

## SENATE . . . . No. 56.

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### Commonwealth of Massachusetts.

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IN SENATE, February 7, 1871.

The Committee on Railways, to whom was committed the petition of Saul B. Scott and others, for a removal of the Depot at City Mills Station, and the petitions of sundry parties in aid of the same; also, the remonstrance of Elliott Felting Mills against said removal, submit the accompanying

#### REPORT:

This case, with others of a similar character, was referred to the railroad commissioners, with a request that they would view the premises, hear the parties, and report the facts, with their recommendation, to the Committee. The report of the commissioners is annexed.

The petitioners, finding that the report of the commissioners was adverse to their prayer, desired a hearing before the Committee. Notice was accordingly given to petitioners and remonstrants, and a public hearing was had, at which the petitioners had full opportunity to rebut the positions of the commissioners so far as they were adverse to their petition. The Committee allowed a wider range to the inquiry than the commissioners. The commissioners confined themselves to the existing state of things; the Committee went somewhat farther, and allowed the parties to present testimony as to the comparative convenience

of the present location, and that proposed by the petitioners, in view of proposed changes in the public highways in that locality. The result of the inquiry was that the Committee unanimously accept the conclusion of the commissioners on the grounds on which they put it; but they also are satisfied that, in view of proposed changes in the highways, the present location of the station will furnish better accommodation to a large majority of the passenger and freight traffic than the proposed location; and that there is reason to hope that if the station remains where it is the highways may be so arranged as to dispense with three crossings at grade, and better accommodate all the travel by one bridge over the railroad.

The Committee, therefore, recommend that the petitioners have leave to withdraw.

For the Committee,

F. W. BIRD, *Chairman.*

## Commonwealth of Massachusetts.

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*Report of the Board of Railroad Commissioners on the petition of Scott and others for a removal of the depot of the Boston, Hartford and Erie Railroad Company, at City Mills, in the town of Norfolk.*

The facts essential to a decision on this case do not admit of dispute, and the rule, or usage, on which the decision must depend, is perfectly well established, and was stated by the Commissioners in their report on the matter of the depot at Millbury, in their Second Annual Report (Report 1871, pp. 120-3). The station, the removal of which to another locality is now petitioned for, was established where it now stands nearly twenty years ago. The corporation then owning the road (the Norfolk County Railroad Company) was financially very much embarrassed, and the station was built by a private party, on land mainly of the company, and in small part his own, and has since been used by the public generally, but always with a sort of special privilege for the party who constructed it, and who was a neighboring manufacturer. The site of the station was fixed upon by the officers of the road in concurrence with the party who constructed it. It was selected in view of the probable construction of a new public way, then contemplated, which was to give access to the station from the south, over a bridge across the railroad; and which would not only render the station sufficiently convenient to all dependent upon it, but would avoid, in approaching it from the south, a very dangerous crossing at grade, at the point to which the petitioners now seek to have the station removed. This public way has never been laid out. Its construction is resisted by those seeking to remove the station; and the removal of the station is resisted by those

desirous of having the public way constructed. It is not denied by the petitioners that, if the proposed way was laid out, the access to the present site would be sufficiently safe and convenient;—neither do the remonstrants deny that, without the proposed public way, the site petitioned for is more accessible and convenient than the present one.

The case is, therefore, strikingly like the Millbury case, and should be governed by the principles there laid down. In the Millbury case the commissioners wholly dismissed the contingency of the future construction of a public way from their consideration of the case. It was a subject over which they could exercise no control, and they did not feel justified in disregarding “the fact of an overwhelming present necessity, because of a contingent future remedy.” (p. 123.) The same rule would guide them in this case, and they would wholly ignore petty local questions, deciding the issue only on existing and recognized facts.

The rule in relation to the removal of long established stations was also distinctly laid down in the Millbury case. (p. 121.) To justify such “a removal, a very decided preponderance of public convenience and popular desire should be manifested. \* \* \* \* A slight balance of advantages, or desire, in such cases, is not sufficient: a heavy burden of proof rests on the innovators.” The propriety of this rule is too manifest for discussion. Without it the whole machinery of business would be subject to constant derangement, and railroad facilities would be incessantly shifting about at the will of land speculators and fluctuating popular majorities. The petitioners in this case certainly proved a preponderance of public convenience, under existing circumstances, in favor of the site desired by them; they did so, however, only by showing that the proposed site is more convenient than the present for those very persons who were remonstrants against the change. The remonstrants, it was conceded, represented over ninety per cent., both of the travel and freight, accommodated at the station. Their resistance to the proposed change was undoubtedly based on the confidence they have in getting a new public way opened to the present site. With the reasons for their resistance to the petition the Commissioners have nothing to do; it is sufficient that they object. They must be supposed to know what their convenience

and desire demands, and, if a conceded ninety per cent. of those using the station for freight and for travel remonstrate against a removal, it is manifestly out of the question for the Commissioners to report that "a very decided preponderance of public convenience and popular desire is in favor of it."

For the reasons above stated, the Commissioners would respectfully report that the petitioners ought to have leave to withdraw.

J. C. CONVERSE,  
EDWARD APPLETON,  
CHAS. F. ADAMS, JR.,  
*Commissioners.*

