainty growing out of the amendment. It was probably the design of the amendment to bring the corporation under the operation of the general laws, if they increased their capital; but, by the position which the amendment is made to occupy, it applies only to running their trains both ways upon one track, when the other is out of repair. The first section authorizes them to increase their capital stock; the second section provides, that all cars going in one direction shall go on one track, and all going in the other, shall go upon the other track; and the third section provides, that when one track is out of repair, they may run both ways upon the same track,—provided they will use all due diligence to put the other in repair. Then follows the amendment of the House: “*Provided*, that the said corporation shall be subject to the general laws of the Commonwealth, to the same extent as other rail-road corporations are, which have been created since the eleventh day of March, in the year one thousand eight hundred and thirty-one.”

The obvious construction of this proviso is, that, in case of accident to one track, the corporation may run both ways upon the other track with their locomotives; provided said corporation shall come under the operation of the general laws. Now your Committee will submit to the board, whether it is expedient to sustain an amendment of very doubtful import, especially when this amendment is suspended on a contingency so trifling as that of a single rail's being, by frost or some accident, out of repair for a single day! Is it wise or dignified in the Legislature to attempt to expose this corporation to the liability of having their charter vacated upon the accidental circumstance of a single rail's being displaced by frost, or being put out of repair by the wantonness of some evil-minded person,—some enemy of the corporation?

Your Committee have heard of no complaint against the Lowell Rail-road Corporation, except that they have speculated in lands in East Cambridge, or Charlestown. The Lowell Rail-road Corporation have in their annual reports apprized the Legislature of their doings on that subject. Their charter authorizes them, "*to purchase and hold land, materials, and other necessary things in the name of the corporation, for the use of said road.*" Under this provision of their charter, they have, as they have informed us from time to time in their reports, purchased lands and flats for the *use* of the road. This corporation were under the necessity of crossing Charles river, and passing by a deep cut through Winter-hill in Charlestown. Believing that they could construct their road cheaper by purchasing a quantity of land upon that hill, and a quantity of flats at East Cambridge; they did so; and by this arrangement, have taken the earth

from this excavation, and filled up a portion of these flats. Some part of the flats so made, they want, and have used for car-houses, &c. The residue of this land they will sell, and the receipts will be credited to the corporation. The corporation have already sold land to a considerable amount. The books of said corporation, as stated under the hand of their president, show that up to Nov. 30, 1836, they have disposed of these lands and credited the corporation to the amount of \$83,838. The corporation believe that they, by this arrangement, will be able to construct their road and furnish their depots, thousands of dollars cheaper than it could otherwise be done; and thus a saving to themselves and to the Commonwealth will be made.

This, your Committee believe to be the whole truth of the case. Now who are injured by this arrangement? Not those whose lands or flats have been purchased,—they sold out at an advanced price; not the Commonwealth, for by this arrangement the road will be constructed at less expense, so that, if the State should purchase the road, they could obtain it for a less sum. Taking this view of the subject the Committee are not able to perceive that any thing has been done injurious to the public, or contrary to the provisions of their charter. See annual report for Jan. 1837, document of the Senate No. 43.

Believing that the prosperity of the State depends in no small degree upon the successful prosecution of railroad communication, the Committee think that an enlightened policy would dictate to the Legislature to hold out every reasonable encouragement to individuals to embark in such enterprizes. But if contrary to this policy, the Legislature should violate their plighted faith, they

would not only do an act of injustice to this corporation, but they would inflict a fatal wound upon enterprize, and impair the faith of the State.

The amendment now before this board, so far as its objects can be learned from its friends, would subject this corporation to liabilities greater than the pioneer corporations of our sister states are subjected to. From the examination we have made, and we have devoted considerable time to the subject, we do not find that any State adopts a policy so narrow, as is proposed by this amendment. We make this statement advisedly as the following facts will show. We have been told that the State of New York subjects all her rail-roads to the same provisions. This is a great mistake. The Ithaca and Owego Rail-road Company, granted in 1828, was not subjected to alteration or repeal; and it was provided that the State might purchase after ten years, by paying them a sum which would reimburse them their capital with fifteen per cent. The great Au Sable Rail-road, granted in 1828, was not subject to alteration or repeal. Some of their later charters are made subject to the will of the Legislature; but it is a constitutional provision in that State, that no charter shall be altered, or amended without a majority *of two thirds of the whole number of members chosen to the Legislature*. When a charter in that State is subject to the will of the Legislature, it is entirely different from a charter so subject in this State. They cannot alter a charter by a major vote; they require a majority of two-thirds; not simply of two-thirds present, but two-thirds of the whole number elected.

The State of Pennsylvania adopts a liberal policy on this subject. In the Philipsburg and Juniata Rail-road, created in 1830, the state reserves the right to revoke,

alter, or annul only in case the *charter is violated*. The state of Maine in 1836 granted the Belfast and Quebec Rail-road. That charter provides that the Legislature may come in once in 15 years, and reduce the toll, but shall not reduce it below 12 per cent. The state of Maine has a law which is an exact copy of our law of March 11, 1831 ; but this charter expressly provides, that it shall not be subject to that law. The state of New Hampshire only reserves the right to alter, amend or modify—they do not claim the right to repeal at pleasure. The state of Connecticut in their pioneer road, the Norwich, not only exempted them from amendment or repeal, but exempted the whole property of the road from taxation, until their income should exceed six per cent. The state of New Jersey is equally liberal. In the Paterson and Hudson River Rail-road, there is no provision to alter or repeal. Such is briefly the situation of rail-roads in the other states. No state adopts a policy so narrow as is proposed by this amendment. And shall Massachusetts be found in the rear of her sister states, in the great work of public improvements? Shall we stain the fair reputation which has been enjoyed by this state, throughout the whole union?

The Committee view with regret and pain the attempts which are made to take advantage of a corporation which is here asking permission to be allowed to fulfil its contract with the government. From every view of the subject which the committee have been able to take, they feel constrained to say, that they consider the amendment doubtful in its application, unjust in its principles, and altogether inexpedient under the circumstances of the case; consequently they report that said amendment ought not to be adopted.

CHARLES HUDSON, *Chairman*.