

# HOUSE . . . . No. 1379.

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## Commonwealth of Massachusetts.

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EXECUTIVE DEPARTMENT, BOSTON, June 11, 1897.

*To the Honorable Senate and House of Representatives.*

I herewith return without my approval the bill entitled "An Act relative to Green Harbor in the town of Marshfield."

The question of the removal of the dike referred to in the bill has been a subject of discussion for some years. It was constructed under the authority of Sts. 1871, c. 303. I am informed that the result of building the dike was to reclaim a large area of territory which had formerly been partly or wholly submerged by tide-water. The effect of removing the dike will undoubtedly be to destroy much of the value of the land so created by causing it again to be submerged at high tide.

The Legislature of 1896 fully considered the question of the removal of the dike, and the result was the enactment of chapter 495 of the Sts. of 1896, which provided that the board of harbor and land commissioners and the state board of health, sitting as a joint board, were to cause an examination of the marshes and dike to be made by competent engineers; and if upon receiving such report the joint board should determine that a substantial improvement and benefit to Green Harbor would result from the removal of the dike, and that no damage to vested property rights greater than the benefit and improvement to be derived from such removal would result therefrom,

then the board of harbor and land commissioners should remove the dike.

The reason for the passage of this statute was without doubt that it was regarded as uncertain how extensive the damages would be which the Commonwealth would be called upon to sustain by the removal of the dike. Engineers have been appointed by the joint board under the provisions of said statute who have been at work investigating the question submitted to them. They found the question even more difficult than it was supposed to be when the act was passed, and have asked for further time to complete their examination.

It is to be feared that the damages which would be caused by the removal of the dike are too great to warrant the Commonwealth in entering upon such an undertaking. The bill before me recognizes this difficulty, and endeavors to prevent the paying of large damages by section 2, which in substance provides that the increase in the value of such property resulting from the building of the dike in 1871 shall be deducted from the damages assessed to the owners of vested rights. I am advised that this provision is unconstitutional. When property is taken under the right of eminent domain there is no escape from the payment of full damages for the value of the property taken reckoned at the time of the taking. This bill attempts to deduct from the compensation to be awarded a substantial portion of the damages sustained.

Moreover, such a provision, even if constitutional, would be open to the charge of possible injustice. If the ownership of the land reclaimed has changed during the twenty-five years that the dike has been in existence, the original owner has received by the sale of his land all of the enhanced value caused by the building of the dike. This enhanced value the purchaser would lose under this bill.

If this provision be held to be unconstitutional, the result will be either that the whole act will be defeated, or that all the damages assessed caused by the removal of the dike will have to be paid by the Commonwealth. In the latter case the enactment of the bill proposed would precipitate the question of damages before the joint board

appointed by the last Legislature have been able to inform themselves and the Commonwealth as to the amount of such damages.

If when the facts are known it proves to be expedient to remove the dike, the commission already appointed has authority to do so. If, on the other hand, it should prove to be unduly expensive, the work should not be undertaken except under an act passed with a clear understanding of the consequences to the Commonwealth.

This cannot be said of this bill.

ROGER WOLCOTT.

